

DOCKET NO.: KNL-CV22-6056561-S

SUPERIOR COURT

BROAD STREET REALTY, LLC

J.D. OF NEW LONDON

V.

AT NEW LONDON

MECHANICAL JUAN, LLC

JUNE 3, 2024

MEMORANDUM OF DECISION

This matter arises out of a landlord tenant dispute over unpaid rent, unpaid water usage and damage to the premises. The claims sound in breach of contract. A court trial was held on February 8, 2024. The court has reviewed the evidence submitted at the trial. The court finds the following facts.

The defendant and lessee, Mechanical Juan, LLC, took possession of a space located at the rear portion of 365 Broad Street in New London by way of a lease. The defendant, Juan Fernandez, is the owner/operator of Mechanical Juan, LLC. The plaintiff, Broad Street Realty, LLC is the lessor and landlord of the premises. The parties had a one-year lease from July 23, 2016 through July 22, 2017. The parties entered into a new lease for a period of three years that ran from September 1, 2017 through August 31, 2020. The rent for the three-year period was set at \$1,600.00 per month.

At the end of the three-year lease, the parties were unable to reach an agreement for a new lease. The plaintiff permitted the defendant to remain in the premises for the monthly rate of \$1,750.00, without a new written lease. The three-year lease contains a holdover provision in section 14, indicating that the plaintiff “may, at its option, elect to treat the Lessee as one who

has not removed at the end of its terms, and thereupon be entitled to all the remedies against the Lessee provided by law in that situation, of the Lessor may elect, at its option, to construe such holding over as a tenancy from month to month, subject to all the terms and conditions of the Lease, except as to duration thereof, and in that event the Lessee shall pay monthly rent in advance at the rate provided herein as effective during the last month of the leased term.”

In July 2021, the plaintiff notified Fernandez that the plaintiff was in negotiations with another business to take over the premises occupied by the defendant. The plaintiff notified Fernandez that the defendant had thirty (30) days to exit the premises. The defendant did not vacate the premises. On August 5, 2021, the plaintiff issued a Notice to Quit to the defendants, notifying the defendant to vacate the premises by August 31, 2021. The Notice to Quit was served on the defendants on August 6, 2021. Thereafter, the plaintiff began eviction proceedings. The defendants paid the rent for August 2021. The defendants attempted to pay the rent for the months of September and October 2021. The plaintiff refused these rent checks. The defendants did not pay the rent for the months of November and December 2021. The defendants vacated the premises on or about December 31, 2021.

Pursuant to the terms of the lease, the defendant was obligated to pay for all electricity, gas and other utilities. Pursuant to the terms of the lease, in the event that the lessee did not pay rent within ten (10) days from the due date, the lessee shall pay a late fee of \$100.00. Pursuant to the terms of the lease, the lessee agreed to maintain the premises in good condition and was responsible for exterior maintenance of the premises including landscaping. Pursuant to the

terms of the lease, the lessee agreed not to accumulate an unreasonable amount of fluids on the premises.

On May 12, 2022, the plaintiff filed a one count complaint against the defendants for breach of contract. The plaintiff claims that the defendants failed to pay the rent for September, October, November, and December 2021; failed to pay the late fees; failed to pay for any of the water usage; failed to remove trash; and failed to restore the premises to the condition in which it was maintained before the defendants moved in.

Discussion

“In construing a written lease . . . three elementary principles must be [considered]: (1) The intention of the parties is controlling and must be gathered from the language of the lease in light of the circumstances surrounding the parties at the execution of the instrument; (2) the language must be given its ordinary meaning unless a technical or special meaning is clearly intended; [and] (3) the lease must be construed as a whole and in such a manner as to give effect to every provision, if reasonably possible. . . . Furthermore, when the language of the [lease] is clear and unambiguous, [it] is to be given effect according to its terms. A court will not torture words to import ambiguity [when] the ordinary meaning leaves no room for ambiguity Similarly, any ambiguity in a [lease] must emanate from the language used in the [lease] rather than from one party's subjective perception of [its] terms.” (Citations omitted; footnote omitted; internal quotation marks omitted.) *Bristol v. Ocean State Job Lot Stores of Connecticut, Inc.*, 284 Conn. 1, 7–8, 931 A.2d 837 (2007); *Tomey Realty Co. v. Bozzuto's, Inc.*, 168 Conn. App. 637, 647, 147 A.3d 166 (2016).

