

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**  
Citation: *Grandy v. Parkland Investments Ltd.*, 2018 NSSM 66

Claim No: SCCH 472901

**BETWEEN:**

DEBORAH A. GRANDY

**Appellant/  
Tenant**

-and –

PARKLAND INVESTMENTS LTD

**Respondent/  
Landlord**

Date of Hearing: March 19, 2018;

Date of Decision: March 28, 2018.

Counsel/Parties:

Deborah Grandy appeared on her own behalf, along with her advocate, Kathryn Chatman.

Kent Noseworthy appeared for the Landlord.

***Editorial Note: The electronic version of this judgment has been edited for grammar, punctuation and like errors, and addresses and phone numbers have been removed.***

**DECISION**

(1) This is an appeal from the decision of Residential Tenancies Officer, Jason Warham, dated January 29, 2018 denying damages for replacing abandoned personal property, pursuant to s. 5 of the *Residential Tenancies Act*.

**Background**

(2) The Tenant rented the premises, [address removed], Halifax, NS, from the Landlord until the tenancy was terminated effective May 16, 2017. Bedbugs were discovered in the premises in January 2017. The history of the early part of the tenancy has been set out by Adjudicator Eric Slone in his unreported decision dated April 13, 2017. He found the Tenant was not the cause of the bedbug problem. He found her actions were inadequate to treat them but did not find she caused the

problem or contributed to it in such a way that she deserved to be evicted. In the end, the premises were treated for bed bugs but the tenant did not return to the premises. By mediated settlement, they agreed to the tenancy being terminated on May 16, 2017.

(3) In the meantime, following the landlord's decision to store the items in a POD onsite, Ms. Grandy's remaining personal effects sat untouched. After the passage of 60 days, the contents were disposed of at a private disposal facility on July 17.

(4) The Tenant brought an application seeking recovery of the items, which was heard by Mr. Warham. He found the process was correct, the value given (\$447.50) as reasonable and in accordance with the *Residential Tenancies Act* ("the Act"). The Tenant appeals alleging bias and failure to follow the Act. She seeks \$45,000 to replace the items.

(5) For the reasons that follow, I have allowed the appeal. I find the disposal of the personal and household goods to be procedurally flawed and not in accordance with the Act. I have awarded the Tenant compensation for the items but at a significantly lower amount than she claimed

(6) It is important to point out that while I have found Mr. Warham erred in his interpretation and application of the *Residential Tenancies Act*, I find there to be no evidence of bias on his part. At worst, his dealing with the Landlord to answer questions as a member of the public (apparently, this is part of a RTO's daily job duties) and subsequently hearing the application by the Landlord may have created a reasonable apprehension of bias which could have been avoided by his recusal from hearing the application. However, as this is a *de novo* hearing, any procedural issues before the Residential Tenancies Officer, whether real or apprehended, are not considered by the Small Claims Court. As noted below, the whole matter, including the weighing of evidence, is heard anew.

(7) For the clarification of the parties, an appeal from the decision of a Residential Tenancies Officer is a new hearing based on the evidence presented before the Small Claims Court Adjudicator. The evidence presented usually consists of that presented to the Residential Tenancies Officer (in whole or in part) and any additional evidence the parties seek to adduce. An Adjudicator may confirm the Order of the Residential Tenancies Officer or vary it as he or she considers just and appropriate based on this evidence.

## Issues

- Were the Tenant's personal effects disposed of in accordance with s.5 of the *Residential Tenancies Act* and ss. 23-24 of the *Regulations*?
- If not, what is the appropriate level of compensation?

## Evidence

(8) As noted, the background of the tenancy leading up to this matter is set out in Adjudicator Slone's unreported decision. His decision was not appealed.

(9) Deborah Grandy has lived in two separate buildings owned by the Landlord for a total of fourteen years. For approximately eight years ending in May 2017, she lived in the premises which are the subject of this matter. She says there was never an abandonment of the premises. She claims \$45,000 for all of the contents which includes various items she acquired during her military career.

