

CANADA / JUDGMENT

# Wong v. Smart

2001 BCSC 832

## COURT

Supreme Court of British Columbia

## DECIDED

7 June 2001

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## Source record

2001BCSC0832

Citation: Wong et al. v. Smart Date:

20010607

2001 BCSC 832 Docket:

L011510

Registry: VANCOUVER

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CHUN MAN WONG & YIN LING WONG  
LANDLORDS

AND:

SUSAN SMART  
TENANT

## REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE E.R.A. EDWARDS

Counsel for the Landlords Rowena Wong as agent

Counsel for the Tenant Acting on Her Own Behalf

Date and Place of Hearing: June 6, 2001

Vancouver, BC

[1] This is a Show Cause Summons under s. 25 of the Commercial Tenancy Act.

[2] On December 1, 2000, the parties signed a lease for premises on which the tenant operates a business engaged in retail sales of antiques and collectibles. The term of the lease is from November 1, 2000 to October 31, 2001. The rent is \$950 per month payable on the first of each month in advance, plus GST.

- [3] There is an additional charge for use of a garbage bin of \$24 per month plus GST. At some point the parties agreed to a further payment of \$100 per month for storage space. Total monthly rent and tax is \$1149.18.
- [4] Rent was waived for the first 9 days of the lease. The landlord holds a deposit of \$950.
- [5] There is a dispute between the parties as to whether the business opened May 1, 2001 or just six days ago. In any event, the start up of the business was delayed by a number of tribulations visited on the tenant. These problems caused the tenant to fall into rent arrears from time to time. Rent payments have been sporadic and characterised by delays, excuses and NSF cheques from the tenant.
- [6] In order to accommodate the tenant during the attenuated start up of the business and to avoid NSF cheque charges, the landlord agreed to accept rent in cash at the rate of \$300 each Friday.
- [7] The landlord says that as of today the tenant is \$667.54 in arrears.
- [8] The tenant disputes this. She said she is not sure what she has paid or what she owes. She said the last payment she made was \$300 on May 18, 2001. She acknowledges a cheque tendered May 24 for \$300 bounced. She said her offer to pay the full rent for June made on June 2, 2001 was refused by the landlord. She said she has the money to make that payment now.
- [9] The landlord also alleges the tenant was in breach of the lease by cluttering up areas adjacent to the premises with various items including a van, to the annoyance of other tenants. The tenant says this has been largely rectified and the van will be removed this weekend.
- [10] The tenant said she has spent many hours and \$4500 on renovations and tenant improvements.
- [11] The landlord seeks an order that the tenant vacate the premises by 12:01 a.m. June 16, 2001, together with an order that the deposit may be used to offset rent then owing and such damages as the premises may have sustained. The landlord asks for costs of this application.
- [12] I am not sure how the landlord calculated the arrears at \$667.54. I assume this represents the payments due May 24 and June 1, including either or both tax and the garbage and storage surcharges.
- [13] While I appreciate the exasperation of the landlord with the tenant's sporadic payments, the tenant has a good deal of "sweat equity" and expense invested in preparing the premises and has been open for business only a short while.
- [14] The tenant expressed confidence cash flow from the business would permit her to pay the rent after July 1, 2001. The landlord believes the business is bound to fail. It is too soon to tell whether the business will thrive or fail. The order sought by the landlord would make it fail.

- [15] I adjourn the landlord's application on condition the tenant pay the landlord \$1482.95 by cash or certified cheque no later than noon Monday June 11, 2001. That sum represents the May 26 payment and the entire amount due for June 2001.
- [16] If the payment is not made, the landlord may continue this application by filing a praecipe returnable in this court the following day, June 12, 2001.
- [17] While it will be in the discretion of the judge hearing the matter, should the payment not be made, the tenant should anticipate the order now sought by the landlord would be made on Tuesday June 12, 2001.
- [18] If the order sought by the landlord is made by the court on or after June 12, 2001, the landlord will be entitled to the costs of today's application.

"E.R.A. Edwards, J."

The Honourable Mr. Justice E.R.A. Edwards

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