The three-year lease contains a holdover provision that provides that in the event of a holdover situation, the terms and conditions of the lease remain in effect except for the terms relating to the duration of the lease. Based on this provision, the court finds that a valid and enforceable lease existed between the parties. The court also finds that the terms of the lease are clear and unambiguous.

It is undisputed that the parties agreed to a monthly payment of rent of \$1,750.00. The defendants argue that they do not owe rent for the months of September, October, November and December 2021 because the plaintiff's member, Douglas Antupit locked them out of the premises during this time period. The court finds that the defendant occupied the premises for the months of September, October, November and December 2021. The court bases this finding on the credible testimony of David Santiago. Santiago, who is not a party to this matter, leased the front of the premises and was present at the premises on a regular basis during the months of September, October, November and December 2021. Santiago testified credibly that he observed the defendant's employees at the premises every day during these months. Although Juan Fernandez testified that he was locked out of the premises for some period of time in September 2021 and therefore could not run his business out of the premises, the court does not credit Juan Fernandez, as credible during this portion of his testimony.

The court now turns to the issue of the lost rent. The plaintiff claims that the defendant breached the lease by failing to pay rent for the months of September, October, November and December 2021. The evidence shows that the defendants tried to pay the rent for September and October 2021 but that Antupit did not accept these payments. Since the plaintiff refused to

accept the defendants' rent checks for the months of September and October 2021, the court declines to find that the defendant breached the lease and failed to pay their rent for these specific months. With regard to the months of November and December 2021, no credible evidence was submitted that the defendants made rental payments for these months or attempted to make rental payments for these months. Thus, the court finds that the defendants breached the lease agreement relative to these months. The plaintiff is entitled to damages in the amount of \$1,750.00 for November 2021 and \$1,750.00 for December 2021, for a total of \$3,500.00.

With regard to the late fees, the lease states that the lessee shall pay a late fee of \$100.00. Thus, since the defendant failed to pay rent for two (2) months, the court finds that the plaintiff is entitled to \$100.00 a month for the two (2) months that the rent was not paid, for a total of \$200.00 in late fees.

The plaintiff argues that it is entitled to reimbursement for various water bills that it paid to the City of New London. Through Anutpit, the plaintiff introduced a summary of the water expenses that the plaintiff claims to have paid that should have been paid by Mechanical Juan, LLC. The summary shows a total of \$1,581.30 that the plaintiff paid for water. The summary shows that the plaintiff made payments on February 3, 2020; August 24, 2020; November 4, 2020; December 8, 2021; and March 14, 2022.

No corresponding bill from the City of New London was introduced into evidence for the February 3, 2020 payment. Thus, the court does not find credible the plaintiff's claim that it is entitled to reimbursement for \$400.00 for the February 3, 2020 payment. With regard to the

December 8, 2021 bill, the plaintiff submitted an invoice from the City of New London in the amount of \$289.85 and a due date of December 8, 2021. The problem with this invoice is that it does not divide up the water usage between the front of the building and the rear of the building. The evidence bears out that Santiago moved into the front of the building in August 2021. Thus, at the time of the invoice, both businesses were occupying the premises. The court cannot determine which portion of the invoice is attributable to the defendants and thus will not hold the defendants liable for this invoice.

Similarly, the invoice with a due date of March 14, 2022 does not divide up the water usage between the front of the building and the rear of the building. Moreover, the defendants had vacated the premises in December 2021. The court will not hold defendants liable for the March 14, 2022 invoice.

The plaintiff submitted an invoice from the City of New London with a due date of June 12, 2020 in the amount of \$379.02. The plaintiff paid this invoice on August 24, 2020. At that time, the defendants were the only occupants of the premises and were obligated under the terms of the lease to pay for the water utility. Thus, the plaintiffs are entitled to reimbursement in the amount of \$379.02 for this invoice.