(10) Kathryn Chatman is the Tenant's advocate and often assists Ms. Chapman with corresponding with the Landlord and others and appears before the Residential Tenancies Officer and in Small Claims Court. Ms. Chatman testified that Ms. Grandy has agoraphobia. As a result, she experiences great anxiety in crowds or difficult situations. She does not go out to socialize.

(11) Ms. Chatman tendered into evidence a document received under Ms. Grandy's door entitled, *Daily Cleaning Tenant Must Follow*. There was no letterhead or signature on the document. She assumed it came from a landlord. The document provided various directions on dealing with bedbugs including disposal of all furniture. Ms. Chatman indicated Ms. Grandy was prepared to clean the carpets and the unit to allow for proper bedbug control. (This was confirmed by Ms. Grandy). It is clear from the comments of Adjudicator Slone that Ms. Grandy did not initially understand the steps that were required of her.

(12) Susan Joan Hogg is Ms. Grandy's sister. She testified that Ms. Grandy had lived at [address removed] and collected valuable furniture and expensive items while there. She purchased many of those just before she moved to [address removed]. She took care of her things as she is not married and does not have children.

(13) Ms. Hogg testified that she recalls seeing several Pendelfin pieces, porcelain dolls, antique dishes, solid wood tables and mahogany furniture in her sister's apartment. There were a number of antique items. She testified that Ms. Grandy had in her possession a number of family photo albums she enjoyed looking at when she visited her. She assisted Ms. Grandy in preparing the documentation in support of her claim. She attempted to bring food to her sister but Ms. Grandy told her not to bring anything into the unit due to the Landlord's fear of tracking bedbugs.

(14) Deborah Grandy testified that she took care of her furniture. She had purchased a laptop the previous year and paid \$1200. She also testified that Bell Aliant is seeking \$360 to replace the modem that was disposed of when the contents of the apartment were discarded. She does not have any receipts to support her claim as they too were thrown out.

(15) Under cross-examination, Ms. Grandy identified a number of the photographs which were in evidence. They had also been considered by Adjudicator Slone. She was able to identify her couch and mattress. She acknowledges having bedbugs. She has

lived in unit B4 for the previous eight years. She identified her relationship with Parkland and the family that owns it as “very good.”

(16) She testified that she first notified the landlord when she identified a bed bug running across her chest when she was using her laptop.

(17) The landlord had put her in touch with John Lighthall of Rentokill Pest Control. They came to the apartment on January 5, 2017. A number of service visit reports were tendered into evidence. Upon closer review in preparing this decision, I note that almost half of the invoices (6 of 14) do not relate to unit B4.

(18) She acknowledges that Rentokil applied chemicals twice while she was there. They also vacuumed the premises. Ms. Grandy did not vacuum the premises. She moved out on February 17 when she was hospitalized and then stayed at her sister Susan's place when she was discharged. She did not move back into the premises after that point. The brief period of hospitalization occurred as the landlord attempted to be reimbursed for treating for bedbugs and presented Ms. Grandy with a bill for over \$3000. On March 10, 2017, Ms. Grandy hired Bedbug Detectives Incorporated to do the cleaning and preparation work required when it was clear to her that she did not understand what was being asked of her by Rentokil. She believes employees of the landlord came and got rid of the sofa and loveseat in January. I note there is a notation on Rentokil's invoice to that effect. Thus, I find the furniture was removed by Rentokil. They also disposed of the computer chair, mattress and box spring. The affected furniture was thrown over the balcony.

(19) On February 27, 2017, when Ms. Grandy was released from hospital, she discovered the locks for her apartment were changed. She does not know when the locks were changed or switched back. She had no difficulty with the landlord accessing the apartment during her absence. She did not return to the premises at any point. She did not look inside of the POD containing her personal effects.

