

CAUSE NO. DC-16-07364

Freeney Anita

ROYCE B. WEST,

*Plaintiff,*

v.

DESMOND D. BRYANT,

*Defendant.*

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IN THE DISTRICT COURT

E-101ST  
JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

**PLAINTIFF’S ORIGINAL PETITION**

Plaintiff Royce B. West (“Plaintiff” or “Mr. West”) files this Original Petition against Defendant Desmond D. Bryant (“Defendant” or “Mr. Bryant”) as follows:

**NATURE OF THE ACTION**

1. This action for breach of a lease agreement arises from Mr. Bryant’s refusal to abide by his promises to Mr. West and accept accountability for his negligent and abusive treatment of Mr. West’s property — mistreatment so severe that the resulting damage has necessitated over \$60,000 in repair work to that property.

2. From September 2013 through January 2016, Mr. Bryant resided at 1212 Regents Park Court, a 6400 square foot, 6 bed, 7.5 bath home in the gated community of Regents Park, DeSoto, Texas (the “Property”). The Property, owned by Mr. West, also boasts a tennis court, swimming pool, and gourmet kitchen.

3. Mr. Bryant rented the Property from Mr. West through a Residential Lease Agreement (the “Lease”).<sup>1</sup> Under the Lease, Mr. Bryant undertook to return the Property to Mr. West in the same condition in which he received it, excepting normal wear and tear. When Mr.

<sup>1</sup> Attached as Exhibit A.

Bryant returned the Property to Mr. West in February 2016, however, Mr. West found it in a state of serious disrepair: littered with trash and feces, missing blinds and shutters, with cracked windows and blackened carpeting. Mr. Bryant has been unwilling to accept responsibility for the damage, forcing Mr. West to file this suit.

**DISCOVERY CONTROL PLAN & RULE 47 DISCLOSURE**

4. Plaintiff intends to conduct discovery under TEX. R. CIV. P. 190.3 (Level 2). Plaintiff further states that he seeks damages involving monetary relief of over \$100,000 but not more than \$200,000, excluding costs, expenses, interest, and attorneys' fees.

**PARTIES**

5. Plaintiff Royce B. West is an individual residing in Dallas County, Texas.

6. Defendant Desmond D. Bryant is an individual residing in Dallas County, Texas, and may be served with process at his current known residence, 15950 Dallas Parkway, Suite 600, Dallas, Texas 75248, or wherever he may be found.

**JURISDICTION & VENUE**

7. The Court has subject matter jurisdiction over this matter, and the amount in controversy meets the jurisdictional minimum of this Court.

8. Venue is proper in Dallas County, Texas pursuant to TEX. CIV. PRAC. & REM. CODE § 15.002(1) & (2).

**FACTUAL BACKGROUND**

9. Mr. Bryant and Mr. West entered into the Lease on August 31, 2013. Under the Lease, Mr. Bryant agreed:

- *“Unless the parties agree otherwise in writing, Tenant may not permit, even temporarily any pet on the Property.”*

- “Tenant, at Tenant's expense, *must keep the Property clean and sanitary*” and “promptly dispose of all garbage in appropriate receptacles,” and *may not* “[r]emove any part of the Property or any of Landlord's personal property from the Property,” among other things. *Id.* ¶¶ 17(A) & (D).
- “When this lease ends, Tenant will surrender the Property *in the same condition as when received*, normal wear and tear excepted. Tenant will leave the Property *in a clean condition free of all trash, debris, and any personal property.*” *Id.* ¶ 16(A).
- Normal wear and tear is defined as “deterioration that occurs *without negligence, carelessness, accident, or abuse.*” *Id.* ¶ 10(B).
- “Tenant will be liable for . . . repairs to the Property for use beyond normal wear and tear.” *Id.* ¶¶ 17 & 27.