The plaintiff submitted an invoice from the City of New London with a due date of September 15, 2020 in the amount of \$214.99. The plaintiff paid this invoice on November 4, 2020. At that time, the defendants were the only occupants of the premises and were obligated under the terms of the lease to pay for the water utility. Thus, the plaintiffs are entitled to reimbursement in the amount of \$214.99 for this invoice.

The plaintiff argues it is entitled to reimbursement for maintenance of the premises. The evidence demonstrates that Juan Fernandez employed a maintainer for the outside of the premises. The court also finds that Fernandez kept the premises clean while his business was in operation. The court finds that the plaintiff is not entitled to reimbursement on this claim.

Special Defenses

The defendants assert the special defenses of unclean hands and unjust enrichment. “The doctrine of unclean hands expresses the principle that where a plaintiff seeks equitable relief, he must show that his conduct has been fair, equitable and honest as to the particular controversy in issue . . . For a complainant to show that he is entitled to the benefit of equity he must establish that he comes into court with clean hands . . . The clean hands doctrine is applied not for the protection of the parties but for the protection of the court . . . It is applied . . . for the advancement of right and justice . . . The trial court enjoys broad discretion in determining whether the promotion of public policy and the preservation of the courts' integrity dictate that the clean hands doctrine be invoked.” (Internal quotation marks omitted.) *Monetary Funding Group, Inc. v. Pluchino*, 87 Conn. App. 401, 407, 867 A.2d 841 (2005). “The party seeking to invoke the clean hands doctrine to bar equitable relief must show that his opponent engaged in willful misconduct with regard to the matter in litigation.” (Internal quotation marks omitted.) *Id.*

“Willful misconduct has been defined as intentional conduct designed to injure for which there is no just cause or excuse . . . [Its] characteristic element is the design to injure either actually entertained or to be implied from the conduct and circumstances . . . Not only

the action producing the injury but the resulting injury also must be intentional . . . [T]he term willful has [also] been used to describe conduct deemed highly unreasonable or indicative of bad faith.” (Citation omitted; internal quotation marks omitted.) *19 Perry Street, LLC v. Unionville Water Co.*, 294 Conn. 611, 630–31 n. 10, 987 A.2d 1009 (2010).

The defendants have not carried their burden of proof in demonstrating that the plaintiff acted with willful misconduct in locking out the defendants and refusing to accept the rent checks. The court credits Antupit’s explanation as to why he declined to accept the defendants’ checks. Antupit’s explanation for refusing the rent checks is in line with the law in this state. “The rule in Connecticut is that a landlord cannot both terminate the lease and *accept* overdue rent; the landlord, however, is entitled to *refuse* payment of rent after the tenancy has been terminated.” *Martin v. Holmes*, Superior Court, judicial district of Waterbury, Docket No. WASP055058 (June 30, 2015, *Ecker, J.*).

Similarly, the court credits Antupit’s testimony that he believed he had the right to change the locks on the doors of the premises by the terms of the lease. The court does not find the defendant, Fernandez, credible on the issue of how long the defendants were locked out of the premises. Antupit changed the locks on the premises on September 18, 2021. The premises remained locked for a few hours until the police ordered Antupit to unlock the premises. Antupit locked the premises for a second time on September 20, 2021, again for a few hours. Antupit left a key for the Fernandez on September 20, 2021. A court order was issued on September 22, 2021, ordering the Antupit to keep the premises unlocked until a hearing.

The defendant, Fernandez first testified that Antupit left him a key for the new lock on September 19, 2021. He later testified that the key was returned on September 22, 2021. Fernandez's son, John Fernandez, testified that Mechanical Juan, LLC was locked out of the premises from September 18, 2021 through October 3, 2021. The counterclaim alleges a different set of dates for the lock out and alleges that the defendants were locked out from September 18, 2021 through September 22, 2021. The defendants' version of the facts is inconsistent and not credible. Comparatively, the court credits Antupit's testimony that he left Fernandez a key on September 20, 2021.