(20) The landlord showed a photograph of a motorized scooter still being held in storage at [address removed]. She described her effects as being in good condition. She placed considerable emphasis on the condition of her eight-year-old Dell desktop computer and her CRT TV. I take judicial notice that electronics depreciate quickly as technology advances. I doubt these latter items have any value at all. I find the desktop computer and TV have no value.

(21) She also testified to owning a buffet from Ashley Furniture and several lamps from the Bombay Company.

(22) When asked in cross-examination if she could produce a copy of her insurance policy she indicated the policy had been thrown out. I find that she did not obtain a new copy from her agent. She testified the contents of the apartment were insured for \$50,000 as a replacement cost.

(23) As of April 18, her apartment had not been restored. She was advised by notice there would be a \$500 monthly rent increase. She testified she was aware there was a POD but she did not know where it was located. She did not ask the superintendent or anyone else working for the Landlord for access.

(24) She testified the monies owing for rent had been paid to Ms. Chatman in trust and held by her rather than being paid to a Residential Tenancies Officer or the Landlord. I find there was no order directing payment in trust. She deferred to Ms. Chatman on correspondence. Ms. Chatman confirmed receiving several of the letters including the letter of May 16 and May 18 indicating that Melda DeWolfe had the key to the POD. She testified she did not provide a new address to the landlord when she moved.

(25) Patricia Athanasiou is a co-owner of the landlord, Parkland Investments Limited. She confirmed that company owns [address removed]. She has been a residential landlord since 1998. She has known Deborah Grandy for 14 years. Ms. Grandy had been a tenant at [address removed] before that building was sold to Killam Properties.

(26) She advised that Ms. DeWolfe told her of a bad case of bedbugs in unit B4, although Ms. Athanasiou had not seen the bedbugs herself as these were the duties of the building manager and superintendent. The contact between Rentokil was made by her daughter and son, Stella and Dmitri, who work for the company. She recalled Ms. Grandy's household effects being removed from the apartment. She had discussed with Ms. Grandy what she deemed as Ms. Grandy's noncompliance with the directives regarding bedbugs.

(27) Apparently, she had been in conversation with Mr. Warham for guidance on dealing with Ms. Grandy's personal effects.

(28) Once it was determined the unit was cleaned, Ms. Grandy was advised by the Landlord that she could move in. She indicated she was prepared to move and the tenancy would end on June 30. By mediated settlement, they agreed the tenancy would terminate on May 16, 2017. The arrears were reduced to \$936.00

(29) On March 29, the Landlord decided to arrange to move the furniture to the POD. On a question from the Court, Ms. Athanasiou testified that she was advised by Rentokil that furniture needed to be discarded. She referred to an e-mail in evidence dated March 27, 2017. In it, John Lighthall of Rentokil advised that he had observed thousands of dead bed bugs. It was necessary to remove baseboards and spray inside the walls. With respect to furniture, he stated simply that "furniture was recommended to be discarded due to high levels of activity". I shall have more to state on this recommendation further in these reasons. It is noteworthy that neither Mr. Lighthall, nor the recipients of the e-mail, Stella and Dmitri, gave evidence.

(30) The inventory was prepared on March 29. Mr. Slone's decision came down on April 13. Ms. Athanasiou denies ever having seen an Ashley Cherrywood buffet. She denies having seen much of the inventory of items prepared by the tenants. She

indicated that Melda DeWolfe always had the key to the POD which could have been accessed by the Tenant at any point. There is disagreement about how Ms. Grandy came to acquire some of the furniture. According to the Landlords, a few were given to the tenants by Ms. Athanasiou or Ms. DeWolfe.

(31) Ms. Athanasiou testified that the Landlord sent a letter dated May 5, 2017 to the Tenant asking why the unit was not reoccupied and what Ms. Grandy wanted done with her personal effects and furnishings. This letter was prepared by Stella. She testified that she was advised she could not treat the unit unless all furniture was removed. Ms. Athanasiou testified that she did not direct Ms. Grandy to discard all of her contents but only certain things such as the mattress and the couch. She left Stephanie to deliver the inventory list by putting it under the door.

