

OFFICIAL TRANSCRIPT

R. v. Hyshka, AB2002, Alta. Prov. Ct. Nos. 017245986P1-01-001 - 002  
02-001 - 002

IN THE CRIMINAL DIVISION OF  
THE PROVINCIAL COURT OF ALBERTA

HER MAJESTY THE QUEEN

- v. -

ERNIE HYSHKA and  
ELIZABETH ELEANOR HYSHKA

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P R O C E E D I N G S  
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Edmonton, Alberta  
12th February, 2002  
Transcript Management Services

1 Proceedings taken in the Criminal Division of the Provincial  
2 Court of Alberta, Provincial Courts Building, Edmonton, Alberta

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4 12th February, 2002

5 The Honourable Judge

6 A. Lefever

The Provincial Court of Alberta

7 G. Green, Esq.

For the Crown

8 Ms. P. Vidal

For the Accused

9 D. Pryor

Court Clerk

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11 THE COURT: Good afternoon. Thank you, please  
12 be seated.

13 MR. GREEN: Good afternoon, sir, Green, initial  
14 'G' for the Crown. Pam Vidal is here for the defence.

15 MS. VIDAL: Good afternoon, sir. Ms. Hyshka is  
16 present.

17 THE COURT: Thank you. Are there any -- just to  
18 put this in context. This matter appeared before me  
19 approximately two weeks ago at which time a guilty plea  
20 was entered and agreed statement of facts were filed and I  
21 asked that Ms. Hyshka be here. I have read the agreed  
22 statement of facts. I have done some thinking about this.  
23 And before dealing with the matter finally, I wish to ask  
24 if there are any further submissions by either counsel for  
25 the Crown or counsel for Ms. Hyshka with respect to  
26 sentence.

27 MR. GREEN: Sir, perhaps I'll --

1 THE COURT: I will call on the Crown first, and  
2 then you will have a chance to respond.

3 MS. VIDAL: Yes, sir.

4 MR. GREEN: Sir, to summarize what has happened  
5 so far, we have a joint submission of, if I recall  
6 correctly, 500 to \$750. This is a Residential Tenancies  
7 Act matter. The maximum --

8 THE COURT: I should tell both of you, just so  
9 that you can tailor your submissions. In my view, the  
10 joint submission does not reflect the gravity of the  
11 offence.

12 MR. GREEN: Thank you, sir.

13 THE COURT: -- in terms of the punishment that  
14 is suggested in the range.

15 MR. GREEN: Thank you, sir. My submission,  
16 notwithstanding what you've just said, Your Honour, is  
17 that it is within the range but for those aggravating  
18 circumstances.

19 The aggravating circumstances, sir, as you no doubt  
20 recall is that an elderly man, 76 years of age, was in the  
21 hospital, intensive care, missed his rental payment.  
22 Because of that, this accused went to the hospital, took  
23 him from the hospital to the bank and retrieved \$400.  
24 Seriously aggravating, sir.

25 The reason the Crown has allowed for a five to \$750  
26 range to be submitted jointly to you, sir, is because you  
27 have a relatively early guilty plea. You have full

1       restitution and then some by this accused in the amount of  
2       some \$600, sir. Restitution for the rental payment for  
3       that whole month, even though the complainant here was  
4       actually residing at the location for ten days or had  
5       tenancy of the location for ten days. He was in the  
6       hospital. So, in other words, he went to the hospital on  
7       October 30th and was taken out of the hospital by the  
8       accused on November 1st. And it wasn't until, I think, the  
9       15th of the month or so that the locks were changed.

10   THE COURT:                       November 9th that Mr. -- the  
11       tenant was taken from the hospital, according to the  
12       agreed statement of facts.

13   MR. GREEN:                       Very well, sir. I stand corrected,  
14       it's been a couple of weeks.

15   THE COURT:                       Yes.

16   MR. GREEN:                       You also have lack of a record by  
17       this accused. But in particular, sir, it is the Crown  
18       submission that you've got a 76 year old man who's the  
19       complainant herein, and he hasn't had to endure seeing his  
20       former landlady. He hasn't had to testify. And I'm not  
21       sure of his state of health now. I think it's fair to say  
22       that he's much better than he was back then, but that  
23       certainly was a consideration for the Crown at that point  
24       in time, sir.

