

THE PROVINCIAL COURT OF ALBERTA

BETWEEN:

LUCY MUNRO

Applicant/Landlord

- and -

ANDREW RUSYNYK and WANDA RUSYNYK

Respondent/Tenants

JUDGMENT OF THE HONOURABLE JUDGE J.N. LeGRANDEUR

Nature of the Proceedings

[1] In this matter the Applicant/Landlord seeks an order terminating the residential tenancy of the Respondents/Tenants on grounds that the tenants failed to pay rent and the Applicant seeks further relief by way of a judgment for arrears of rent. The tenants oppose the application, denying being in arrears with respect to rent and indeed the tenants claim that the landlord is indebted to them.

[2] A trial of these issues was directed and the matter came on for hearing before this court on the 27th day of May, 2002 at the Court House in Pincher Creek, Alberta.

[3] At the conclusion of the hearing I dismissed the application of the landlord concluding that the tenants were not in substantial breach of the tenancy agreement and therefore the landlord was not entitled to an order terminating the residential tenancy. I advised at that time that my reasons would follow and that these reasons would explain the dismissal of the application and address the issue of accounts outstanding between the parties.

Issues

[4] The issues for consideration are as follows:

- a. Did the landlord agree as part of the rental agreement to allow the tenants to offset against rent as it accrued, improvements rendered the residential premises by the work and effort of the tenants?
- b. Is the landlord entitled to terminate the tenancy of the Respondents on grounds of substantial breach of the tenancy agreement by the tenants?
- c. Are the tenants entitled to compensation over and above any set off of rent, for work and improvements rendered the leasehold property?

#### Facts and Analysis

[5] In the Fall of 2000, Ms. Munro had set about to do some renovations on property she owned in the Crowsnest Pass, including the subject property at 22901 - 10th Avenue, Hillcrest, Alberta. The Respondents, who were originally from Calgary, came to understand she had property for rent and contacted her concerning the same. Ms. Munro showed Mr. Rusynyk two properties. He viewed the residences from outside and was told that rent would be \$400.00 to \$500.00 per month. Ms. Munro noted that work needed to be done on the subject premises before they could be rented and Mr. Rusynyk advised her that he did contract and renovation work in Calgary and he suggested that he would do the work she needed in exchange for an offset against rent. Ultimately the parties agreed that the premises would be rented to the Respondents for the sum of \$400.00 per month and Ms. Munro agreed as well that Mr. Rusynyk could do work in exchange for rent. She testified that he was to fix the wood floor, paint, fix baseboards, put shelving in the bathroom and install three wooden doors.

[6] There was never any discussion as to how much of a rental offset the work undertaken by Mr. Rusynyk would generate, nor as to how this work was to be valued. The tenants formally took occupancy of the residence on or about February 1st, 2000, although Mr. Rusynyk had stayed at the premises from time to time during his renovation work through the months of November and December of 2000 and January, 2001. The tenancy agreement took effect as of February 1st, 2000. It was a month to month tenancy and the rent payable was \$400.00 per month. The landlord testified that it was always her intention to increase that rent to \$550.00 per month, once the premises had been brought up to appropriate condition, however, she never took any formal steps to increase the rent, and I am satisfied that there was no consensus between the parties at the commencement of the tenancy that specifically contemplated an increase in rent at some point in time thereafter. The tenants are liable and continue to be liable only for the sum of \$400.00 per month and utility costs commencing February 1st, 2001.

#### Rental Set Off

[7] It is clear that the tenants were entitled to setoff against rent, as it accrued from month to month, the value of the work done in repairing and renovating the premises. The difficulty however, as I have expressed aforesaid, is presented by the fact that the landlord and tenants did not agree at the outset to a value to be attributed to the work, nor a method of valuing the work. The tenants did not pay rent or utilities for the months of February, March, April or May, 2001, but have paid all rent and utilities since that time. During these four months Mr. Rusynyk saw Ms. Munro regularly and mentioned to her the need to figure out what the setoff would be. Near the end of May, 2001, six post-dated cheques for rent were provided to Ms. Munro and she provided them with the utility bills thereafter. In November, 2001 another six post-dated cheques were provided to the landlord. There was no discussion during this period of any rent being outstanding. In March, 2002, the landlord offered to sell the property for \$75,000.00 which price she advised would pay the property and satisfy any outstanding rent. The tenants indicated they were not interested in purchasing the property and thereafter, according to Mr. Rusynyk, Ms. Munro advised them that they needed to resolve the rent issue for February, March, April and May of 2001. On April 8th, 2002, the landlord sent a fourteen day notice of termination to the tenants demanding they vacate the subject premises by April 23rd, 2002. (See Exhibit #1)