(32) In cross-examination, she confirmed that Ms. Grandy was a long-term tenant with whom they had previously had a good relationship. For her, it is not fair to say she wanted Ms. Grandy out of the building. The Form A was put under the door. She believes the unit was not abandoned. She denies ever indicating that she felt harassed by Ms. Chatman. Ms. Chatman showed her some of the letters that were in evidence complaining of harassing calls by Ms. Chatman. She prepared Form A with the help of the residential tenancies office.

## **The Law**

(33) Section 5 of the *Residential Tenancies Act* and subsections 23 to 24 of the regulations prescribe the procedure for dealing with abandoned personal property.

### **“Disposal of property of tenant**

**5** (1) A landlord shall not hold or dispose of a tenant’s personal property except in accordance with an order made pursuant to Section 17 or except as otherwise authorized by law.

(2) Nothing in subsection (1) entitles a tenant to leave personal property in the residential premises after the tenancy has terminated.

(3) Where a tenant leaves personal property in the residential premises after the tenancy has terminated or the tenant has abandoned the residential premises, the landlord shall do an inventory, to be filed with the Director, of the personal property and may at any time after sixty days dispose of the property in the manner determined by regulation and any revenue received from such property shall be paid first, towards rent owed, and second, for any storage costs or damages, with respect to the residential premises and any balance shall be turned over to the Public Trustee.

### **Inventory of abandoned personal property**

**23** Where a tenant leaves personal property in the residential premises after the tenancy has ended or the tenant has abandoned the residential premises pursuant to subsection 5(3) of the Act, the landlord shall prepare an inventory in Form A and file it with the Director, and send a copy of Form A to the tenant by registered mail to the tenant’s new address, if known, or to the address for contact of next of kin, if indicated on the lease.

### **Disposing of abandoned personal property**

**24** (1) The Director may, in writing, authorize a landlord to dispose of abandoned personal property that has an estimated value of \$500 or less by any method convenient to the landlord, if 60 days have elapsed since Form A was filed with the Director and mailed to the tenant or the tenant's next of kin.

(2) The Director may, in writing, authorize a landlord to sell abandoned personal property that has an estimated value over \$500, except manufactured homes, through a public sale or a public auction, if 60 days have elapsed since Form A was filed with the Director and mailed to the tenant or the tenant's next of kin.

(3) A landlord may immediately dispose of abandoned personal property that the landlord considers to be unsanitary or unsafe to store, and within 10 days of the date that the property is disposed of, must file Form A with the Director and mail a copy of Form A to the tenant or the tenant's next of kin."

## Findings

(34) In reviewing the evidence, I find both the Landlord and Tenant essentially did what they wanted to do when addressing the bedbugs and the personal effects. Neither were mindful of the provisions of the Act. Furthermore, I do not believe I am getting the full story from either of them. I am left to draw inferences from the parties' respective conduct.

### Negative Inference

(35) It is noteworthy that most of the correspondence with the Landlord and Rentokil did not involve Patricia Athanasiou, but her daughter and son, Stella and Dmitri. Furthermore, nobody from Rentokil testified. Their respective evidence would have gone a long way in aiding my understanding of the circumstances and the evidence that was before the court.

(36) In cases where relevant evidence is available from a party or a witness and a party chooses not to call that witness, the Court may draw a negative or adverse inference.

(37) In the case of *Scotia Fuels Limited v. Lewis* (1991), 102 N.S.R. (2d) 12 (TD), Saunders, J.(as he then was) stated as follows:

"...It is well recognized that where a party or a witness fails to present evidence, which was in the power of the party or witness to give, then such failure justifies the court in drawing the inference that the evidence would have been unfavourable to the party to whom the failure was attributed...."