25       Sir, subject to questions, the only other thing that  
26       I would advise you is, it appears to me that you're  
27       familiar with the Tkachuk decision out of our Court of

1 Appeal which is a case that discusses, and I have a copy  
2 for you, sir, if you wish to see it, discusses the  
3 procedure that should be followed by a sentencing judge  
4 should a joint submission not be followed. Would you like  
5 to see it, sir?

6 THE COURT: Mm-hm. Tell me the procedure you  
7 suggest I follow then, Mr. Green?

8 MR. GREEN: Sir, page 7 of this decision, which  
9 is R. v. Tkachuk, the original sentence was by Judge  
10 Mackie, it's out of the Alberta Court of Appeal and dated  
11 May 25th of the year 2000.

12 It says that first of all, sir, you have to give  
13 serious consideration to the joint submission and that it  
14 should be accepted, unless it's determined to be unfit or  
15 unreasonable.

16 Sir, that if you are disinclined to impose the  
17 sentence recommended, the judge should so advise counsel  
18 and permit them to make further submissions in support of  
19 their original position and against the suggestion that  
20 the submission be departed from, providing counsel an  
21 opportunity to answer any concerns that you might have.

22 And if, after those submissions, the judge remains of  
23 the view that the joint submission is unfit or  
24 unreasonable, you may impose a different sentence, but  
25 you'd also give reasons for doing so.

26 So I think you follow that, sir. And I just wanted to  
27 bring that to your attention. Sir, if you have any

1 questions of me, those are --

2 THE COURT: The only question, and based on  
3 what you have just said, the only question I was not sure  
4 of based on the agreed statement of facts, first, I do not  
5 see anywhere in the agreed statement of facts that the  
6 tenant was in intensive care, and so I will disregard that  
7 unless that is an admission between counsel.

8 And the other I was not certain of is that the agreed  
9 statement of facts indicates \$400 was withdrawn, and I do  
10 not know if all of that amount was paid to the accused or  
11 whether only \$385 of the 400 was paid to the accused. I  
12 note, when I look at paragraph 14 of the agreed statement  
13 of facts, that -- oh sorry, I draw from that, as I read it  
14 now, the entire \$400 was kept at the time.

15 MR. GREEN: Yes, sir.

16 THE COURT: Okay. Thank you. That is what I  
17 originally thought and then I wondered if in fact that was  
18 the correct reading of the facts.

19 MR. GREEN: Yes, sir.

20 THE COURT: Okay.

21 MR. GREEN: Thank you, sir.

22 MS. VIDAL: Good afternoon, sir.

23 THE COURT: Good afternoon.

24 MS. VIDAL: Just to give you a little bit more  
25 background on Ms. Hyshka, she -- her personal details,  
26 sir, is she's born May 1st, 1947, resides at 236 Walker  
27 Road in Edmonton. Ms. Hyshka is married, has three

1 children all living at home.

2 Ms. Hyshka has been the landlord of Eleanor  
3 Apartments for approximately three years. Prior to this  
4 incident, sir, she had never been charged under the  
5 Residential Tenancies Act or the Criminal Code. Carol  
6 Tremblay (phonetic) and Don Campbell (phonetic) managed  
7 Eleanor Apartments during the time period of this offence.

8 Ms. Hyshka, as stated in the agreed statement of  
9 facts, acknowledges and admits to changing one of the  
10 locks on the apartment door. However, it was a bottom  
11 lock. The top deadbolt was still not changed and access  
12 would have been granted had Mr. Poitras asked for it to  
13 retrieve his personal belongings.

14 THE COURT: I do not understand that point.  
15 And the reason, let me just explain why. As I read the  
16 agreed statement of facts, paragraph 10 states it was  
17 learned that the locks, plural, had been changed without  
18 Mr. Poitras' consent, not the lock, singular.

