

IN THE PROVINCIAL COURT OF ALBERTA
CIVIL DIVISION

BETWEEN:

JANICE BURTON

PLAINTIFF

- and -

RONALD WRIGHT

DEFENDANT

JUDGMENT OF THE HONOURABLE JUDGE D. J. PLOSZ

COUNSEL:

Alex Rose, Q.C. for the Plaintiff
Ronald Wright for himself

[1] The defendant owned a house in Alix, Alberta. He rented it to the plaintiff commencing February 1, 1999. Copy of the Residential Tenancy Agreement was tendered as Exhibit 1. Only the plaintiff tenant signed it. There is no evidence before me to show that the defendant landlord ever signed the agreement. We are therefore dealing with a verbal lease on a month-to-month basis. The parties had agreed that the monthly rental of \$425.00 was to be paid on the first day of each month. I am also satisfied on a balance of probabilities based on the evidence of the defendant that the plaintiff was also to pay \$425.00 as a damage deposit. This is evidenced by the fact that on February 1 she gave the defendant two cheques of \$425.00 each. On February 8, both cheques were returned to the defendant marked N.S.F. Subsequently, the plaintiff then gave the defendant two further cheques, one of \$425.00, and another for \$304.00 (which was \$425.00 minus paint she had purchased to paint the inside of the house.) Both of these cheques were also returned marked N.S.F. The plaintiff then told the defendant she would pay \$500.00 on February 24 and \$217.00 on February 27, and that the March rent would be paid March 5. On February 26, the defendant went to the plaintiff's residence and she gave him three cheques. On March 1, all of these cheques were returned N.S.F. when the defendant tried to cash them. That same day the defendant then posted a Notice to Terminate on the defendant's door, which has been marked as Exhibit 10. On March 15, the plaintiff called the defendant. She was

still living in the residence. The defendant told her he needed the rent money. He went to her house as had been arranged. She was not there but had left two cheques with a note saying they could be cashed on March 26. On March 18, the defendant got a Notice of Objection from the plaintiff in the mail regarding the Notice to Terminate Tenancy he had served her with on March 1. On March 26, the defendant went to cash the two latest cheques he had been given by the defendant. The only way he was able to do this was to add \$40.00 of his own money to the defendant's account so that there would be sufficient funds in it in order for the cheques to be cashed. He did so. On March 31, the defendant gave the plaintiff an invoice for the outstanding rent that was due and owing up to that time. She stated she did not agree with this. The April rent was not paid on April 1. On that date, the defendant and plaintiff agreed to a restructured rent payment agreement, as evidenced by Exhibit 8. The plaintiff was required to pay \$589.00 on April 16.

[2] On April 16, the plaintiff said her rent cheque for that month was not available. On April 21, the defendant phoned her residence. There was no response. On April 28, he posted a Notice on her window, as there was no one in the house at the time. This notice was marked as Exhibit 7. On April 29, the defendant, along with an acquaintance Dennis Van Beek entered the house. There was still no one there. The notice was still where it had been placed the day before. They moved her property out onto the boulevard except for certain items referred to in Exhibit 11 which he kept in a quonset building. The washer and dryer referred to in Exhibit 11 remained in the house, which he padlocked after the items had been removed from it. He stated that while he and Mr. Van Beek were moving the items from the house, the mayor of the village of Alix came by and volunteered to store the items, other than those referred to in Exhibit 11 in a storage facility in Alix. Workers from the village of Alix moved these items. No witnesses were called regarding this. This was not done at the request of the defendant, nor did he assist them in doing so. The plaintiff's goods were returned to her on May 2. She continued to live in the residence until the first end of August.

[3] The defendant had earlier given the plaintiff three Notices to Terminate Tenancy dated March 1 (Exhibit 10), May 6 (Exhibit 12), and May 31 (Exhibit 13).

[4] During the month of May, both plaintiff and defendant retained lawyers and various arrangements were worked out between the parties through their legal counsel, ultimately resulting in the plaintiff finally paying her rent and vacating the premises at the end of August after a Queen's Bench Judges Order to vacate had been obtained.