(38) Furthermore, the learned authors of *The Law of Evidence in Canada* (3<sup>rd</sup>. Ed.) state the following at pages 377-378:

"In civil cases, an unfavorable inference can be drawn when, in the absence of an explanation, a party litigant does not testify, or fails to provide affidavit evidence on an application, or fails to call a witness who would have knowledge of the facts and would be assumed to be willing to assist that party. In the same vein, an adverse inference may be drawn against a party who does not call a material witness over whom he or she has exclusive control and does not explain it away.

Such failure amounts to an implied admission that the evidence of the absent witness would be contrary to the party's case, or at least would not support it.

An adverse inference should be drawn only after a *prima facie* case has been established by the party bearing the burden of proof."

(39) There are several instances where key evidence is missing and would be known by either John Lighthall or an employee of the Landlord. As a result, I have drawn a negative inference.

(40) It is worth noting that Melda DeWolfe was not able to attend due to a serious personal obligation. No inference is drawn as a result of her absence.

### Bedbugs

(41) There is no question the Tenant had bedbugs in her apartment. Ms. Grandy testified to observing bed bugs several times. There is no dispute from her or Ms. Chatman that the apartment was infested. The reports from Rentokil also confirm this. It was necessary to take further action. As with any pests, the extermination process for bedbugs requires cooperation from both the landlord and tenant. Unfortunately, Ms. Grandy did not appreciate the extent of the problem. She was not removing the bed bugs once they were killed until she hired Bedbug Detectives Incorporated. That company did not apply any insecticide or other treatment to kill the bedbugs. They were hired by Ms. Grandy for cleaning purposes only.

(42) Ms. Athanasiou testified that the pest-control personnel told the landlord to remove all furniture prior to treatment. I have reviewed the Service Visit Reports prepared by Rentokil as well as the e-mail sent by Mr. Lighthall. There is no reference whatsoever to the need to remove furniture while the unit is being treated. There is a recommendation to discard some affected furniture, without reference to the specific furniture to be discarded.

(43) The Tenant introduced the document entitled *Daily Cleaning Tenant Must Follow*. The document does not have any letterhead. It contains a listing of seven directions in point form. It directs the reader to not take furniture to the garbage room or the hallway. Given its directions to parts of the building rather than simply treatment and removal instructions, I do not find the document was prepared by any pest-control contractor. On the balance of probabilities, I find it was prepared and placed there by representatives of the landlord, probably Stella Athanasiou.

(44) The last item in the list stated the following, "absolutely no visiting of any other units".

(45) I believe Ms. Grandy when she states that she followed this e-mail and did not go from unit to unit. Unfortunately, this led others to believe that her apartment was not available for visiting. That is why her sister, Ms. Hogg, was too afraid to deliver food to her.

(46) The list makes it clear that other furniture is to be fully cleaned. It does not mention disposal of many items. There is no reference in any documentation that the furniture had to be removed.

Procedural history before disposal of items

(47) The timelines for this matter are of interest.

(48) On March 23, 2017 the parties appeared before Residential Tenancies Officer Sheila Briand to seek termination of the tenancy. Ms. Briand declined to do so and dismissed the application. In addition she dismissed the Landlord's claim for treating the bedbugs.

(49) During the last week of March, 2017, the landlord placed all of the tenant's belongings in a pod which was stored at [address removed]. The Landlord did this despite that there was no evidence that Ms. Grandy had abandoned her unit. The Residential Tenancies Officer had dismissed the Landlord's application to terminate the tenancy, meaning the apartment was still being rented. Furthermore, as noted by the various letters in evidence, the Landlord remained in contact with Ms. Grandy through Ms. Chatman and Ms. Hogg. It was clear to the landlord there was no factual or legal abandonment of the premises. Indeed, for whatever reason, she prepared the Form A on March 29 and filed it with the Residential Tenancies Office without any grounds whatsoever.

(50) In court, Ms. Athanasiou testified that she prepared the Form A on the advice of her pest-control contractor. There is no evidence whatsoever to support this. Given the absence of Stella, Dmitri and John Lighthall, I draw a negative inference and find their evidence would have been that there was no such direction whatsoever. Furthermore, given the several repeated directions from Adjudicator Slone to provide the Form A to the Tenant, I accept the evidence of the Tenant's witnesses that the Landlord did not send the Form in accordance with the Act.