19 MR. GREEN: Sir, this is news to me. And the  
20 only comment that I can make is referring you to paragraph  
21 8 in which there was --

22 THE COURT: Yes. It is plural in both cases.

23 MR. GREEN: Yes. But it also says that, I mean,  
24 even if it was one, sir, there's a lock on both. And it's  
25 clear from the agreed statement of facts and the material  
26 that I have received from the investigators that there was  
27 no circumstance in which this elderly man was going to be

1 allowed to go back.

2 MS. VIDAL: Sir, if I could just rephrase then.  
3 My understanding from Ms. Hyshka was that, yes, the facts  
4 are admitted, sir. We'll go with what has been stated.  
5 Just what she wanted to point out was that it was the top  
6 deadbolt, according to Ms. Hyshka, was not changed. And it  
7 had had difficulty in the past, it sticks, and all that  
8 kind of problem, sir.

9 Ms. Hyshka advises that the reason that she changed  
10 the -- the locks were changed was that there was a safety  
11 concern regarding Mr. Poitras. He was a danger to himself  
12 and to the other tenants. On previous occasions, Mr.  
13 Poitras had been found in his apartment with a cigarette  
14 burning and there was a fire threat, sir.

15 THE COURT: He was never evicted. There was  
16 never any eviction. I mean, I understand what you are  
17 saying, except that the facts that I have, which is the  
18 agreed statement of fact on the offence, do not -- do not  
19 take me to that point. The landlord knows under the  
20 Residential Tenancies Act that if there is a substantial  
21 breach, you can give a very short notice and you can  
22 obtain possession of the property.

23 MS. VIDAL: Yes, sir.

24 THE COURT: And so antecedent acts that are now  
25 suggested as causing that kind of a concern but which were  
26 not acted on cause me some reservations.

27 MS. VIDAL: Sir, she states that Mr. Poitras

1 has never been -- or had any type of eviction notice in  
2 the past. However, these concerns were brought to her by  
3 the caretakers of the apartment. Now --

4 THE ACCUSED: That's an out and out lie.

5 THE COURT: Now, excuse me, madam, the rule in  
6 this courtroom is that only one person speaks at a time,  
7 and I am asking counsel to speak. If you are going to do  
8 anything like that again, you will have to leave. Please.  
9 Carry on.

10 MS. VIDAL: Thank you, sir. Ms. Hyshka also  
11 states that she was frustrated at the lack of -- her  
12 perceived lack of cooperation from social workers handling  
13 Mr. Poitras' file at the hospital and that they did not  
14 take her concerns regarding Mr. Poitras seriously. Ms.  
15 Hyshka voiced her concerns to Anita Dechaine, investigator  
16 for Alberta Government Services, in a letter stating that  
17 Mr. Poitras is not a tenant that was appropriate to live  
18 in an independent type of unit such as the one found at  
19 Eleanor Apartments.

20 Ms. Hyshka also advises that in a prior  
21 hospitalization for Mr. Poitras, they had been asked to be  
22 notified when Mr. Poitras would be returned so that they  
23 could monitor his whereabouts in the apartment, it being  
24 made aware of his presence in the building.

25 In terms of the bank incident, sir, Ms. Hyshka is  
26 charged under the Residential Tenancies Act. The trip is  
27 something that Ms. Hyshka regrets. And quite seriously,

1 sir, if she was to do it all over again, she would  
2 completely avoid everything that happened, would not do it  
3 again. She did not have malicious intentions when she set  
4 out to collect the rent money on that day.

5 Furthermore, sir, the Royal Alexandra Hospital  
6 authorized a pass for Mr. Poitras to attend at the bank  
7 with Ms. Hyshka and this was not a situation where the  
8 hospital authorities didn't know what the case or what the  
9 situation was.

10 In terms of sentencing, sir, I state again that Ms.  
11 Hyshka's intention was not to put Mr. Poitras on the  
12 street, but rather to have him find suitable  
13 accommodations such as a group or nursing home which we  
14 presently understand is his situation right now that he's  
15 residing in. Ms. Hyshka has provided full restitution in  
16 the amount of 607.50 to Mr. Poitras, which includes his  
17 full November rent, security deposit, and interest. Ms.  
18 Hyshka is extremely remorseful and wish again that none of  
19 this had ever happened. Ms. Hyshka has had to face public  
20 humiliation and scrutiny in this case by having the matter  
21 appear in the local media.