The defendants have not met their burden of proof in demonstrating that the plaintiff engaged in willful misconduct. Thus, the defendants have not met their burden of proof on their special defense of unclean hands.

With regard to the special defense of unjust enrichment, such a special defense "is without merit because unjust enrichment is a cause of action which permits a recovery; it is not a defense which precludes recovery by another party. Unjust enrichment is a doctrine which allows the restoration to a party of something of which he was deprived." *Thibault v. Buckmiller*, Superior Court, judicial district of Waterbury, Housing Session, Docket No. SPWA 90 0708503 (December 31, 1991, *Vertefeuille, J.*); see also *Avon Financial v. Dolan*, Superior Court, judicial district of Hartford/New Britain at New Britain, Docket No. CV96-0473093 (October 31, 1996, *Arena J.*). "Unjust enrichment is viable as a counterclaim, but it is improper when asserted as a special defense." (Internal quotation marks omitted.) *Republic Credit Corp. v. McCarty*, Superior Court, judicial district of Stamford/Norwalk at Stamford, Docket No. CV

99-0175412 (October 5, 2000, *D'Andrea, J.*); see also *Citigroup Mortg. Loan Tr. v. Brown*, Superior Court, judicial district of Fairfield at Bridgeport, Docket No. FBT-CV19-6088425-S, (March 20, 2023, *Cirello, J.*). Therefore, the defendants' special defense is legally insufficient and fails as a matter of law.

Counterclaim

The court now turns to the defendant's counterclaim. The defendant filed a counterclaim on August 10, 2022. The defendant brings claims against the plaintiff for unlawful entry and detainer; violation of Connecticut Unfair Trade Practices (CUTPA); breach of contract; breach of the covenant of good faith and fair dealing; tortious interference with a business relationship; tortious interference with a contract; abuse of process; statutory theft; and conversion.

Unlawful detainer

The defendants' unlawful detainer claim is governed by General Statutes 47a-43 which provides:

- (a) When any person (1) makes forcible entry into any land, tenement or dwelling unit and with a strong hand detains the same, or (2) having made a peaceable entry, without the consent of the actual possessor, holds and detains the same with force and strong hand, or (3) enters into any land, tenement or dwelling unit and causes damage to the premises or damage to or removal of or detention of the personal property of the possessor, or (4) when the party put out of possession would be required to cause damage to the premises or commit a breach of the peace in order to regain possession, the party thus ejected, held out of possession, or suffering damage may exhibit his complaint to any judge of the Superior Court.

The defendants allege that they suffered lost business income, legal fees and costs and emotional distress. The defendants submitted no credible evidence of lost profit or business

income during the time that they were locked out of the premises. Moreover, the court does not find the defendant, Fernandez, credible on the issue of how long the defendants were locked out of the premises. Antupit changed the locks on the premises on September 18, 2021. The premises remained locked for a few hours until the police ordered Antupit to unlock the premises. Antupit locked the premises for a second time on September 20, 2021, again for a few hours. Antupit left a key for the Fernandez on September 20, 2021. A court order was issued on September 22, 2021, ordering the Antupit to keep the premises unlocked until a hearing.

The defendant Fernandez first testified that Antupit left him a key for the new lock on September 19, 2021. He later testified that the key was returned on September 22, 2021. Fernandez's son, John Fernandez, testified that Mechanical Juan, LLC was locked out of the premises from September 18, 2021 through October 3, 2021. The counterclaim alleges that the defendants were locked out from September 18, 2021 through September 22, 2021. The defendants' version of the facts is inconsistent and not credible. Comparatively, the court credits Antupit's testimony that he left Fernandez a key on September 20, 2021. The court also does not find that the defendants have met their burden in demonstrating that Fernandez suffered emotional harm or that the defendants suffered reputational harm.

The defendant failed to carry their burden in demonstrating that the plaintiff engaged in a lockout that caused the defendants any damage.