(51) On April 13, 2017 Adjudicator Eric Slone handed down his decision confirming Ms. Briand's decision and order. In his decision, Adjudicator Slone stated the following:

"The order for a rent abatement in the amount of \$358.50 shall also stand.

The tenant shall be entitled to re-occupy the unit forthwith, and shall be responsible for paying rent from the time that occupancy is restored to her.

I realize that there is an issue with the tenants furniture. It would be reasonable for the landlord to insist that only bedbug free furniture brought into the unit, and if necessary the pest-control people it be brought in at the landlord's expense to monitor that process".

(52) Ms. Grandy has never returned to her unit or sought return of her belongings. She did not go to look at her contents, or even ask where they were located despite Adjudicator Slone's clear language that is what he expected she would do. Mr.

Noseworthy submits that Ms. Grandy has been fearful of the bedbugs and the risk of tracking them.

(53) Returning to the procedure, in my view, the Form A related only to the first application. Subsection 5(1) of the Act is very clear.

A landlord **shall not hold or dispose of a tenant's personal property** except in accordance with an order made pursuant to Section 17 or except as otherwise authorized by law.

(54) A landlord is not permitted to hold or dispose of a tenant's personal unless authorized to do so by the Director under s. 17 or other legal process. The Form A was not valid. This was clear once Adjudicator Slone found there was no abandonment of the premises. At all times, the Form A dated March 29, 2017 was a nullity. At that point the Tenant could reasonably have inferred that the matter of abandoned property had been conclusively addressed.

(55) The issue of dealing with Ms. Grandy's personal property arose once the tenancy terminated on May 16, 2017. At that point, the Landlord was required to go through the whole process of preparing the Form A and providing notice in accordance with s. 5 of the Act and ss. 23-14 of the Regulations. Section 5 of the Act directs the sale of the items 60 days after the tenancy has ended if they remain in the premises. It is not necessary to find abandonment at that point. All that is required is the contents have been left behind. I find that was the case.

(56) Ms. Athanasiou contacted Jason Warham to ask questions about disposing of the property. He told her to wait until 60 days after the date the tenancy ended as stipulated on the Mediated Settlement (May 16, 2017), or July 16. I find he did not recommend to Ms. Athanasiou that she notify the tenants again. Ms. Athanasiou testified that her daughter purportedly put the notice under the tenant's door. I do not find there was any attempt at notice whatsoever.

(57) Section 23 of the regulations requires a landlord to mail a copy to the tenant's new address or to the next of kin provided on the lease. The lease is eight years old. There is no copy in evidence. Once again, I draw a negative inference against the landlord and find there was an address given for a next of kin. Furthermore, the landlord was in continuous contact with Ms. Grandy through Ms. Chatman. She sent her notice of a rental increase to her as well as seeking directions on how to dispose of the furniture. Indeed, the Landlord relied on this in court in confirming Ms. Grandy was aware of the letters. She also knew the tenant's sister, Ms. Hogg, lived in the building. It is disingenuous to suggest she did not know how to notify the Tenant. I find there was no attempt made whatsoever.

(58) Section 24 of the regulations provides two different procedures for when personal property is left in premises beyond 60 days or the premises are abandoned. When the property is valued at \$500 or less, subsection (1) allows the landlord to dispose of property anyway that is most convenient to the landlord. When the value is greater, subsection (2) requires a public sale and auction. Once the sale has been conducted

there is an accounting requirement and an order for payment of the proceeds. Clearly, the process is simpler when the property is estimated at \$500 or less.

(59) There is no guidance in the legislation about how a landlord arrives at an estimate of value. In most cases, I suspect the value is simply accepted when there is very little left behind. The threshold is quite low, \$500. However, in my view, there must be a bona fide attempt to ascertain the value. A landlord must be prepared to show cogent evidence when the value is challenged. The list must be complete. I find it was not.

