

1 R. v. Baziuk, AB 1994, Alta. Prov Ct. No. 31610819P10101 - 0201

2  
3 IN THE CRIMINAL DIVISION OF  
4 THE PROVINCIAL COURT OF ALBERTA

5 HER MAJESTY THE QUEEN

6  
7 - v. -

8 ENEYIL DMYTRO BAZIUK  
9 and  
10 ANDREW ROMAN BAZIUK

11 -----  
12 REASONS FOR JUDGMENT OF THE HONOURABLE JUDGE BRODA  
13 -----

14 THE COURT: To reach some conclusion to this very  
15 unhappy state of affairs, it is necessary to make  
16 certain findings of fact as established by the  
17 evidence that we heard throughout the day.

18 Firstly, I am satisfied that the accused, Andrew Roman  
19 Baziuk, was in fact the owner -- I am sorry -- in fact  
20 the son of the owner, Stephanie Baziuk, and --

21 MR. HALL: Excuse me. You said Andrew.

22 THE COURT: No, I am sorry. Andrew -- I made the  
23 mis -- that is an error on my part. We have dealt  
24 with Andrew. Andrew is out of it. Eneyil -- is that  
25 the way you pronounce that properly?

26 Eneyil was the son of Stephanie, and she clearly  
27 established him as her agent relating to the property,

1 which she was the owner, and clearly she was the  
2 landlord.

3 It is also clear that Bruce Ratzlaff was in fact a  
4 tenant, certainly to start with, and I am satisfied  
5 that that tenancy was never totally, and completely,  
6 and legally brought to an end by the actions of the  
7 landlord or her agents.

8 I am also satisfied, and this was established by the  
9 evidence of Eneyil, that the lock was added on the  
10 14th of October to Bruce's room, and therefore the  
11 lock was added at the time when Bruce was a tenant,  
12 and there is no evidence that Bruce gave his consent.

13 So having made those findings, clearly there is a  
14 breach of Section 18 of the Residential Tenancies Act,  
15 if in fact the Act applies. It is clear, and I think  
16 all counsel agreed, that the Act would not apply if it  
17 is established that the accused, Eneyil, was a  
18 resident landlord. And I -- although that term is not  
19 used in the Act, I think it is a fair term to describe  
20 what relationship has to be established in order to  
21 bring a person outside the provisions of this Act. It  
22 has to be, if he is a resident landlord, then the Act  
23 does not apply, Section <sup>23</sup>~~18~~(1) does not apply, and  
24 young Eneyil is off the hook as it were.

25 Now what evidence is there that Eneyil was indeed a  
26 resident? That is where the conflict lays in this  
27 case, and there is a lot of conflict unfortunately.

1           The evidence of the four tenants saying they rarely  
2 saw this man, does not in my estimation, establish one  
3 way or the other whether he was a resident or not.  
4 Because a person can in fact and legally be a resident  
5 of premises and be rarely seen by anyone living in  
6 those premises. It can happen, it does not -- one  
7 does not have to stretch one's imagination too far to  
8 recognize that state of fact.

9           I am most concerned, however, with the flow of  
10 documents that occurred in this particular situation,  
11 and particularly Exhibit 1, where the landlord clearly  
12 wants to establish that her son is a resident, and  
13 says "will commence" -- the words, "will commence".  
14 Now the natural meaning of that, "will commence" will  
15 mean that up to that time, or that relationship of a  
16 resident did not exist. He will commence his  
17 residency as of October 6th, 1993.

18           The evidence is that nothing at all changed between  
19 October 6th and October 14th insofar as Eneyil is  
20 concerned. You know, he did not move any chattels  
21 into the room, his presence was not more visible.  
22 Absolutely nothing changed, life went on as it had  
23 been going on ever since these four tenants moved in.  
24 Or at least -- or since Bruce moved in there. So  
25 nothing changed between the 6th and the 14th of  
26 October.

27           And it seems to me the wording of Exhibit 1 is an

2 attempt by the owners of the property, to bring  
3 themselves within the operation of the Residential  
4 Tenancies Act.