22 As my friend indicated, we came to a joint submission  
23 to have an early resolution of this matter, and as I  
24 understand it, the Crown would have had seven witnesses  
25 for them: the police and three civilians. This will be Ms.  
26 Hyshka's first and only offence under the Residential  
27 Tenancies Act. And we submit that you find in the lower

1 range, sir. However, having regard to your statements  
2 earlier, I leave that up to you.

3 THE COURT: Can somebody inform me as to when  
4 the 607.50 was repaid, the date?

5 MS. VIDAL: Sir, that was -- I don't have the  
6 exact date right on me at this moment. However, it was  
7 after we agreed on the joint submission.

8 MR. GREEN: It was sometime in mid January,  
9 sir, I think.

10 THE COURT: Thank you.

11 MS. VIDAL: Subject to any questions you may  
12 have, sir, those are my submissions.

13 THE COURT: No, I think that you have given me  
14 some further information and I appreciate it.

15 Ms. Hyshka, is there anything that you would like to  
16 say this afternoon? You are not required to, but you have  
17 an opportunity to, if you wish.

18 THE ACCUSED: Sir, I deeply apologize for all  
19 inconveniences that I've caused to all concerned. And this  
20 will never happen to me again. It's all I have to say.

21 THE COURT: All right. Elizabeth Hyshka has  
22 pled guilty before me of an offence under Section 18 of  
23 the Residential Tenancies Act which reads:

24 Neither a tenant nor a landlord shall add  
25 to or change locks on doors giving access  
26 to residential premises or to the property  
27 of which the residential premises form a

1 part without the consent of the other  
2 party.

3 There is a second subsection which provides that  
4 notwithstanding the first:

5 The landlord may add to or change locks on  
6 doors giving access to residential premises  
7 or to the property of which the residential  
8 premises form a part, if a key is made  
9 available to the tenant as soon as the  
10 addition or change is made.

11 Section 50 of the Residential Tenancies Act provides  
12 punishment for contraventions of various provisions in the  
13 Act. One such section is Section 18 that being the section  
14 with which Ms. Hyshka is convicted. A commission of an  
15 offence committed under Section 18 thereby renders the  
16 accused liable to a fine of up to but not exceeding  
17 \$5,000.

18 When this matter first came before me, I put it over  
19 because Ms. Hyshka was not present in court. In my view,  
20 after reviewing the Agreed Statement of Facts, it was  
21 necessary that she attend. I am pleased to see her here  
22 today.

23 The facts have been admitted. They have been  
24 recounted in part by Mr. Green, Crown prosecutor, but I  
25 will reiterate some of the more salient facts that I have  
26 distilled from the Agreed Statement of Facts.

27 Basically, the victim in this case was a frail 76-

1 year-old man who had been a tenant of Ms. Hyshka's for  
2 some 18 months during which time he appears to have been a  
3 good tenant causing no problems and paying his rent on  
4 time. Due to health reasons beyond his control, he was  
5 hospitalized on October the 30th, 2001, and did not pay  
6 his November rent of \$385 due November 1st.

7 What then occurred can only be described as  
8 high-handed and insensitive without any care or regard for  
9 the tenant and, from one perspective, with avariciousness  
10 in the forefront.

11 On November the 9th, Ms. Hyshka and her caretaker  
12 attended at the hospital and took the tenant from the  
13 hospital against his will to the bank. Upon arrival at the  
14 bank, Ms. Hyshka attempted to help the victim leave the  
15 car, but he resisted and fell on the street. Thankfully,  
16 he did not suffer any apparent physical injuries from that  
17 particular fall.

18 At the bank, the teller who knew the victim described  
19 him as "disoriented and frazzled." In this state, the  
20 victim gave Ms. Hyshka \$400, or some \$15 more than was due  
21 for the rent. One can only speculate what the \$15 was for:  
22 in lieu of rent, or one could speculate it was in lieu of  
23 a taxi fare, or for the burden of having to remove the  
24 victim from the hospital bed to the bank and back to  
25 collect the rent. I simply do not know. The tenant,  
26 however, was taken back to hospital. He was not abandoned.

