

**SAINT REGIS MOHAWK TRIBAL COURT  
IN AND FOR THE SAINT REGIS MOHAWK TRIBE**

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<b>Constance Tarbell,</b>	)	
	)	<b>Case No.: 19-CIV-00002</b>
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>DECISION AND ORDER</b>
	)	
<b>Shirley Thomas-Bourque,</b>	)	
<b>Respondent.</b>	)	

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**Procedural Background**

On February 2, 2019, Constance Tarbell, Plaintiff, filed a civil complaint requesting a refund of fuel and an electric bill for a total amount of \$429.00. Plaintiff submitted other documentation including receipts, a copy of a bill from National Grid, and the lease agreement with the move in & inventory and conditions.

On March 25, 2019, Shirley Thomas Bourque, Respondent, submitted an answer and counterclaim, denying all allegations and seeking a refund of her deposit, and submitted documentation including a fuel and rent receipt.

On April 16, 2019, the Court held an initial appearance on this matter. Plaintiff was present and self-represented. Respondent was absent. Plaintiff advised the Court that she wished to proceed to trial.

On April 18, 2019, Chief Judge Carrie Garrow advised Court staff that she had a conflict in this matter and the case was assigned to Associate Judge Patrick Solomon.

On June 3, 2019, the Court held the trial on this matter. Plaintiff and Respondent were both present and self-represented. The Court heard testimony from the parties and accepted evidence. On the record, the Court denied the Plaintiff's request to be reimbursed the fuel damages in the amount of \$200.00, as Respondent had produced evidence that she had paid the bill.

**Jurisdiction**

The Court possesses civil jurisdiction over civil disputes involving contracts negotiated, executed, or performed in Mohawk Indian Country pursuant to the Saint Regis Mohawk Tribe Civil Code (SRMT Civil Code).<sup>1</sup> The instant matter involves a landlord-tenant contract matter entered into and performed within the borders of the Saint Regis Mohawk Indian Reservation. Thus, the Court possesses the requisite jurisdiction.

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<sup>1</sup> SRMT Civil Code § II. B.

### **Applicable Law**

The SRMT Civil Code delineates the applicable law for civil disputes and the order in priority of which they should be applied. First the Court is required to look to portions of the United States Constitution and federal law.<sup>2</sup> In this matter, the parties do not request the Court to apply the United States Constitution and federal law to their claims. Next, the Court may apply written Mohawk laws adopted by the recognized governmental system of the Mohawk Tribe.<sup>3</sup> At this time, the Saint Regis Mohawk Tribe has not enacted a law addressing contracts. The Court may also look to unwritten and written Mohawk customs, traditions, and practices.<sup>4</sup> In this matter, neither party has requested the Court to apply Mohawk customs, traditions, and practices. Next, the SRMT Civil Code allows the Court to apply generally recognized principles of the law of contract as reflected by the most recent Restatement of Contracts or in such expert treaties as the Court may choose to recognize.<sup>5</sup> Since there is no written Mohawk laws which would supersede the use of the most recent Restatement of Contracts, the Court will utilize the Restatement as necessary to resolve this matter.

### **Findings of Fact**

The Plaintiff, Constance Tarbell, bears the burden of proof by preponderance of evidence.<sup>6</sup> Preponderance of the evidence is met “by providing superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.”<sup>7</sup> After reviewing the record and testimony the Court finds the following facts were proven by a preponderance of evidence.

1. The Plaintiff and Respondent entered into a three month lease agreement for trailer #2 on January 11, 2019.
2. The terms demonstrate that the named Plaintiff was the landlord and the named Respondent was the tenant.
3. The terms found in the move in & inventory document dated January 11, 2019 are included as part of the three month lease agreement.
4. The Respondent paid a \$100.00 security deposit, \$300.00 in rent, and \$200.00 to #9 Fuels.
5. The Respondent resided at trailer #2 for two weeks during January 11, 2019 to February 11, 2019.

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<sup>2</sup> SRMT Civil Code § V. A. 1.

<sup>3</sup> SRMT Civil Code § V. A. 2.

<sup>4</sup> SRMT Civil Code § V. A. 3.

<sup>5</sup> SRMT Civil Code § V. A. 4.

<sup>6</sup> SRMT Rules of Civil Procedure § XX. A.-B.

<sup>7</sup> SRMT Rules of Civil Procedure § XX. B.

6. The Respondent gave the Plaintiff a two day notice that she was going to move out.
7. The Plaintiff received an electric bill in the amount of \$229.47 from National Grid for the billing period of January 11, 2019 to February 12, 2019.
8. The Plaintiff has not received payment for the \$229.47 National Grid electric bill.

### **Analysis**

In the instant matter, the Plaintiff testified that she rented a premises known as trailer #2 to the Respondent. Both parties signed the agreement for the purpose of entering into a landlord-tenant relationship in order to allow the Respondent to rent trailer #2 from the Plaintiff. The terms expressed in the documents known as the lease agreement and the move in & inventory dated January 11, 2019, were agreed upon by both parties. These facts are undisputed; therefore, the Court finds that the documents constitute a legally binding enforceable contract.