10. Mr. Bryant further agreed that, in the event of his failure to comply with these provisions the Lease:

- Remedies for violations of ¶ 9(A) include recoupment of the costs of (i) exterminating fleas, (ii) cleaning and deodorizing carpets and drapes, and (iii) repairing any other resulting damages. *Id.* ¶ 9(B).
- “Tenant must reimburse Landlord all Landlord’s reasonable costs . . . for packing, removing, storing, and selling . . . personal property left in the Property.” *Id.* ¶ 16(C)(2).
- “Landlord may . . . perform whatever action Tenant is obligated to perform **and Tenant must immediately reimburse Landlord** the reasonable expenses that Landlord incurs.” *Id.* ¶ 17(E).
- “Tenant will be liable for (a) **any lost rent**; (b) Landlord’s cost of reletting the Property including . . . utility charges []; (c) **repairs to the Property** for use beyond normal wear and tear; [and (d)] all Landlord’s costs associated with collection of amounts due under this lease.” *Id.* ¶ 27(B)(4).
- “Landlord may deduct reasonable charges from the security deposit for . . . damages to the Property, excluding normal wear and tear,” including, but not limited to, the costs of (i) cleaning, deodorizing, exterminating, and maintaining the Property; (ii) replacing security devices; (iii) packing, removing, and storing abandoned property; (iv) restoring walls, flooring, landscaping, or any alterations to the Property not previously approved in writing; and (v) removing odors caused by smoking on the Property. *Id.* ¶ 10(D)

- *“If deductions exceed[] the security deposit, Tenant will pay to the Landlord the excess within 10 days after Landlord makes written demand.” Id.*
- *“Tenant will pay a security deposit to Landlord in the amount of \$4,750.50.” Id. ¶ 10(A). Mr. Bryant’s rent was \$4,720 per month. Id. ¶ 5.*

11. The terms of the Lease remained in effect throughout Mr. Bryant’s tenancy of the Property. *See id.* ¶ 4. Mr. Bryant requested that his tenancy be terminated in January 2016.

12. At Mr. Bryant’s request, Mr. West provided Mr. Bryant and Mr. Bryant’s representative with a written notice of termination of the tenancy.<sup>2</sup> The notice also stated Mr. West’s request that the parties schedule a walk-through of the Property post-termination.

13. Upon Mr. Bryant’s return of the Property to Mr. West, Mr. West invited representatives of Mr. Bryant to perform a walk-through of the residence with him. No representative appeared on the date scheduled for the walk-through, which Mr. West then performed. The walk-through revealed irreparable damage to carpeting, flooring, windows, shutters, and blinds; the presence of animal feces, trash, debris, and personal property inside the residence; and distinct and pervasive odors throughout. Mr. West documented some of this damage by photograph.<sup>3</sup> The photographs present only a fraction of the overall damage caused by Mr. Bryant, which necessitated:

- Removal of trash and furniture from the interior and trash from the exterior of the residence;
- Repainting of the entire residence;
- Cleaning or removal and replacement of all flooring and carpeting inside the residence;
- Replacement of the lighting and ceiling fans;
- Replacement of a number of windows and window screens;

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<sup>2</sup> Attached as Exhibit B.

<sup>3</sup> Attached as Exhibits C-1 through C-11.

- Replacement of the home security system;
- Replacement of the doors, garage locks, and the gate;
- Repair or replacement of the shutters;
- Repair to landscaping; and
- Extensive interior and exterior cleaning of the residence, required in part to clear the residence of the distinct odors.

14. Mr. West came to learn that the repairs would cost him \$61,546.77.

15. In April 2016, Mr. West contacted Mr. Bryant and his representative regarding the damage and costs of repair, providing photographs of the damage and itemized documentation<sup>4</sup> of the costs (including invoices and receipts) and requesting reimbursement of the costs. Mr. Bryant and his representative did not respond.

16. In May, Mr. West again contacted Mr. Bryant's representative to request reimbursement of the costs, which Mr. Bryant had promised to provide under the Lease.

17. Two days later, Mr. West received a letter from separate counsel on behalf of Mr. Bryant. That letter implied that Mr. Bryant would seek to file a separate and unrelated lawsuit against Mr. West should Mr. West pursue collection of the costs of repair any further. The allegations made in the letter were vague, unfounded, and clearly intended as retaliatory.