Connecticut Unfair Trade Practices Act

The defendant's CUPTA claim incorporates the entry and detainer claim. A violation of CUTPA can be found where the defendant's actions violate § 47a-43 (a). *Haslam-James v. Lawrence*, 133 Conn. App. 321, 330-31, 35 A.3d 368 (2012). Since the defendants have failed to prove an unlawful entry and detainer, the defendants have likewise failed to prove a violation of CUTPA.

Breach of Contract

The defendants claim that the plaintiff breached the lease agreement by locking them out of the premises. The defendants allege that as a result of the plaintiff's breach, they sustained "significant damages."

"The elements of a breach of contract action are the formation of an agreement, performance by one party, breach of the agreement by the other party and damages." (Internal quotation marks omitted.) *Keller v. Beckenstein*, 117 Conn. App. 550, 558, 979 A.2d 1055, 1060 (2009). "The general rule in breach of contract cases is that the award of damages is designed to place the injured party, so far as can be done by money, in the same position as that which he would have been in had the contract been performed." *Ambrogio v. Beaver Rd. Assocs.*, 267 Conn. 148, 155, 836 A.2d 1183 (2003).

Paragraph 10 of the lease provides that the lessor will permit the lessee to occupy, possess and enjoy the premises without hinderance from the lessor. The evidence demonstrates that the plaintiff locked the defendants out of the premises for a few hours on September 18, 2021 and a few hours on September 20, 2021. However, the defendants did not carry their

burden and demonstrate that they suffered any damages as a result of the plaintiff's actions. Thus, the defendants failed to prove a breach of contract claim.

Breach of the Covenant of Good Faith and Fair Dealing

The defendants allege that the plaintiff's refusal to accept rental payments and then seek collection of the rental payments is a breach of the covenant of good faith and fair dealing.

"Good faith performance or enforcement of a contract emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party . . .

Essentially it is a rule of construction designed to fulfill the reasonable expectations of the contracting parties as they presumably intended. The principal, therefore, cannot be applied to achieve a result contrary to the clearly expressed terms of the contract, unless, possibly, those terms are contrary to public policy." (Citations omitted; internal quotation marks omitted.)

Magnan v. Anaconda Industries, Inc., 193 Conn. 558, 566-67, 479 A.2d 781 (1984). "A key distinction between simple breach of contract and breach of the covenant of good faith and fair dealing is that the latter requires allegation and proof of bad faith." *Faryniarz v. Ramirez*, Superior Court, judicial district of Ansonia-Milford at Milford, Docket No. CV16-6021996-S, (May 13, 2020, *Stevens, J.*). "Bad faith in general implies both actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive . . . Bad faith means more than mere negligence; it involves a dishonest purpose." (Citation omitted; internal quotation marks omitted.) *Habetz v. Condon*, 224 Conn. 231, 237, 618 A.2d 501 (1992).

The evidence shows that the defendants tried to pay the rent for September 2021 but that Antupit did not accept the payment. Antupit explained that he did not accept the payment because he did not want the defendants to think that he was permitting them to stay in the premises for the month of September. The defendants submitted into evidence a check from Mechanical Juan, LLC with “Oct Rent” written in the memo. Antupit claims he never saw this check. The defendant testified that the plaintiff did not cash this check. The court finds credible the defendants’ evidence on the issue of the October 2021 rent check. The court is persuaded that the defendants attempted to make the rent payment of October 2021.

The defendants have not established that the plaintiff acted in bad faith when it rejected the checks. The court credits Antupit’s explanation as to why he declined to accept the defendants’ checks. Antupit’s explanation for refusing the rent checks is in line with the law in this state. “The rule in Connecticut is that a landlord cannot both terminate the lease and *accept* overdue rent; the landlord, however, is entitled to *refuse* payment of rent after the tenancy has been terminated.” *Martin v. Holmes*, supra. Based on the evidence presented, the court does not find that the plaintiff acted in bad faith.

Tortious Interference With Business Relationship

The defendants allege that the plaintiff interfered with the business relationship to their customers by wrongfully dispossessing the defendants from the premises. The defendants allege that the dispossession disrupted the defendants’ business and forced them to close their business for a period of time on two separate occasions.