The terms of the contract demonstrate that the duration of the lease was for three months. The Plaintiff's complaint, admitted evidence, and testimony indicates that the Plaintiff is only requesting the damages incurred during January 11, 2019 and February 11, 2019. Thus, the Court finds that the Plaintiff waived her rights to the damages incurred in the remaining two months of the lease agreement.

In regards to the case at bar, the Plaintiff entered into evidence copies of a fuel receipt from #9 Fuels in the amount of \$200.00 and a National Grid receipt for electric in the amount of \$229.47. The Plaintiff requests the Court to grant her damages in the amount of \$429.00. On the record, based on the written evidence provided by the Respondent, the Court denied the Plaintiff's request for the fuel damages. Thus, the issue before the Court is whether the Plaintiff is entitled to the remaining damages requested in the amount of \$229.00.

The Respondent disputed the National Grid bill by alleging that the amount billed for electricity is a high amount for the time frame that she was living at trailer #2. The terms of the lease agreement state that the tenant "shall be responsible for all utilities, such as heat, electric, garbage removal, internet service, and cable t.v." The Respondent did not submit evidence that demonstrates that she paid any amount of the National Grid bill. Rather, she disputes the Plaintiff's claim by pointing to the fact that she already paid the Plaintiff a total of \$600.00 for the two weeks she lived at the trailer. Based on the fact that the lease states that the tenant is responsible for utilities including electric and that the Respondent failed to pay the amount owed, the Court finds that the Plaintiff is entitled to recover the amount of \$229.00.

In this matter, the Respondent has counterclaim and asked the Court to award her \$100.00 for the security deposit. To substantiate her claim, the Respondent alleges that the living conditions of the trailer were poor and inhabitable. The Respondent alleged that there were mice in the trailer and that due to the mice she could not store food in the cupboards. She further testified that there were holes in the floor causing the trailer to be cold. She also testified that the kitchen pipes under the sink froze while she was renting the trailer from the Plaintiff. The

Plaintiff did not dispute this. However, the Respondent testified that she did not tell the Plaintiff about the living conditions. As a result, the Plaintiff was not given notice to remedy the alleged problems with the trailer.<sup>8</sup> Thus, the Court will deny the counterclaim filed by the Respondent.

At the trial, the Plaintiff testified that it was her standard practice that a security deposit is refundable if a trailer is in the “same condition and the place is clean.” The terms of the lease substantiate this practice. The lease agreement states that “[t]he security deposit will be refunded if everything is in good condition as when rented, clean tub, fridge, windows, shampoo rugs and undamaged.” The Plaintiff testified that the Respondent did not clean the apartment as required when she moved out. The Respondent disputed this assertion in part. The Respondent testified that she vacuumed the rugs, cleaned the trailer, and there was no damage to the trailer. However, the Respondent testified that she failed to shampoo the carpet. Moreover, the terms of the lease state that “[i]f said tenant should decide to move out before this lease agreement is up, said tenant will lose the security deposit and any unused portion of monthly rent money.” In the instant case, the Respondent moved out before the end of the three month lease agreement. This is undisputed. Based on the aforementioned and the terms of the contract between the parties, the Court denies the Respondent’s counterclaim.

### **ORDER**

Based on the foregoing the Respondent, Shirley Thomas-Bourque, is **ORDERED** to pay the Plaintiff, Constance Tarbell, \$229.00 for damages owed.

Signed this 17<sup>th</sup> day of June, 2019.



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**Patrick Solomon, Associate Judge  
Saint Regis Mohawk Tribal Court**

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<sup>8</sup> At this time, the Saint Regis Mohawk Tribe has no written Landlord-Tenant Law governing the rental of properties. Typically, Landlord-Tenant Law is composed of primarily state statutory law and common law. Some states may base their statutory law on the Uniform Landlord and Tenant Act or the Model Residential Landlord-Tenant Code. The concepts expressed in landlord and tenant are supported by principles in both contract and property law. State housing codes are established to ensure that rental units are habitable at the time of rental and during the terms of the lease. The habitability of a rental unit is also ensured by warranties of habitability which are prescribed by common and/or statutory law. A breach of this warranty may constitute constructive eviction, allow tenants to withhold rent, repair the problem and deduct the cost from the rent, or recover damages. Real Property Law § 227. New York State has adopted the warranty of habitability for residential tenants and it is required that the tenant give the landlord notice of the bad conditions. Tenants’ Rights Guide, Office of the New York State Attorney General at [https://ag.ny.gov/sites/default/files/tenants\\_rights.pdf](https://ag.ny.gov/sites/default/files/tenants_rights.pdf). In its cases, the Court has looked to for guidance and applied concepts of law found in other expert sources so long as the application of the source is consistent with principles of tribal sovereignty, self-government, and self-determination. See Francine Gray et. al. v. Alicia M. Cook, 18-CIV-00022 (Feb. 20, 2019). Similar to other cases, the Court finds the application of the warranty of habitability and notice requirement is consistent with the aforementioned principles.

***No later than ten (10) days after a judgment is final, a party may ask the Judge for a rehearing, reconsideration, correction vacation, or modification of the judgment. The parties have thirty (30) days from the entry of this Order to file an appeal with the Saint Regis Mohawk Court of Appeals.***