18. In response, in late May, Mr. West made one more request that Mr. Bryant abide by his obligations under the Lease and provide reimbursement for repairs of damage that he caused.<sup>5</sup>

19. Since February 2016, Mr. West has been unable to relet the Property because of the continuing repair work resulting from Mr. Bryant's damage to the Property.

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<sup>4</sup> Attached as Exhibit D.

<sup>5</sup> Attached as Exhibit E.

20. Because of Mr. Bryant's ongoing disregard for the promises he made and the responsibilities he assumed under the Lease, and Mr. West's resulting losses, Mr. West now seeks resolution of the parties' dispute through this suit.

### CAUSES OF ACTION

#### COUNT 1: BREACH OF CONTRACT

21. Mr. West incorporates the above paragraphs by reference.

22. Mr. West and Mr. Bryant entered into a valid and enforceable contract (the Lease) under which Mr. Bryant agreed to maintain the Property in a certain condition and return it to Mr. West in the condition in which he received it, excepting normal wear and tear. Mr. Bryant further agreed that, in the event the Property was returned with damage beyond normal wear and tear, he would reimburse Mr. West for the costs of repairs.

23. Mr. West fully performed under the contract, or his performance has otherwise been excused.

24. As alleged herein, Mr. Bryant breached the express promises stated in the Lease by bringing the Property to a state of disrepair, returning the Property to Mr. West in such a state, and refusing to reimburse Mr. West for the costs to repair the physical damages that he caused.

25. As a proximate result, Mr. West has suffered actual and consequential damages in an amount to be determined at trial or other final disposition of this case on the merits.

26. Mr. West also requests attorneys' fees pursuant to Chapter 38 of the Texas Civil Practice and Remedies Code and under the Lease.

#### COUNT 2: PROMISSORY ESTOPPEL (IN THE ALTERNATIVE)

27. Mr. West incorporates the above paragraphs by reference.

28. Mr. Bryant made promises to Mr. West relating to his occupancy and treatment of the Property and the payment of any repairs resulting from damage that he caused.

29. Mr. West reasonably and substantially relied on those promises to his detriment as described above. Mr. West's reliance was foreseeable by Mr. Bryant.

30. Injustice can only be avoided by enforcing Mr. Bryant's promises.

#### **REMEDIES REQUESTED**

##### **DIRECT & CONSEQUENTIAL DAMAGES**

31. Mr. West incorporates the above paragraphs by reference.

32. As a result of the negligent and abusive conduct of Mr. Bryant as alleged herein, Mr. West has suffered and will continue to suffer direct and consequential damages.

33. Specifically, and with a reservation of right to supplement, Mr. West seeks:

(a) costs that Mr. West has incurred and will incur in repairing the damage to the Property caused by Mr. Bryant, and

(b) any rent or profits foregone or costs (such as utilities) incurred by Mr. West as a result of the loss of his ability to relet the Property while repairs are being completed.

##### **ATTORNEY'S FEES & COSTS**

34. Mr. West incorporates the above paragraphs by reference.

35. Mr. West is entitled to and hereby seeks recovery of his reasonable and necessary attorneys' fees and costs under Chapter 38 of the Texas Civil Practice and Remedies Code, as well as ¶¶ 27 & 29 of the Lease.

##### **CONDITIONS PRECEDENT**

36. All conditions precedent to the bringing of the causes of action stated herein have been performed or have occurred.

**REQUEST FOR DISCLOSURE**

37. Under TEX. R. CIV. P. 194, Defendant is requested to disclose, within 50 days of service of this request, the information and material described in TEX. R. CIV. P. 194.2.

**PRAYER**

For the foregoing reasons, Plaintiff Royce B. West requests that Defendant Desmond D. Bryant be cited to appear and that, upon final judgment, the Court grant the following relief:

- (a) Direct and consequential damages as alleged herein;
- (b) Attorneys' fees and costs;
- (c) Pre- and post-judgment interest at the highest rate allowed by law; and
- (d) All such other and further relief to which Plaintiff may be found justly entitled.

Dated: June 17, 2016

Respectfully submitted,

**GRUBER ELROD JOHANSEN HAIL SHANK LLP**

By: /s/ G. Michael Gruber

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