

IN THE PROVINCIAL COURT OF ALBERTA

BETWEEN:

RICHARD LEE DUBOIS, RAYMOND DUBOIS and SHERRY BALASKI  
Plaintiffs  
(Defendants by Counterclaim)

- and -

DOUGLAS McCALLUM and CAROL McCALLUM  
Defendants  
(Plaintiffs by Counterclaim)

JUDGMENT OF THE HONOURABLE JUDGE A.H. LEFEVER

COUNSEL:

The Plaintiffs (Defendants by Counterclaim) appeared in person  
The Defendants (Plaintiffs by Counterclaim) appeared in person.

Introduction

[1] This is a landlord and tenant dispute with a history. There were allegations and objections to things done or not done. There had been name calling and insult. There had been calls to the Edmonton City Police. There had been proceedings in criminal court. There had been allegations of conspiracy to arrest one party the day before this trial. Emotions were running at a fever pitch and people were in high dudgeon. All might well have taken to heart the reported words of Aristotle in *Nicomachean Ethics*:

It is easy to fly into a passion – anybody can do that – but to be angry with the right person and to the right extent and at the right time and with the right object and in the right way – that is not easy, and it is not everyone who can do it.

[2] My judgment is not likely to ease or soothe the raw issues felt by the parties. Peace will not suddenly break forth in the parties vale of dispute nor bridge their divide. All one can hope is that with this decision, the parties will put these matters behind themselves and move on to sunnier uplands.

#### **Summary of the Claim and Counterclaim**

[3] The Plaintiffs claim \$1,500.00 for loss of wages, alleged landlord's failure to comply with regulations and rental agreements, and various other alleged failures or breaches of the tenancy agreement or landlord's legal obligations.

[4] The Defendants defend and counterclaim seeking damages calculated at \$10,378.00 but reduced to \$7,500.00 to comply with this court's jurisdiction. The nature of the claims concerns allegations the Plaintiffs failed to abide by legal obligations, alleged breaches of the rental agreement, out-of-pocket expenses for the alleged failures and breaches, substantial damages for an alleged home invasion by one of the Plaintiffs, and consequential damages arising from an inability to rent the premises as soon as the Defendants wished upon the Plaintiffs vacating the premises.

[5] The pleadings in this case when read in their entirety reflect a relationship which, however it began, ended in acrimony, confrontation, and name calling. While the trial occupied some 3 full days, I see little value in ruling upon many of the perceived slights or problems perceived by the parties to have occurred. In my view, the sooner and shorter this matter is concluded the better.

#### **Context of the Claim and Counterclaim**

[6] By lease dated July 17, 2000, Carol McCallum (referred to as "McCallum") and Doug McCallum (referred to as "Doug") (both of whom are collectively referred to as the "McCallums") leased property municipally described as 6620-128 Avenue, Edmonton, Alberta to Richard Dubois (referred to as "Dubois"), Raymond Dubois (referred to as "Raymond") and Sherry Balaski (referred to as "Balaski") for a term of 5 months from July 17, 2000 to January 31, 2001. From time to time Dubois, Balaski and Richard are referred to as the "tenants" or as the "Plaintiffs".

[7] A copy of the tenants' lease has been entered as Exhibit 1. A copy has also been entered as Exhibit 6. For ease of reference, the leased property will be referred to as the "house").

[8] It appears that Dubois and Balaski were looking for new accommodation in the summer of 2000, but were being outbid for available accommodation that was within their price range. They gave a rental deposit on the house, but then wanted to cancel it within a matter of a day or

days. However, the McCallums had cancelled the rental advertising by then and had taken the house off the market. As a result, Dubois, Balaski and Richard went forward with the rental. An "in inspection " was conducted and has been entered as Exhibit 2.

[9] There are many allegations by Dubois that the McCallums failed to make necessary repairs to the property. Numerous calls were placed by Dubois. By his own words, by mid-December 2000, he called the McCallums "every name in the book" and threatened to withhold payment of the next months rent.

[10] In December 2000, the McCallums offered the tenants a 5 month renewal lease. Dubois said that the new proposed lease "was for only 5 months", which he did not think was fair as the tenants had done so much cleaning when they moved in. McCallum explained that they normally gave 6 month leases, but the 5 month lease was to the end of the school year so that the Balaski children would not need to change schools during the school year. There is nothing in the original lease nor in law which compels the McCallums to grant a new lease for any term following expiration of the old lease.