#### Value of Work Done by Tenants

[8] It is undeniable, that the tenants were to get a credit against rent accruing for the improvements they rendered to the property by their work and effort. This is consistent with the testimony of the parties and indeed their conduct subsequent to making that agreement. The landlord sought no rent for February, March, April and May, 2001 and no reimbursement for utility payments until April, 2002 when the tenants indicated they did not wish to purchase the property. (See: Duxbury and Tucker v. Training Inc., (2002) ABPC 24 re: subsequent conduct of parties as evidence of a contract) Exhibit #2 and #3 are detailed breakdowns of the work done to the premises and the value the tenants attribute to the work. These details were prepared in April of 2002, only after the landlord demanded payment for rent for the period of February through May, 2001.

[9] I am satisfied that all the work listed and detailed above the item "deck framing", as set out in Exhibits #2 and #3, was work done under this agreement between the parties and indeed the precise determination of the value of this specific work is not necessary. The parties appear to have reached a consensus on the value of the same in May, 2001. The tenants, for June 2001 and thereafter paid rent in the sum of \$400.00 per month plus utilities and the landlord, as of that date, sought no compensation for rent or utilities for the preceding months, February through May, 2001. It is my view that it matters not whether the true value of this work is more or less than the amount owing for rent and utilities during the same period, the parties reached a consensus in May, that what was done was sufficient to pay the rent and utilities for that period.

From that point on, rent was paid as agreed with no further abatements or gaps in payment of rent or utilities. The work done, as I have described, is the work contemplated by the parties when they entered into the leasehold agreement.

#### Subsequent Work Done

[10] Evidence is also presented by the tenants of further work being done subsequent to May, 2001. This work is represented in Exhibit #2 and #3 by the items listed commencing with the item, "deck framing" and followed by the items "deck surface, deck landing and stairs, gutting upstairs" and on Exhibit #3 "cutting down rotten tree". This was work done with the knowledge and concurrence of the landlord and I have no doubt, that although it was not part of the original understanding as to what work was to be done, the landlord knew full well that the tenant expected compensation in some form for the improvements rendered and the money expended in that regard. Improvements were made to the property of the landlord in circumstances where it is clear that the tenant did so in expectation of reasonable compensation therefore. Mr. Rusynyk spent 88 hours in providing such improvements at a rate he fixed at \$15.00 per hour. Given his background, and the nature of the work done, I find his assessment in that regard to be reasonable. With respect to the cost of tree removal, Mr. Rusynyk testified that he traded personal goods valued at \$195.00 for the removal of the tree. I conclude, having regard to the work done, that the sum of \$195.00, being the amount he in effect paid or traded for the removal, is adequate compensation for the achievement of this improvement.

[11] I conclude that Mr. Rusynyk is entitled to compensation for the aforementioned matters as follows:

a.	Deck framing - 32 hours x \$15.00	\$ 480.00
b.	Deck surface - 36 hours x \$15.00	\$ 540.00
c.	Deck landing and stairs - 12 hours x \$15.00	\$ 180.00
d.	Gutting upstairs - 10 hours x \$15.00	\$ 150.00
e.	Tree removal	\$ 195.00
	TOTAL:	<u>\$1545.00</u>

#### Substantial Breach

[12] The tenants were at no time in arrears of rent. The Applicant has on the facts, failed to

prove a substantial breach of covenant on the part of the tenants and the application for termination of tenancy is therefore dismissed.

Summary of Judgment

[13] The Applicant/Landlord's application for termination and judgment for arrears of rent is dismissed with costs in favour of the tenants in the sum of \$100.00.

[14] Judgment shall issue in favour of the tenants against the landlord, Lucy Munro for the sum of \$1,545.00, plus the \$100.00 costs as described aforesaid for a total judgment in the amount of \$1,645.00. This sum may be set off by the tenants as against rent as it may have accrued due or be accruing hereafter, or the tenants may simply require direct payment of the sum by the landlord and may take such lawful steps to enforce the same as may be necessary.

DATED at the City of Lethbridge, in the Province of Alberta this 28th day of June, 2002.

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Jerry N. LeGrandeur  
Judge of the Provincial  
Court of Alberta