[5] The plaintiff now sues the defendant as outlined in Appendix B in her civil claim. The defendant has counterclaimed for a number of items.

[6] It is patently obvious that the plaintiff was a bad tenant. Between the beginning of February when she moved in, to the end of April, she gave the defendant numerous

N.S.F. cheques, she avoided him in order to avoid paying the rent, and as of April 29, she was in arrears of her rent for the month of April in the amount of \$589.00 as evidenced by Exhibit 8. Based on the evidence of the defendant, which I accept, as I found him to be a credible witness, the plaintiff was obviously not complying with her obligations as a tenant to pay the rent when it was due and she was doing whatever she could to avoid doing so, as evidenced by the testimony of the defendant. I was not impressed with her testimony and did not find her to be a credible witness.

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[7] The plaintiff, and plaintiff by counterclaim in this action, must prove their claims by a balance of probabilities.

[8] Regarding the various aspects of the plaintiff's claim against the defendant, as outlined in Appendix B of her civil claim document, I will deal with them as itemized in Appendix B.

[9] Regarding paragraphs 1 (a) and (b), the defendant's position was that the back door window and the door knob were not damaged when the plaintiff moved in. I accept that evidence. I do not accept the plaintiff's evidence that they were damaged; therefore, those two claims are not allowed.

[10] Regarding paragraph 1(c), the repairs to the bathroom tap, the defendant testified that he was willing to come and fix it and in fact showed up to do so, but was told that it had already been repaired by the defendant. There was no delay on the part of the defendant to do this. The defendant had also purchased the necessary parts, but when he came to fix it the plaintiff said it had already been done. Therefore, the plaintiff should absorb the cost on this as there was no need for her to fix it. Her claim regarding paragraph 1(c) is therefore denied.

[11] The time she claims to have taken to repair these various things is also not allowed under paragraph 1(d).

[12] Under paragraph 1(e), the plaintiff claims for 24.5 hours at \$10.00 an hour for cleaning the premises when first moving in. I accept the evidence of the defendant as well as the two previous tenants, Rick Meyn and Jennifer Meyn, both of whom were credible witnesses, who testified that they had thoroughly cleaned the house prior to vacating at the end of January. I do not accept the plaintiff's evidence when she said it was left in a mess. Therefore, her claim under paragraph 1(e) is not allowed.

[13] With respect to paragraph 1(f), I accept the evidence of the defendant when he says the premises did not require painting but that the plaintiff chose to paint it herself because she did not like the colour. The defendant purchased the paint for the plaintiff. The fact that she chose to paint it when it did not require painting is not an expense that the defendant is obliged to pay for in the circumstances. Accordingly, her claim under

paragraph 1(f) is not allowed.

[14] The defendant testified that there was never any arrangement between the plaintiff and the defendant for any work that she did in the premises to be paid at \$10.00 an hour for this. I accept his evidence on this point. She also did not establish on a balance of probabilities any justification for charging \$10.00 an hour, as opposed to minimum wage, for example.

[15] Regarding paragraph 2 of the plaintiff's claim, the defendant violated Section 17 of the Residential Tenancy Act by entering the residential premises occupied by the plaintiff on April 29. The evidence clearly suggests he did so because she was in arrears of her rent. There is no evidence that she had abandoned the premises as all of her belongings were still in the house. The notice that the defendant provided, which was marked as Exhibit 7 in these proceedings, was not for the purposes as set out in Section 17(a)-(d) of the Residential Tenancies Act. Therefore, the defendant was not authorized under the statute to enter the residence to put out the property of the plaintiff onto the street. The plaintiff claims damages under paragraph 2 of her statement of claim, Appendix B, regarding this.

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[16] Under paragraph 2(a), she claims repairs needed to be done to certain appliances as evidenced by Exhibit 5. The defendant says these items were not damaged. As well, there is evidence before me which I accept that the toaster, mixmaster and microwave were many years old. The plaintiff has not proved on a balance of probabilities that the toaster and mixmaster and microwave were not working as a result of damage caused by the defendant or his agents. Part of the claim of this Exhibit 5 indicates a broken belt on the dryer. The evidence of the defendant was that the dryer was never moved from its place in the house, but the house was simply padlocked. Therefore, the plaintiff has not proved on a balance of probabilities that the defendant caused any damage to the dryer given those facts which I accept.