[11] Given the problems that had arisen between Dubois and the McCallums, it is of note that in the face of those problems, the McCallums were still prepared to offer a renewal lease to the end of the school year. I find this complaint of Dubois to be without foundation. It is illustrative of the mindset he had at the time of distrust, confrontation and accusation against the McCallums.

[12] In cross examination, it appeared to me that Dubois was prepared to renew a lease provided it contained different terms than those offered. He initially conceded that his verbal abuse of the McCallums was a reasonable basis for them to not renew the lease, and then later in an about face, states he was surprised that the McCallums refused to renew the lease, regardless of his verbal abuse of them. Were there any issue in this regard, I would have concluded without reservation that by January 2001, the relationship had deteriorated to such a degree that the McCallums would have been acting entirely reasonably in ending the tenancy relationship on January 31, 2001.

[13] The difficulties continued to grow between the McCallums and the tenants. There was some evidence that in January, tradespeople were not able to gain easy access to the house to effect repairs. While the evidence on this was not as fulsome as one might hope, it establishes to my satisfaction that access was made difficult by the Plaintiffs.

[14] Raymond described how after having a few beers, he was abusive to McCallum when she called to speak to Balaski. In his opinion, McCallum was humiliating Raymond by asking to speak to Balaski about tenant matters. In giving his evidence, Raymond was gratuitously insulting to the McCallums. Regardless of his view of past events, it was unnecessary to cast

such aspersions, a practice which is of little assistance to the court. He refused access to a rental person in January who was there to show the house to prospective tenants, on the basis of "just being miserable to them" (the McCallums).

[15] Balaski also felt McCallums should have spoken to Dubois directly rather than her. I gained the impression that Balaski was the most reasonable of the tenants, and that her reasonable approach was not viewed favourably by either Dubois or Raymond. However, given the abusive behaviour of Dubois, it is understandable that McCallums would speak to one of the tenants who was at least civil to deal with, regardless of whether that tenant agreed with McCallums or not. Any interpersonal issues between Dubois, Balaski or Raymond are not the subject of compensation due from the McCallums.

[16] It is in this context of accusation and acrimony that the parties sought to litigate a landlord and tenant dispute.

#### **Decision on the Plaintiffs' Claim**

[17] The Plaintiffs' complaints listed below are taken from the Civil Claim before me.

##### **Failure to comply with regulations or rental agreements**

[18] On December 21, 2000, the house was inspected by Ms. Ludmilla Schmidt, an Environmental Health Officer with the Capital Health Authority, (referred to as "Schmidt"). Her inspection report was entered as Exhibit 18. There were gaps around and under the outside doors which allowed wind, snow and cold to enter the house. Sometime before Christmas, 2000, Doug tried, but was unable to fix the problem through installing weatherstripping. The deficiency was accepted by the McCallums and was observed by Schmidt upon her inspection on December 21.

[19] It is also alleged that missing window screens and broken windows were not fixed in timely manner. It is clear from Schmidt's evidence that when she inspected the premises on December 21, 2000 there were missing screens and problems with missing or broken windows. Some of these problems were fixed by January 17, 2001 when Schmidt did a follow up inspection, although some remained outstanding (Exhibit 19). Schmidt confirmed that she re-inspected the property on December 11, 2001, or just 3 days before testifying, and all problems she had noted in December 2000 had been repaired. McCallum stated that all the repairs had been completed within a short time after January 31, 2001, and I have no reason to doubt her evidence.

[20] In addition to the deficiencies listed by Schmidt, Dubois said there were a lot of "verbal deficiencies" not listed on the in inspection report nor in Schmidt's inspection reports, posing in

cross examination to McCallum the question whether the McCallums would have rented to Dubois had he raised all of the little things. While we will never know the answer to that rhetorical question, it illustrates the mindset Dubois had at the time. What he perceived as a real but unmentioned deficiency became a real deficiency for which he sought to make the McCallums' responsible even though they were not aware he felt something was a deficiency. This is sandbagging at its worst, and ignores the very reason for the inspection and the entry into a Tenancy Agreement. Silence is golden, and in this case, silence is everything.