27 That very night, that is the night of obtaining the

1 funds, Ms. Hyshka instructed the caretaker to rent the  
2 suite indicating the tenant would not be coming back.

3 On November the 10th, the accused, Ms. Hyshka, left a  
4 message with social workers that the tenant could not  
5 return to the apartment.

6 On November the 11th, on the instructions of Ms.  
7 Hyshka, locks were changed on the suite. I take this from  
8 the Agreed Statement of Facts that locks were changed, not  
9 a lock, ignoring the fact that the tenant had paid the  
10 rent for the whole of November.

11 November 16th, an eviction notice was posted on the  
12 apartment door alleging that the tenant was a danger to  
13 himself and to other occupants of the building. That is  
14 the only eviction notice with which I am advised, on the  
15 evidence, was placed or given to the tenant.

16 On November the 17th, the tenant's personal effects  
17 were removed from the apartment and a new tenant moved in.  
18 This, in effect, allowed Ms. Hyshka at this point to  
19 collect double rent for a portion of the month.

20 While I accept that this is the first time this kind  
21 of incident happened, in my view no acceptable or  
22 reasonable explanation has been forthcoming for this  
23 high-handed conduct. The stress or the problems of being a  
24 landlord are not an excuse. Having been a landlord for  
25 three years should have provided Ms. Hyshka with more than  
26 a passing knowledge of the Residential Tenancies Act and  
27 the alternative measures or steps available to a landlord

1 under that Act when there is a difficulty or perceived  
2 difficulty in dealing with the tenant.

3 The Agreed Statement of Facts discloses as well that  
4 upon an investigation being commenced, Ms. Hyshka did not  
5 cooperate, and only after the investigation was begun did  
6 she return in full the funds to the tenant along with his  
7 security deposit and interest on the security deposit. I  
8 will come back to that point shortly.

9 I was told when this first came before me and it was  
10 reiterated today that there was a joint submission that,  
11 upon acceptance of the guilty plea, the fine in the range  
12 of \$500 to \$750 would be appropriate. The Court of Appeal  
13 has stated that I must give a joint submission serious  
14 consideration but that I may reject it if I do not find it  
15 carries with it an appropriate sentence.

16 An appropriate sentence is to reflect a number of  
17 sentencing principles including general and specific  
18 deterrence, denunciation of the conduct in question, and  
19 at the same time offering an opportunity for the offender  
20 to be rehabilitated.

21 Almost all of the aggravating factors can be subsumed  
22 under the point that Ms. Hyshka appears to have simply  
23 placed her own financial gain at the forefront of any  
24 other human consideration in respect of this dependent and  
25 vulnerable individual. There appeared a callous disregard  
26 for the health of a hospitalized person and ignoring that  
27 person's health in respect of furtherance of personal

1 financial interest. The tenant was disoriented during the  
2 entirety of the incident. The tenant, who was elderly and  
3 vulnerable, fell and avoided injury, thankfully, from  
4 that.

5 The taking of more money than Ms. Hyshka was entitled  
6 to under the tenancy agreement indicates, in my view, a  
7 further callous disregard for even what was properly due  
8 and payable under all the circumstances. No explanation is  
9 forthcoming for how or why an additional \$15 was entitled  
10 to be taken from the tenant under those circumstances.

11 The almost immediate change of locks and the  
12 indication from Ms. Hyshka that the tenant would not and  
13 could not return coupled with the renting of the apartment  
14 about a week later even though, as far as Ms. Hyshka was  
15 aware, the tenant's rent had been paid in full for the  
16 entire month of November, increased the financial return  
17 on the apartment.

18 Finally, and I mentioned this earlier, the returning  
19 of the money to the tenant after the incident or after the  
20 investigation must be taken into account. The court  
21 records indicate that the Information was sworn on  
22 November 21st, 2001, but I am told that the return of the  
23 funds did not occur until sometime in mid January. The  
24 return of funds, while it is a factor to be taken into  
25 account, does not in my opinion indicate or validate a  
26 deep and abiding sense of remorse.

27 In my view, there is not tremendous or substantive

1 evidence of remorse. There was no cooperation with the  
2 investigating authorities and, as I say, the funds were  
3 not returned until much later.