[17] Regarding paragraph 2(b), there were certain allegations of damages as evidenced by Exhibit 6, the defendant acknowledges that the bed and headboard came apart when being moved. Exhibit 6 indicates an amount of \$70.00 to repair this. The rest of Exhibit 6 relates to scratches on T.V. and damage done to entertainment centre. Again, I accept the evidence of the defence that all these items were handled carefully by the defendant. I am not satisfied on a balance of probabilities that the plaintiff has shown that the allegations of damage to the T.V. and entertainment center were as a result of her property being put out on the street by the defendant. There will be judgment under Section 2(b) of her claim in the amount of \$70.00 in relation to the bed.

[18] Regarding paragraph 2(c), the plaintiff claims having paid \$24.95 for one piece of glass for an end table and \$57.00 for a glass piece on a coffee table. She claims to have paid cash. No receipts have been tendered to corroborate her claim. I am not

prepared to accept her testimony on its own regarding these two items. In my view, she has not proved on a balance of probabilities the claim under paragraph 2(c).

[19] Paragraph 2(d) is a claim for labour moving the goods and chattels back into the residence. Again, there is no support for the claim that \$10.00 an hour is an appropriate hourly rate for doing so. She has not proved on a balance of probabilities that she should get anything over and above the minimum wage. I am satisfied that she has proved on a balance of probabilities that she had to move the goods and chattels back into her residence. Under paragraph 2(d), she will be entitled to 12.5 hours at \$6.00 an hour for a total of \$75.00.

[20] In paragraph 2(e), the plaintiff claims costs for washing clothes at laundromat. The evidence of the defendant, which I accept, was that the washer and dryer were left in the house by him and if the washer and dryer did not work, it was not the doing of the defendant. The house was only inaccessible for one day, as she returned to Alix on April 30 and gained access to the house on May 1. Therefore, this claim is not allowed.

[21] With respect to paragraph 2(f), the plaintiff claims meals on April 30 for herself and her daughter. Given that she did not have access to the house on April 30, this claim will be allowed in the amount of \$21.00 which is the amount that the claimant testified to in Court.

[22] With regard to paragraph 3 of her claim, these being delicate glass items and small pieces of jewelery, I am satisfied that these items could well have been broken, damaged or lost in the circumstances. There will be judgment therefore in paragraph 3 for \$269.99.

[23] Regarding paragraphs 4 through 7 of the plaintiff's claim, Section 29 of the Residential Tenancies Act specifies that if a landlord contravenes this Statute, the tenant may apply, among other things, for recovery of damages resulting from this contravention. I have found the defendant contravened Section 17 of the Statute by unlawfully entering the plaintiff's premises and putting her property out on the street. He was no doubt driven to frustration by the plaintiff who had up to that point been continually giving him the runaround by not paying her rent and causing him no end of trouble in this regard. The plaintiff was phoned by the defendant on April 29 while she was at Olds advising her of what he had done. She went back to the house on April 30 accompanied by David and Glen Hughes, the two people she was visiting in Olds. She was unable to get into her house until May 1 at which time the padlock was removed. On May 2, her goods were returned. In my view, under Section 29 she is entitled to recover some damages as the result of the actions of the plaintiff for his unlawful entry and removal of her goods.

[24] Under paragraph 4 of her claim she is entitled to \$500.00 as damages.

[25] Under paragraph 5 and 6, this is simply a duplication of paragraph 4. She was also allowed \$75.00 for the work done in moving back the property into the house. She has not established on a balance of probabilities the claims referred to in paragraphs 5 and 6.

[26] Regarding paragraph 7, she made reference of the mental stress concerning her daughter. She was essentially saying, "What if my daughter had gone back to the house on the 29th and could not get in?" That did not happen and in my view, she has not established her claim under paragraph 7.

[27] She will therefore be entitled to judgment in the sum of \$935.99 together with \$25.00 for the issuance of the civil claim. There will not be any interest allowed on any part of this claim.