[21] I earlier referred to the inspection by Schmidt. Consistent with the relationship between the McCallums and the tenants, there was a disagreement over this inspection. An inordinate amount of court time was occupied in seeking to establish who had initiated the inspection, rather than simply establishing that an inspection had occurred and focussing upon the nature of the deficiencies found in that inspection. Perhaps the parties perceived that the most "innocent" party would be the one who had initiated the inspection. Schmidt testified that she received a call first from Balaski, and shortly thereafter from McCallum. Realizing that she had a call from both tenant and landlord, Schmidt called both back in arranging the inspection. It is not germane to this action to establish or disprove who called whom first. McCallum gave a notice of entry to enable the public health authority to do the inspection as a response to Dubois' threat to withhold payment of rent. The inspection occurred and a report resulted.

[22] Schmidt's investigation is detailed in the result in Exhibit 18. She confirmed that some of Dubois' complaints were legitimate, but that with the exception of a battery missing from a smoke detector, none of the defects were considered critical.

[23] I also heard evidence that it was impossible to keep the house heated properly. To some degree this allegation also touched upon the health of Balaski's children, referred to below, and the gaps around the entrance doors. Schmidt resolved in my mind the evidence about the heating in the house. She testified that when she did her inspection, the temperature in the house ranged from 21.5C to 29C, and that the bedroom window was frozen open in the room in which the temperature was 21.5C. In her judgment, the house was at an appropriate temperature.

[24] Balaski also blamed her children's illness on draughts caused by the poorly fitting doors to the house, but later stated that her children had health issues from birth. This established for me that some of the health issues blamed upon the McCallums had preceded the rental and were not directly related to any of the claimed deficiencies. I am unable however to find that there is any causal link between the deficient weatherstripping and family illnesses or other consequences which can be the subject of a damage award.

[25] In the result, I am not prepared to find any liability for the Plaintiffs' claims under this heading.

Failure to have the house clean and ready to move in

[26] There was a sharp disagreement over what were referred to as "verbal" discussions not recorded in writing but which fuelled much of the dispute. McCallum states that in return for a \$200 reduction on rent, Dubois was to clean, to repair certain things, and to paint the upstairs bathroom and living room ceiling. Dubois stated that there was no agreement to do painting.

[27] What is clear and uncontradicted from the evidence is that the tenants received a \$200 reduction in rent at the onset of the tenancy. Exhibit 3 is a receipt that details that concession. The problem concerning the cleaning appears to have arisen after the Plaintiffs took occupation of the house and other issues arose. At that later time it was alleged that the time taken to do the cleaning at the onset of the tenancy was too much, and that the McCallums had underestimated the time it took to clean the house. In effect, the tenants claim that \$200 was insufficient to cover the time required to clean the house.

[28] However, it is equally clear that the tenants had ample opportunity to inspect the house before entering the tenancy agreement and before accepting the \$200 allowance. Any issues over the extent of cleaning required or the estimate of the value of the time for doing that cleaning could have and should have been spoken to at that time, rather than long after the fact. None of the tenants mentioned the "underestimation" at the time of doing the cleaning, raising it only after the acrimony in the relationship had fully matured. I dismiss any claim for damages due to the time required to perform the cleaning at the onset of the tenancy period.

[29] The McCallums allege that the tenants were to paint the bathroom of the house. Initially, Dubois stated that there was no agreement to do any painting in the house. However, later in his evidence Dubois alleged that there was insufficient paint dropped off in July 2000 to paint the room, and by the time it was dropped off, the family had moved in and it was unreasonable to live in the house while there were paint fumes from the bathroom. I found Dubois evidence on this point to be unconvincing and contradictory. I find that he ultimately accepted that he had agreed to paint the bathroom, but that he later objected to the timing of when he was able to do the painting.

[30] I also found his position regarding not painting while the family was in the house to be unreasonable. Many people live in their homes while at the same time painting some part. While this may cause some loss of amenities due to inconvenience and fumes, this is part of the normal activities one finds in effecting many home repairs. Agreeing in advance of renting the house to do painting after taking occupancy carries with it the inconvenience that would result from painting while living in the house. It would have been a simple thing to have painted the bathroom in August, opened the bathroom window and closed the bathroom door sealing the smell within the bathroom, and allowing it to vent to the outside. In the result, I would not award

any damages to the Plaintiffs for this claim.