5 It is significant that Mrs. Baziuk said yes, I knew  
6 the provisions of the Act at all relevant times. She  
7 explains the documents by saying that the difficulties  
8 with the police -- they were getting advice from the  
9 police that maybe was not very well founded in law,  
10 but it seems to me that advice is about as good as --  
11 is worth about as much as you paid for it, when  
12 obviously in this case -- but it seems to me further,  
13 that to be a resident, a person must be a bona fide  
14 resident, although the word is not used in the  
15 statute, it cannot be a fictional residency, it must  
16 be bona fide. And in my view, the Defence has not  
17 established that the accused was a bona fide resident.

18 I therefore make a finding of fact that this accused,  
19 Eneyil, was an agent of the landlord, to come within  
20 the definition of landlord under Section 2 of the Act,  
21 but he is not a resident landlord, and therefore  
22 Section 18 applies. And since I have already made a  
23 finding that he did place a lock on the door of a  
24 tenant without his consent or notice, then he has in  
25 fact breached the provisions of the Act, and I  
26 therefore must find him guilty as charged.

27 MR. BECK:

THE COURT:

There is no record, Sir.

No record? You wish to speak to

penalty? It is a \$5,000.00 maximum. What is the

Crown's position on penalty?

I guess, Sir, I would point out the

MR. BECK:

aggravating factors here, that the lock was put on the door, Mr. Ratzlaff had his property removed without his consent for -- for a day. He did receive it all back, and I believe he stated that there was no damage

to it.

THE COURT:

Would you concede that the aggravation

went both ways?

MR. BECK:

Probably, Sir.

THE COURT:

Yes. No one has come here with lily

white hands, I will tell you right now. I think all parties acted objectionably, --

MR. BECK:

Yes, Sir.

THE COURT:

-- to say the least.

MR. BECK:

I think I would --

THE COURT:

In a bad way.

MR. BECK:

-- leave the amount of the penalty in

your hands, Your Honour.

THE COURT:

Yes. What do you wish to say?

MR. HAYNES:

I would just, if I could, Your Honour,

speaking to a few personal facts about Mr. Eneyil Baziuk.

Eneyil is 19 years of age, he's just completed high school, and he is currently both pursuing a Bachelor

of Science program by correspondence through the

University of Athabasca, and he is also working

1 part-time at a computer store here in the Edmonton  
2 area.

3 Eneyil participates in the community by operating a  
4 computer bulletin board, which is a -- an -- an  
5 information dissemination service, which he pays out  
6 of his own pocket, that the community can access.  
7 This is what he spends much of his free time doing.

8 He has, as the Crown has pointed out, no prior  
9 criminal convictions, and I have found in my dealings  
10 with him, to be of very sweet natured temperament.

11 I would ask --

12 THE COURT: Your client never did get the rent for  
13 that premise for the full month of October, did he?

14 MR. HALL: No.

15 THE COURT: Or she.

16 MR. HALL: No.

17 THE COURT: Okay.

18 MR. HAYNES: Your Honour, I would say that

19 Mr. Eneyil Baziuk also was not the controlling mind in  
20 these events, and in many ways was the unfortunate  
21 victim of the acts of multiple parties, And so I would  
22 ask for extreme leniency in sentencing.

23 THE COURT: I have already made a comment as to the

24 acts of all the other people involved in this thing,  
25 and take that into account, and taking into account  
26 the fact that Bruce still has not paid the rent that  
27 he was obligated to pay for living in that place for

1 the rest of the month, and the fine should be a  
2 nominal one. And I intend to approach it on that  
3 basis.

4 Stand up, please, Eneyil. You shall pay a fine here  
5 of \$25.00 with enforcement.

6 We may adjourn.

7 MR. BECK: Thank you, Sir.

8 MR. HAYNES: I don't believe they need time to pay.

9 Is the Clerk's Office still open?

10 THE COURT: Well it is with enforcement so I am not  
11 (INDISCERNIBLE).

12 MR. HAYNES: Yeah, I just wanted to make sure the  
13 Clerk's Office was still open.

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14  
15 PROCEEDINGS CONCLUDED

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16  
17 Delivered orally in Provincial Court, Provincial Courts Building,  
18 Edmonton, Alberta, on the 24th day of January, A.D. 1994.

19 R. Beck, Esq.  
For the Crown

20 A. Haynes, Student Legal Services  
For the Accused, Eneyil Baziuk

21  
22 R. Hall, Esq.  
For the Accused, Andrew Baziuk

23 M. Kassian, Ms.  
Monitor/Court Clerk

24  
25 /jaa  
29th January, A.D. 1994

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