“[I]n order to recover for a claim of tortious interference with business expectancies, the claimant must plead and prove that: (1) a business relationship existed between the plaintiff and another party; 2) the defendant intentionally interfered with the business relationship while knowing of the relationship; and (3) as a result of the interference, the plaintiff suffered actual loss.” (Internal quotation marks and citation, omitted.) *Hi-Ho Tower, Inc. v. Com-Tronics, Inc.*, 255 Conn. 20, 32-33, 761 A.2d 1268 (2000). “[F]or a plaintiff successfully to prosecute such an action it must prove that the defendant's conduct was in fact tortious. This element may be satisfied by proof that the defendant was guilty of fraud, misrepresentation, intimidation or molestation ... or that the defendant acted maliciously.” *Blake v. Levy*, 191 Conn. 257, 260–61, 464 A.2d 52 (1983). Not every act that disturbs a contract or business expectancy is actionable. *Id.*

The defendants have not carried their burden of proof of demonstrating that the plaintiff intentionally interfered with the business relationship between the defendants and their clients. Similarly, the defendants did not submit credible evidence that they suffered actual loss. Instead, the evidence demonstrates that the defendants continued to run their business at the premises, with the exception of being locked out for a few hours.

Tortious Interference with a Contract

The defendants incorporate by reference their allegations for tortious inference with a business relationship in their tortious interference with a contract claim. “A claim for intentional interference with contractual relations requires the plaintiff to establish: (1) the existence of a contractual or beneficial relationship; (2) the defendant's knowledge of that

relationship; (3) the defendant's intent to interfere with the relationship; (4) that the interference was tortious; and (5) a loss suffered by the plaintiff that was caused by the defendant's tortious conduct.” *Rioux v. Barry*, 283 Conn. 338, 351, 927 A.2d 304 (2007). “It has long been considered tortious either to induce a breach of contract or to interfere with financial expectancies. . . . However, it is well-settled that the tort of interference with contractual relations only lies when a third party adversely affects the contractual relations of two other parties.” (Internal quotation marks omitted.) *Wellington Systems, Inc. v. Redding Group, Inc.*, 49 Conn. App. 152, 168, 714 A.2d 21, cert. denied, 247 Conn. 905, 720 A.2d 516 (1998).

The defendants have not carried their burden of proof of demonstrating that the plaintiff intentionally interfered with a contractual relationship between the defendants and their clients. Similarly, as stated previously, the defendants did not submit credible evidence that they suffered actual loss.

Abuse of Process

The defendants claim that the plaintiff engaged in abuse of process by engaging in “self help eviction instead of using the proper summary process procedure. . . .” Counterclaim, Count Seven, ¶ 37. The defendants also incorporate by reference the allegations that the plaintiff served the defendants with a notice to quit and summary process action. Presumably, the defendants claim that these actions were an abuse of process by the plaintiff. The defendants further allege that the plaintiff’s act of refusing to accept rent and then commencing a collection action is an abuse of process.

“An action for abuse of process lies against any person using a *legal* process against another in an improper manner or to accomplish an improper purpose for which it was not designed.” (Emphasis added.) *Larobina v. McDonald*, 274 Conn. 394, 403, 876 A.2d 522 (2005); *Fedor v. Hawley*, Superior Court, judicial district of Fairfield, Docket No. CV06-5003192-S (April 12, 2007, *Tyma, J.*).

The plaintiff argues that the abuse of process claim fails because it acted in good faith in bringing the eviction action and changing the locks. The question of motive requires the weighing of evidence by a finder of fact. See *Just Breakfast & Things AAA, LLC v. Vidiaki, LLC*, Superior Court, judicial district of New London, Docket No. CV105014092 (January 31, 2013, *Martin, J.*). The court finds that the plaintiff has submitted credible evidence that it instituted the summary process proceedings in good faith. The evidence demonstrates that the defendants were month to month tenants; that the plaintiff had given the defendants notice of its intention to rent the premises to new tenants; and that the new tenants had already moved into the front portion of the premises. The evidence further demonstrates that the defendants did not leave the premises despite being given notice that they needed to leave. Based on this evidence, the court finds that the plaintiff did not abuse the process when it served a notice to quit and started a summary process action.