Leaking water pipes causing damage to food and requiring clean-up

[31] The McCallums accept that plumbing repairs were required to the kitchen sink at the time the tenants moved into the house, and that initially Doug made those repairs. This repair work involved the use of plastic pipes and pipe cement or glue. Apparently almost as soon as the sink was used after the tenants move into the house, water leaked from this plumbing repair and required some clean up. Upon being advised that Doug's efforts had proven ineffective, McCallum called a tradesman to make the repairs. Dubois accepted that the problem was fixed within 24 hours of it being reported to the McCallums.

[32] Either concurrent with or immediately after the sink repairs, there was a perceived problem with a smell in the fridge, prompting a call from Dubois to the McCallums. In evidence in chief he stated that Balaski thought it was smell from freon gas, which Dubois thought unlikely as he knew freon did not smell. The McCallums dispatched a fridge repairman immediately, and when no problem could be found, it appears the repairman opined that the smell might have been from contact cement which was "caught" in the fridge from when Doug was doing the plumbing repairs, as according to Dubois, the fridge was "wide open" while Doug was doing the repairs.

[33] There was a claim for lost food as Balaski did not want to serve "toxic" food to her family. The fridge had been empty and not used for the storage of food for approximately 2 weeks before the incident involving the smell. As pointed out by McCallum, a number of alternatives existed to deal with the smell, including cleaning the inside of the fridge with a cleanser, leaving the door open for a period for the fridge to "air out", and putting baking soda in the fridge to absorb any undesirable odours. None of these "home" remedies were apparently pursued by the tenants.

[34] In my opinion, there has not been any proof of any damage claim for which compensation should be awarded for this claim.

Failure to supply safe rental property (light fixtures falling and blinds falling causing damage)

[35] It was alleged that some door handles "fell off" and had to be replaced. These I find were minor inconveniences which did not detract from the use of the house and which only assumed monumental proportion following later more substantive disputes.

[36] The evidence established that while the tenants were moving into the house, a light fixture in the basement "fell off". Again this resulted in a short minor inconvenience, and was

rectified. This too assumed monumental proportion following later more substantive disputes.

[37] Dubois alleged that some blinds were inappropriately affixed to the ceiling of the rooms rather than into some firm holding material, and that these blinds simply fell off when the blinds were pulled due to being anchored into inappropriate holding material. In addition, Dubois stated that the wands of at least two blinds apparently broke, and had strings missing. According to Dubois, the master bedroom blind "blew apart" when its string had been pulled, and that it broke again later. This is not listed on the out report. Again, I cannot find a causal connection between these events and any damages alleged to have been suffered by the Plaintiffs.

[38] In the result, I would not award any damages for this claim.

Failure to supply "in" and "out" reports

[39] The Plaintiffs filed as Exhibit 2 an "in" report. What the tenants found objectionable in respect of this "in" report was the addition by hand of certain information by McCallum after the "in" report had been signed by the Balaski on behalf of the tenants. What is in dispute is what effect if any the added handwritten additions have on the obligations of the parties. Because those handwritten additions relate to other matters which are dealt with separately, I will not deal with them here.

[40] There was a problem with completion of the "out" report. Originally it was scheduled for noon on a particular day. Dubois stated Balaski was to be there as she was not working, and he took time off work to be there. Apparently there was a note affixed to the door indicating the McCallums could not do the inspection until 7 p.m. that evening, and yet they were at the house at 3 p.m. at which time Dubois ordered them out of the house. I was not happy with the evidence on this point as it was led. I found McCallum's evidence to be less than forthcoming on this point. In answer to my questions, she finally confirmed that in the week before January 31, she was requested to extend the time for possession as the Plaintiffs needed more time to do the cleaning due to employment obligations. McCallum agreed to extend the time, and gave a notice stating she would do the "out" inspection at 7:00 p.m.. Dubois relied on that as the time of possession. I find that his reliance was reasonable.

[41] I do not find that the time adjustment from noon to 7:00 p.m. caused the Plaintiffs any damages.

[42] Because it is interconnected with the security deposit matter, delivery of the "out" report is addressed below.

Failure to return Damage Deposits and interest

[43] Not surprisingly given the deterioration in the relationship, there were a number of issues surrounding return of the security deposit. Exhibit 7, dated February 8, 2001, was suggested to have been McCallum's return of the security deposit and accounting for the deposit. To this Dubois had two fundamental objections. First, he alleged he did not receive the original letter sent by McCallum, and as a result delivered a letter demanding return of the deposit. Secondly, Dubois felt that McCallum, in making out a cheque for the security deposit payable to the three tenants, was playing a "game" with the tenants.

