

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL

Civil Appeal No. 6 of 2011

BETWEEN:

VERNESE BRATHWAITE

Appellant

AND

ANNETTE CLARKE

Respondent

BEFORE: The Hon. Madam Justice Sandra P. Mason, The Hon. Justice Andrew D. Burgess and the The Hon. Madam Justice Kaye C. Goodridge, Justices of Appeal

2016: February 09

Mr. Tariq Khan for the Appellant

Mrs. Roslind Jordan-Callender for the Respondent

ORAL DECISION

MASON JA:

Introduction:

[1] This is an appeal from a decision of the Consumer Claims Tribunal in which it was determined that judgment be given for the refund to the respondent Mrs. Clarke in the sum of \$2190.00 and the cost of electricity connection.

[2] The relevant facts on which this decision was given are as follows:

On or about the 28th January, 2010, the respondent in response to an advertisement in the Nation Newspaper contacted the appellant the owner of Apartment No.2 Husbands Heights, St. James (the “apartment”), with a view to renting the apartment to her daughter, a student at the University of the West Indies, Cave Hill, St. Michael. The respondent wanted to rent the apartment because it was suitably located and relatively safe for a student such as her daughter and she initially wished to rent it for a six (6) month period. These facts were made known to the appellant at the time of the initial viewing of the premises on the 23rd day of January 2010.

[3] At that time, the respondent had an opportunity to enter and inspect the apartment and upon inspecting the same, the respondent drew to the appellant’s notice some concerns she had with the state of the premises. These concerns were in respect of (1) paint work to be done on the exterior and interior of the premises (2) repainting of the kitchen cupboards (3) replacement of a toilet seat (4) the removal of a dirty spot in the bathroom or the retiling of the floor (5) replacing curtains and rods and (6) the re-attachment of wardrobe doors. The electricity was not connected. The respondent advised the appellant that she was prepared to take the apartment from February 1, 2010 on condition that the aforestated repairs were

conducted. The appellant agreed to that condition and started personally to do some of the repair work.

- [4] During the course of executing the works the appellant advised the respondent that she needed her to pay the sum of two thousand, one hundred and ninety dollars (\$2,190.00) being the first and last month's rent and to show that she was firmly committed to taking the apartment upon the completion of the repairs. The respondent complied and made the payment.
- [5] On January 30th 2010 during the time that the repairs were still being conducted, the appellant gave the respondent a letter addressed to the Barbados Light & Power Company Ltd., for the purpose of having electricity supplied to the apartment.
- [6] The respondent was unhappy about the way and the time the work progressed. The date to assume occupation of the apartment changed from February 1, 2010 to February 15, 2010 then to March 1, 2010 and then to March 15, 2010 as the works remained incomplete up to that date. On March 17, 2010, the appellant informed the respondent that she had to do the last of the repairs and proposed to be ready by April 1, 2010. The respondent then informed the appellant that that date was too late to occupy the apartment, time being of the essence since her daughter's exams would start in May and she would not have had time to settle. The respondent therefore requested a refund of the

two thousand, one hundred and ninety dollars (\$2,190.00) paid. That request was refused and the matter was referred first to the Office of Public Counsel.

[7] Mediation was undertaken and this was unsuccessful. The matter was eventually referred to the Consumer Claims Tribunal.

[8] The sole issue before this Court is whether the Tribunal had jurisdiction to hear the matter.

[9] **Section 44(1) of the Consumer Guarantees Act Cap. 326 E (the Act)** provides:

“The function of the Tribunal is to enforce the rights conferred upon consumers and others by this Act and for that purpose to exercise the jurisdiction specified in subsection (2).

Subsection (2) stipulates that:

“The jurisdiction of the Tribunal is to determine complaints made to it under this Part where the value of the subject-matter of the complaint does not exceed the sum of \$10 000 and, subject to section 48, to make awards and other decisions in accordance with its powers under this Act.

[10] It is clear from **subsection (1)** that the jurisdiction of the Tribunal is to enforce rights conferred under the **Act** on a consumer as a consumer or any “other” individual on whom rights are conferred by the **Act**.

[11] From the facts found by the Tribunal the respondent Mrs. Clarke and the appellant Mrs. Brathwaite at all times dealt with each other as landlord and tenant.

[12] No rights are conferred by the **Act** on a tenant nor any obligations imposed by the **Act** on a landlord.

[13] It therefore follows that the respondent Mrs. Clarke in her capacity as tenant does not fall within the meaning of “consumer” as contemplated by the **Act**.

[14] Similarly as no rights are conferred by the **Act** on the respondent, she does not fall within the meaning of “other” as stated by **section 44(1)**.

Disposal

[15] In the premises, the order of this Court is as follows:

- (i) The appeal is hereby allowed;
- (ii) The decision of the Consumers Claims Tribunal is set aside.
- (iii) No order as to costs.

Justice of Appeal

Justice of Appeal

Justice of Appeal