Similarly, the court credits Antupit’s testimony that he refused to accept the rent checks because he wanted the defendants to understand that they had to vacate the premises. The court therefore does not find that the defendants met their burden of proof on the abuse of process claim.

Statutory Theft

The defendants bring a claim of statutory theft pursuant to General Statutes § 52-564. General Statutes § 52-564 provides: “Any person who steals any property of another, or knowingly receives and conceals stolen property, shall pay the owner treble his damages.” To establish an action for theft, also known as statutory theft, the plaintiff must prove that the defendant intentionally stole property owned by the plaintiff or the defendant knowingly received or converted stolen property owned by the plaintiff. *Sullivan v. Delisa*, 101 Conn. App. 605, 620, 923 A.2d 760 (2007). “Because statutory theft is synonymous with larceny. . . a good faith belief that one owns the property at issue will negate the required intent. One who takes property in good faith, under fair color of claim or title, honestly believing that . . . he has a right to take it, is not guilty of larceny even though he is mistaken in such belief, since in such case the felonious intent is lacking. . . . The general rule applies . . . to one who takes it with the honest belief that he has the right to do so under a contract” (Citations omitted; internal quotation marks omitted). *Fernwood Realty, LLC v. AeroCision, LLC*, 166 Conn. App. 345, 367–68, 141 A.3d 965 (2016).

At the outset, the court finds that there is no evidence that plaintiff stole any property out of the premises from the defendants. The defendant alleges that the plaintiff deprived the defendants from their property when the plaintiff changed the locks. As addressed above, Antiput had a good faith reason for changing the locks. He believed that under the terms of the lease, since the tenant was in default, the landlord had the right to reentry and to possession of the premises. See section 14 of Lease. The court finds this to be a credible good faith

explanation for why the locks were changed. Thus, the court finds that the defendants did not meet their burden of proof on the claim of statutory theft.

Conversion

The defendants claims that the plaintiff engaged in conversion when it intentionally and wrongfully took possession of the premises. To establish an action for conversion, the plaintiff must prove that the defendants without authorization assumed and exercised ownership over property belonging to another to the exclusion of the owner's rights. *News America Marketing In-Store, Inc. v. Marquis*, 86 Conn. App. 527, 544, 862 A.2d 837 (2004). "To establish . . . conversion, the plaintiff [must] demonstrate that (1) the material at issue belonged to the plaintiff, (2) that [the defendant] deprived the plaintiff of that material for an indefinite period of time, (3) that [the defendant's] conduct was unauthorized, and (4) that [the defendant's] conduct harmed the plaintiff." *News America Marketing In-Store, Inc. v. Marquis*, 86 Conn. App. 527, 545, 862 A.2d 837 (2004), *aff'd*, 276 Conn. 310, 885 A.2d 758 (2005).

The defendants have not proven their conversion claim. While the plaintiff did prevent the defendants from getting inside the premises, the lock outs ended after a few hours. To be clear, the lock outs were not for an indefinite period of time. The defendants have not met their burden of establishing that the plaintiff's conduct harmed the defendants. Thus, the defendants failed to prove conversion.

Conclusion

Based on the court's findings, the court awards the following damages:

\$3,500.00 for back rent

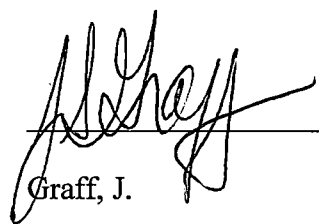
\$200.00 for late fees for rent

\$379.02 for invoice dated 6/12/20 to City of New London

\$214.99 for invoice dated 9/15/20 to City of New London

\$6,490.60 for attorney's fees, pursuant to section 11.3 of the Lease

\$10,784.61 total



Graff, J.