[44] Dealing with the second issue, I find it to have no merit whatsoever. The lease was to all three Plaintiffs, and even though the security deposit had been paid by one person's cheque, it was paid on behalf of all three tenants. I find McCallum's approach to return of the security deposit to be reasonable and within the landlord's obligations. Had Dubois wanted to see the cheque go to one of the three tenants, it would have been a very simple matter for two tenants to endorse the cheque over to the third who would then be able to exclusively deal with the cheque.

[45] The first issue surrounding return of the security deposit is somewhat more complicated. It is clear that in February, 2001, matters between the McCallums and the tenants had ebbed to such an extent that the McCallums had sought the intervention of the Edmonton Police Service ("EPS"). I heard from a number of EPS officers regarding their involvement with the parties. In respect of the security deposit accounting, I heard from Constable Millay that on February 28, 2001, Constable Millay gave Dubois an envelope with some material in it. McCallum testified that the material in the envelope was the "out" report, the original security deposit letter and cheque refunding a portion of the security deposit. Dubois said he got a thick envelope from the EPS Constable but didn't look inside, and then said he did receive the "out" report but not at the time he was supposed to receive it. Dubois was then confronted with a Post Office Receipt dated March 30, 2001. McCallum testified that she had sent Exhibit 6 and the security deposit cheque by registered mail on March 30, 2001. In response, Dubois stated that he did not recall saying when he received the documents, and finally stated it was all a long time ago, presumably suggesting that he had problems with his memory. Dubois also stated that he had received a copy of Exhibit 6 (a copy of the Tenancy Agreement) and not the "out" report from the EPS.

[46] I find, on the evidence of McCallum and Constable Millay that on February 28 Constable Millay gave Dubois a copy of the security deposit statement and cheque for \$384.00. I reject Dubois' evidence. He gave positive evidence before me that he did not receive the report. He was unequivocal in this. He blamed the McCallums. However, within a matter of minutes, he recanted when faced with the post office receipt. I find his explanation simply to be without any credibility whatsoever.

[47] This then leaves the deductions made by the McCallums from the security deposit, discussed below:

*Bathroom walls and ceiling not painted - \$100.00*

[48] I have concluded earlier that there was an agreement to paint the bathroom walls and ceiling, and that this was not done. This agreement was part of the original \$200 allowance given to the tenants for being allowed to move in early if they did both the painting and the cleaning up. I heard no evidence with respect to the length of time it would take a person to paint the bathroom as agreed, or what value the McCallums' placed upon the labour to be provided by Dubois, given that they had placed some value on it in the initial \$200.00 credit. In the result, I will only allow a nominal amount for this claim based upon the rate of \$5.00 per hour. In my view, a reasonable amount for painting the bathroom as agreed would be \$50.00, and I allow that amount.

*Rent cheques that allegedly bounced - \$150.00*

[49] Raymond testified in respect of using his bank account from which the rent was paid. As far as I could determine, there were some difficulties on two occasions in getting the rent paid without needing to deposit more money into the account or without a delay. In addition, one cheque appears to have been returned because it was not signed. This is not the same as an NSF cheque. In none of the examples given to me was there an "NSF" cheque produced. Rather, the McCallums took steps to secure payment of the rent on a timely basis and held off presenting a cheque for part of a day if it would clearly be returned "NSF". While this caused inconvenience to the McCallums, and undoubtedly contributed to the deterioration of the relationship, I find no cheques were returned "NSF", and this deduction is disallowed.

*Satellite dish repairs - \$50.00*

[50] A satellite dish was put on the roof of the house. Initially in his direct evidence, Dubois stated that Doug agreed with Dubois, Raymond and possibly Balaski that Dubois could put it up. Dubois said the dish was "professionally installed" and upon removal of it, corks and silicone were used to patch any holes. However, just before completing his direct evidence, Dubois stated that he was wrong and did not have permission to erect the satellite dish. This caused me to have serious doubts as to the reliability of his evidence on this point.

[51] Raymond said that Doug agreed a satellite dish could be installed if it was done professionally. Raymond had installed 20 dishes over the past 2 years and felt he could do it professionally. This is not necessarily what was agreed upon if it was agreed upon.