4 I can think of really two mitigating factors and one  
5 partially mitigating factor. The first and the obvious one  
6 that both counsel have referred to is the guilty plea,  
7 which thereby saved the victim having to relive this  
8 incident through the testimony in court with the stress  
9 and trauma and upset that might cause. This is an early  
10 guilty plea. The matter was remanded from docket court to  
11 a summary disposition court.

12 There is no prior record, which is the second factor.  
13 I am told and I accept the Crown alleged no record.  
14 Defence counsel advised me there is no prior conviction  
15 for breaches of the Residential Tenancies Act. I accept  
16 that.

17 The return of the funds, which does include an amount  
18 in excess of what Ms. Hyshka was obligated to return, is  
19 the third and more minor factor that I do take into  
20 account in terms of what is an appropriate sentence.

21 Having regard to the joint submission, as I indicated  
22 to counsel at the onset of their remarks, in my view it is  
23 not an appropriate disposition of this matter.

24 I have given it serious consideration. I note in a  
25 number of cases from other provinces, particularly the  
26 Crown in Northrup Mobile Homes Limited, which is found in  
27 1991, 112 New Brunswick Report 2nd Series 262, a decision

1 of the New Brunswick Court of Queen's Bench, and the Crown  
2 and Horseford (phonetic), which is a 1991 decision from  
3 the Ontario Court of Justice, both being appeals from  
4 convictions under the relevant Residential Tenancies Act  
5 in those two provinces, the underlying judgments were  
6 sustained.

7 In the Northrup Mobile Homes Limited decision, the  
8 Court was dealing with a breach of the New Brunswick  
9 Residential Tenancies Act in the following circumstances.  
10 The New Brunswick Act made it an offence for a person to  
11 require under a lease as a condition of entering a lease  
12 for a person to pay any amount other than rent as a  
13 security deposit or a reasonable amount for a service to  
14 be provided in relation to the tenancy. It therefore  
15 restricted what could be sought under a lease as a  
16 condition of entering into the lease.

17 An entity known as Tamarack Mobile Home Parks Limited  
18 was a company controlled by Mr. Glen Northrup, who also  
19 was the owner of Northrup Mobile Homes Limited, when Mr.  
20 Middleton had decided to sell his mobile home for \$20,000,  
21 the mobile home being on a lot at the Tamarack Mobile Home  
22 Parks Limited. It was there by way of a written lease at  
23 an agreed monthly rent of \$100 per month. After putting  
24 the mobile home up for sale, no prospective buyers came  
25 around.

26 Hence, approximately six months later when two  
27 individuals did come by, Mr. Middleton entered into

1 serious discussions with them. Two individuals, a Ms.  
2 Madower and Mr. Mills expressed interest and agreed with  
3 Mr. Middleton to purchase the mobile home for \$20,000.  
4 That sum was later reduced to \$17,000, and Ms. Madower and  
5 Mr. Mills agreed to pay \$3,000 to Northrup Mobile Homes  
6 Limited. The stipulated or purported reason for the  
7 payment of the \$3,000 to Northrup was that the mobile home  
8 would not be allowed to remain within the Tamarack's  
9 Mobile Home Park unless that sum was paid.

10 It is clear at the end of the transaction that was in  
11 front of the court in Northrup that Ms. Madower and Mr.  
12 Mills paid the \$20,000 they were originally prepared to  
13 pay, but not in one lump sum to Mr. Middleton as  
14 originally agreed. It is equally clear that Mr. Middleton  
15 was able to sell his mobile home but not at the price he  
16 originally had asked based upon the lack of prospective  
17 purchasers and the passage of six months. The amount of  
18 \$17,000 may well have reflected closer to the market price  
19 for the mobile home.

20 The Court rejected the argument that it was the  
21 vendor of the mobile home who had paid the \$3,000 as part  
22 of or as an attempt to facilitate sale or disposition.  
23 Rejecting that and finding that there had been a breach of  
24 the Residential Tenancies Act of New Brunswick, the Court  
25 imposed a fine of \$1,000.