[28] The defendant has counterclaimed. As indicated earlier, I found the defendant to be an honest witness. He had difficulties with the plaintiff as a tenant right from the beginning. She, as indicated, gave him numerous N.S.F. cheques, made false representations to him in this regard, and essentially drove him to do what he did on the 29th April. That, of course, is no lawful excuse for him to contravene Section 17 of the Statute, but nevertheless, his actions were done more out of desperation than vindictiveness. The defendant lives in Lacombe. The defendant made numerous trips from Lacombe to Alix in an attempt to collect the rent. The tenant plaintiff was in substantial breach of the Residential Tenancies Act at the outset under Section 16(a) which specifies that the rent will be paid when due.

[29] With respect to paragraph 1 of the defendant's counterclaim, the defendant did not establish the number of trips he made to Alix to collect the rent, nor the mileage he traveled, either to Alix or Red Deer as claimed; therefore, paragraph 1 of this claim is not allowed.

[30] Paragraph 2 of his claim refers to telephone calls but no evidence was led as to how these amounts were arrived at. He has not proved paragraph 2 of his counterclaim by a balance of probabilities; therefore, it is not allowed.

[31] Paragraph 3 relates to him retaining a lawyer after the events of April 29. He had to obtain an Order from the Court of Queen's Bench to evict the plaintiff and I accept his evidence regarding clause 3 concerning his payment of \$350.00 to his lawyer in this regard. He will receive judgment for the sum of \$350.00 pursuant to paragraph 3 of his counterclaim.

[32] Regarding paragraph 4, I am satisfied that the defendant has proved on a balance of probabilities that he has paid \$40.00 as N.S.F. charges on the numerous worthless cheques he was given by the plaintiff, as well as the \$40.00 he testified to as

having to deposit in her account in order for him to cash, on March 26, the two cheques the plaintiff had given him. He will therefore receive judgment in the sum of \$80.00 in accordance with paragraph 4 of his counterclaim.

[33] With respect to paragraph 5, I accept his evidence regarding the state of the yard at the residence once the defendant was finally evicted. This evidence was also corroborated by Mr. Ervine Thull, who lived right next to the house in question in Alix. He was a credible witness. His evidence was that the yard was not cared for during the time the plaintiff lived there. I further accept the evidence of Barbara Morris, who testified that it took four days of cutting the grass and cleaning the inside of the house and repairing the picket fence once the plaintiff had been evicted. She and her husband did this work. They stated they were paid \$500.00, or more, for this. Under paragraph 5, the plaintiff has claimed \$517.00. No receipt was tendered. The defendant will be allowed \$500.00 judgment regarding paragraph 5 of his claim based on the evidence of Barbara Morris.

[34] In paragraph 6, the defendant claims rent still owed on the property. When one examines Exhibit 2 in these proceedings, the letter from defendant's counsel, Corey Gish, indicates that the \$448.18 was received by the defendant's lawyer, which represents the remaining rent owing. Therefore, the amount claimed under clause 6 is not allowed.

[35] Under clause 7, the defendant claims damages for mental stress. He testified that he had to move out of his own residence as he needed the rent money to pay the mortgage both on his own house and on the house he was renting to the plaintiff. He was caused to do this by the plaintiff's continual breaches of not paying the rent. I am satisfied on a balance of probabilities that the defendant has shown he suffered considerable mental stress by having to continually try and collect the outstanding rent from the plaintiff over a number of months, and also by having to move out of his own residence which was caused by the continued default of payment by the plaintiff. In my view, he has established that he should be entitled to general damages in the amount of \$1,000.00. The defendant is entitled therefore to judgment in his counterclaim in the sum of \$1830.00.

[36] The plaintiff's claim and costs of \$25.00 total \$960.99. This amount will be set off from the defendant's counterclaim of \$1830.00. Therefore, there will be judgment for the defendant (plaintiff by counterclaim) for \$869.01 with no interest.

[37] There will be an Order returning the exhibits to their rightful owners at the end of the appeal period.

[38] Dated at the City of Red Deer, in the Province of Alberta this, 13 day of January, 2000.

Judge D. J. Plosz