[52] Doug denies giving anyone permission to instal a satellite dish on the house.

[53] Having heard all the evidence and observed the parties, I find that there was no

permission granted to install a satellite dish. However, the cost to rectify any problems caused by the installation was not the subject of any extensive or cogent evidence. In the result, I am prepared to allow nominal damages of \$20.00 for this item.

*Replace smoke detector battery, clean up, etc. \$120.00*

[54] The evidence in respect of this item was lacking in any detail. I am prepared to find that the smoke detector battery was absent, and was the responsibility of the tenants. I am also prepared to find that some minor matters which were the tenants' responsibility required repair. However, in the absence of any clear evidence, I can only award nominal damages of \$50.00.

*Failure to report sewer line as a constant problem causing sewer back-up*

[55] Balaski said there were ants in basement, draughts in basement, an outside faucet which continually leaked and sewer backup in the basement "left, right and centre". While ants, draughty basements or leaking faucets can be irritants, they are not the subject of any real claim in this action. They do illustrate the level of frustration that developed between tenant and landlord. However, the sewer backup is a claim brought by the Plaintiffs. The original Application to Rent contains an acknowledgement by the Plaintiffs that sewer backup insurance was required. McCallum testified that the Plaintiffs showed her proof of having sewer backup insurance.

[56] I felt Balaski also exaggerated matters. She alleged that she experienced sewer backup "right, left and centre". The evidence on this was exceedingly skimpy and unconvincing. It may have simply been frustration on her part. Balaski admitted it affected the neighbours as well, so could not be directly blamed on McCallums. There was a claim for \$150 for this, but in cross examination, Balaski finally admitted that she had been told about needing sewer backup insurance before renting the premises. She also finally in cross examination admitted that she had been told in advance of renting that there had been sewer backups in the past.

[57] In the result, I am satisfied that the sewer backup was addressed by the parties before the tenancy agreement was entered, and that the risk of loss from sewer backup was on the tenants to be covered by a policy of insurance. I therefore do not award any damages for this claim.

*Conclusion on the Plaintiffs' claims*

[58] In the result, Exhibit 7 indicates that the McCallums deducted or withheld \$420.00 from the security deposit. I have concluded that the McCallums were entitled to deduct \$120.00. In the result, the Plaintiffs are entitled to judgment for the sum of \$300.00.

**Decision on the Counterclaim**

[59] In now turn to the counterclaim. In my opinion, most of the items claimed in the counterclaim arose out of frustration with the tenants, and reflect the measure of frustration felt by the McCallums. Having said that, the role of landlord is fraught with frustration particularly where acrimony creeps into the relationship. Acrimony and frustration do not equate with compensable damages.

*Refusal to allow tradesmen entry, loss of credible tenant, not giving up possession at noon on last tenancy day*

[60] I found based upon Raymond's evidence that tradesmen were denied entry on at least one occasion. I accept a notice of entry had been given and that there was no lawful reason to refuse entry. However, I have no direct evidence of the cost to the McCallums from that denial, other than delay in effecting repairs. In the result, I can only award nominal damages of \$25.00.

[61] The McCallums turned the house over to a property management company to rent following the end of the Plaintiffs' tenancy. I note that the costs for this new approach for renting the property were much higher than those incurred by the McCallums when they rented the house directly. The house was offered for rent by the property management company at a rent higher than what the Plaintiffs had been paying, but it could not be rented for that amount. It was ultimately rented for an amount lower than originally sought by the property management company but still higher than the rental that had been paid by the Plaintiffs. There is no way to determine whether the delay in renting the house was a result of the higher rent being demanded, or due to the actions of the Plaintiffs.

[62] In the result, I am not prepared to find that the McCallums inability to rent the house earlier than they did was a direct result of any actionable wrong by the tenants. In my opinion, the additional cost for using a property management company cannot be foisted upon the tenants. In the result, I do not allow any damages for the loss of a credible tenant.

[63] Finally, McCallum testified that she agreed to vary the time of the "out" inspection report from noon to 7:00 p.m.. As a result, I find that the claim for failure to give up occupancy at noon has not been established, and I award no damages for this claim.

*Lost wages, (\$300.00); out of pocket expenses (\$250.00)*

[64] Part of the burden of being a landlord is that one must expend time and money in dealing with matters. Not every action that results in a landlord having to take time off work or to incur costs such as photocopying results in a right of recovery from the person's tenants.