26 Unfortunately, the Horseford decision from Ontario  
27 does not report the underlying punishment imposed and I

1 was unable, through any research, to find the amount of  
2 the fine. All I know is that the appeal from the  
3 conviction was upheld.

4 How should this offence, therefore, be characterized?  
5 In the scheme of offences, it is generally seen as less  
6 serious than a breach of the Criminal Code, yet the  
7 punishment possible under the Residential Tenancies Act  
8 indicates it is viewed seriously by the legislature.

9 There are elements, in my view, of predatory  
10 behaviour here in taking a frail, disoriented, and elderly  
11 man from a hospital bed to a bank and then taking more  
12 money than was due for rent. It is clear from the  
13 statement of facts that the tenant did not want to leave  
14 the hospital to go to the bank. One can only imagine the  
15 fear, the concern, and the upset in his mind when this  
16 occurred. Added to that, the additional fear and concern  
17 when he was removed from the vehicle against his will and  
18 fell at the bank.

19 To state that there are elements of high-handedness  
20 or callous disregard for the tenant is to understate, in  
21 my view, what occurred here. This kind of self interest  
22 with total disregard to the needs of a hospitalized  
23 elderly man require denunciation in the strongest terms  
24 possible.

25 I recognize that being a landlord carries with it a  
26 host of matters, not all of which are positive or  
27 pleasant. Landlords fulfill a very valuable service in our

1 community by providing rental accommodation to those who  
2 are either unable or unwilling to purchase property  
3 directly. Not all tenants are model tenants. However, the  
4 Residential Tenancies Act strives to balance the rights  
5 and the obligations of both landlords and tenants in  
6 regard to the rental of residential accommodation.

7 Nothing in the Act, however, justifies nor supports  
8 what has happened here. Any fine imposed here by me should  
9 not be seen as a "cost of doing business," but must  
10 reflect society's repugnance at this conduct. A fine  
11 should also deter Ms. Hyshka from the repetition of such  
12 conduct and, through publicity, operate to deter other  
13 persons who rent property from any similar high-handed  
14 behaviour.

15 Having regard to all of the circumstances as I have  
16 already indicated, I am not prepared to accept the joint  
17 submission on the range of punishment. In my mind, a fine  
18 within that range suggested does not operate to denounce  
19 the conduct nor would it be seen to achieve either  
20 specific or general deterrent requirements.

21 In my view, having regard to all of the circumstances  
22 that I have outlined already, an appropriate fine for this  
23 offence is \$2,000 and I therefore impose that fine.

24 Is time to pay required?

25 MS. VIDAL: Yes, sir.

26 THE COURT: How much time?

27 MS. VIDAL: Sir, she's asking for 30 days.

1 THE COURT: Thirty days, March the 31st.  
2 MS. VIDAL: Thank you, sir.  
3 THE COURT: It is a little longer than 30 days.  
4 THE COURT CLERK: Is there -- is there default on the  
5 fine?  
6 MR. GREEN: There is, sir.  
7 THE COURT: Deemed days in default.  
8 THE COURT CLERK: Deemed days in default. Thank you,  
9 sir.  
10 MS. VIDAL: And sir, the charges against --  
11 THE COURT: If there is a surcharge, it is  
12 waived. I do not know if there is on this offence.  
13 MR. GREEN: There can be, sir, yes.  
14 THE COURT: There can be? It is waived.  
15 MR. GREEN: Thank you very much, sir. And the  
16 balance of the charges withdrawn, please.  
17 THE COURT: They are all withdrawn.  
18 MR. GREEN: Thank you, sir.  
19 MS. VIDAL: Thank you, sir.  
20 THE COURT: Thank you, all.

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22 PROCEEDINGS CONCLUDED

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1 Certificate of Transcript

2 I hereby certify that the foregoing pages 1 to 10 are a true  
3 and faithful transcript of the contents of the record in this  
4 action and that pages 10 to 21 have been submitted to the Judge  
5 for editing, taken from digital recording, and transcribed to  
6 the best of my skill and ability.

7 Dated at the City of Edmonton, Province of Alberta, this  
8 22nd day of February, 2002.

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10 B. Dickson

11 Transcriber

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Hyshka, Elizabeth & Ernie