(60) According to Ms. Athanasiou, the estimate was made by her daughter, Stella. Once again, I draw a negative inference based on Stella's absence. However, I need not have done that. The contents take up most of the POD. In the photographs provided by the Landlord, there is a buffet in clear view in the apartment and the POD which is not shown on the Form A. I accept Ms. Grandy's evidence that she was billed \$360 by Bell Aliant for a modem. I find her laptop is only a year old for which she paid \$1200. The assets are clearly worth more than \$500.

(61) In considering the entirety of the process, I find the requirements under section 5 of the *Residential Tenancies Act* and subsections 23 and 24 of the Regulations were not followed.

## Damages

(62) It is clear from the conduct of the Tenant, she does not want her contents back. I agree with Mr. Noseworthy that Ms. Grandy was fearful of entering her apartment and the possibility of tracking bedbugs away. Notwithstanding this conduct, it is important to look at the purpose and intent of the abandoned property provisions.

(63) Reference is made to the case of *Nova Scotia (Minister of Health) v. R.G.*, 2005 NSCA 59 :

"In Elmer Driedger's definitive formulation, found at p. 87 of his *Construction of Statutes* (2nd ed. 1983):

'Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.' "

"...As well, Section 9(5) of the Nova Scotia *Interpretation Act*, R.S., c. 235, s. 1 holds that all enactments shall be deemed remedial, and interpreted to insure the attainment of their objects by considering among other matters:

- (a) the occasion and necessity for the enactment;
- (b) the circumstances existing at the time it was passed;
- (c) the mischief to be remedied;
- (d) the object to be attained;

- (e) the former law, including other enactments upon the same or similar subjects;
- (f) the consequences of a particular interpretation; and
- (g) the history of legislation on the subject.’ “

“...Then, if after applying a purposive and contextual approach, we are left with an ambiguity, we turn to other interpretative aids. Justice Iacobucci explains in *Bell ExpressVu Ltd. Partnership v. Rex*:

28 Other principles of interpretation - such as the strict construction of penal statutes and the "Charter values" presumption - only receive application where there is ambiguity as to the meaning of a provision." (citations omitted)

“...At the end of the day, after taking into account all relevant and admissible considerations, the court must adopt an interpretation that is appropriate. An appropriate interpretation is one that can be justified in terms of (a) its plausibility, that is, its compliance with the legislative text; (b) its efficacy, that is, its promotion of legislative intent; and (c) its acceptability, that is, the outcome complies with accepted legal norms; it is reasonable and just.”

(64) What then is the purpose of section 5? In reviewing the *Residential Tenancies Act*, the intention of the legislation is set out in s. 2A, “to provide landlords and tenants with an efficient and cost-effective means for settling disputes”. In fulfilling this objective, the Act seeks to provide a balance of rights between landlords and tenants.

(65) The legislation is also clear that the parties may not contract out of any requirements of the Act. (s.3(1)). The statute is paramount in governing landlord-tenant relationships. When dealing with abandoned property or property left behind, the statutory provisions provide three things:

(66) The first is to determine what constitutes abandoned personal property. The Act is very clear and unambiguous. Property is considered abandoned when it is left on site for greater than 60 days following the termination of the tenancy. In this case, the tenancy ended on May 16, 2017 by agreement of the parties and set out in a mediated settlement. Mr. Noseworthy correctly indicated this represents an order of the court that cannot be appealed.

(67) The second question to be determined is “what property has been abandoned?” In this case, that stipulation is made where the landlord prepares a form showing the inventory of what has been left behind.

(68) The third issue to be determined is the value of the items. The estimated value will determine which of the two processes for dispensing with the personal property will be used, disposal or sale. The Act provides that when a court ordered sale or any director ordered sale has been undertaken the proceeds are to be applied against rent or damage with the remaining being remitted to the Public Trustee.