[65] In my opinion, these claims were inflated and reflected the level of frustration experienced by the McCallums. I am not prepared to award any damages for this claim.

*Home invasion (\$5,000.00)*

[66] This was the saga of the peace bond issued under s. 810 of the *Criminal Code of Canada*. The only reason this is relevant is that the McCallums claim \$5,000 damages for an alleged home invasion on March 17, 2001, which resulted in the peace bond process being instituted. I heard the audiotape from McCallum's 911 telephone call, and heard from the investigating EPS officers.

[67] While Constable Kruger accepted that the McCallums were fearful, he concluded that Dubois had no criminal intent and hence did not lay a breaking and entering charge under the *Criminal Code*. Another EPS officer, Constable Millay, heard a telephone call from Dubois in which Dubois stated in part "deal with the situation if you don't want me coming down your throat". Constable Millay after conducting his investigation concluded that there was no criminal intent and did not lay any charges of uttering threats under the *Criminal Code*.

[68] Dubois was then the subject of an application under s. 810 of the *Criminal Code*, which resulted in a peace bond being issued. The circumstances of the former peace bond proceeding began to assume a life of their own in this trial, causing me to advise all participants on a number of occasions that we were not going to retry the peace bond application.

[69] Were it necessary to reach any findings of fact on this aspect of the counterclaim, I would note the following. Dubois testified that one of Balaski's sons accompanied him into the back yard of the McCallum's home, and that Dubois did not enter the McCallum's home. When giving evidence, this young man testified that he remained in Dubois' car parked at the curb, and did not see what happened in the rear of the McCallum's yard. I found the young man's evidence to be believable on this point, and that Dubois misrepresented the circumstances before me.

[70] However, I am not satisfied that the events of the "home invasion" were as dramatic or traumatic as described before me. If anything, the claim would sound in trespass. However, at the time the Plaintiffs were in a dispute with the McCallums about the tenancy and the security deposit. I find that the actions of Dubois in attending at the McCallums' house do not amount to a trespass for which damages are recoverable.

*Malicious or frivolous claim*

[71] Having found a genuine dispute over the security deposit, I cannot say that the Plaintiffs' in bringing this action were acting maliciously or frivolously. While I decry the name calling, rhetoric, and exaggeration evidenced by the Plaintiffs, that does not make the action malicious or frivolous. We do not have to like those with whom we deal, and we do not have to act in an

adult or professional manner. Rudeness and vulgarity alone do translate into recoverable damages.

*Bailiff's charge for possible over-holding tenant (\$75.00)*

[72] Persons in commercial relationships often take prophylactic steps when they perceive potential risk. That decision while commercially reasonable in many instances, does not always translate into recoverable damages. In my view, this item is not recoverable.

*Conclusion on the Counterclaim*

[73] In the result, I have concluded that only \$25.00 of the Plaintiffs by Counterclaim's significant damage claim is recoverable.

**Conclusion**

[74] In conclusion, I find that the Plaintiffs are entitled to judgment for the sum of \$300 representing the amount wrongly withheld from the security deposit. In addition, they are entitled to the applicable rate of interest on that amount from February 28, 2001 until today, and to the rate of interest allowed under the *Judgement Interest Act* from today until the amount is paid.

[75] All other claims for damages by the Plaintiffs are dismissed.

[76] The McCallums are entitled to \$25.00 damages on the counterclaim. This amount will be set off against the amount owing to the Plaintiffs resulting in a net amount owing to the Plaintiffs of \$275.00.

[77] In the normal case, costs of the action if any would follow the event, reflecting the success of the litigants. However, I found that much of the Plaintiffs' evidence was exaggerated, and made certain findings of credibility in respect of the Plaintiffs' evidence. At the same time, the McCallums advanced a claim for damages of \$10,378.00 reduced to \$7,500.00. This counterclaim occupied two full days of court time. It was in my view inspired as result of the Plaintiffs claim, and not as a result of initially perceived actionable wrongs for which damages were recoverable. Put another way, had the Plaintiffs not brought this action, it is my view that the counterclaim would not have seen the light of day.

[78] In the result, I am not prepared to award any costs to any litigant.

Dated at the City of Edmonton, in the Province of Alberta this 8<sup>th</sup> day of January, 2002.

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Judge A.H. Lefever