(69) In summary, the threefold purpose of s. 5 of the Act and ss. 23-24 of the Regulations is to identify what is meant by abandonment, identify what has been abandoned and provide a safeguard so that a tenant's property is not disposed of

except with due process. In my opinion the actions of the landlord do not come close to meeting the requirements of the statute.

(70) I am not satisfied that the Tenant did all she could do, however, her conduct is not enough to create a defence to the Landlord's conduct. I find the actions of the Landlord were motivated by the presence of the bed bugs. The employees of Parkland Investments took the view that Ms. Grandy was responsible for bringing in the bed bugs. The findings of both Sheila Briand and Adjudicator Slone were clearly the opposite. The landlord sought to charge her over \$3600 for bed bug treatment, at other times they sought to raise her rent by \$500 per month, changed the locks on her door without notice and removed her items without legal authority. Their actions were high-handed, harsh and designed to rid them of Ms. Grandy and the fall out of her bedbug infestation as quickly as possible. They acted with flagrant disregard to her rights as a tenant.

(71) Without hesitation, I find the Landlord, Parkland Investments Limited, conducted an illegal disposal of the items. The Tenant did not receive adequate notice. The landlord could have provided that notice but did not. Accordingly, the Tenant is entitled to compensation.

## **Quantum**

(72) Ms. Grandy through Ms. Chatman submitted a lengthy document listing many items which were in her apartment at one point. The values assigned to those items are based on replacement value.

(73) With the exception of her laptop and modem, the items were acquired prior to Ms. Grandy's moving in to the premises at least eight years before. Furthermore, several of the items were discarded due to the presence of bedbugs and several others may have needed to be discarded as well. The remaining articles fit in the POD. They consisted of a laptop approximately one or two years old which she paid \$1200 new and a modem for which Ms. Grandy has been charged \$360. There are other items for which the tenant deserves compensation.

(74) The tenant seeks \$45,000 based on replacement cost. At the end of the hearing, she reduced the claim to \$25,000, the limit under the *Small Claims Court Act*. I am not certain the statutory maximum under that act applies to residential tenancies appeals. Nevertheless, I need not consider that issue as there is no evidence that any loss experienced by the Tenant approaches either figure. On the opposite side, the landlord takes the position that the assets are worth only \$447.50. She provides no basis whatsoever for that figure. I rejected that value in its entirety. I am left with no alternative but to place my own estimate on the value of the items.

(75) Practitioners of estate law and family law understand that it is difficult to place accurate values on household contents. Unless they are part of special collections for which there is a market, such as stamps, coins, trading cards, memorabilia, certain antiques, etc., most personal effects and household goods are depreciating items regardless of the care one takes of them. In the case of *Durocher v. Durocher* (1991) 106 N.S.R. (2d.) 215 (SCTD), Justice Goodfellow stated the following when valuing assets in a matrimonial context:

“The proper valuation is their realistic value which generally means their value at auction after reasonable notice. Mr. Durocher valued a number of items such as china (wedgewood), silver, crystal and Royal Dalton figurines, etc. at their replacement cost and in that regard he is in substantial error. On the other hand Mrs. Durocher values these at such limited amounts that one would be tempted to purchase them from her at her figures sight unseen. I do not propose going through each item in their lists nor should they object if I fail to do so. When parties are not able to agree on a value of such things as furniture and contents they can expect to be left with but the best estimate of a judge through a fair measure of ball parking and guesstimate.”

(76) In arriving at a realistic value, I must determine their value at auction on reasonable notice. Of course, the public auction was side-stepped by the Landlord when they undervalued the contents. I find the Tenant’s belongings were at least 8 to 9 years old at the time of disposal. Any items made of fabric were disposed of due to bedbugs. This included the box spring and mattress, computer chair and sofa and love seat. These items would have been worthless. Many of the items on the list were repeated. Family photos and videos have no monetary value.

(77) I am prepared to give Ms. Grandy the benefit of the doubt that there is value in those items in the POD once they are treated. Given the difficulty I have had with the Landlord’s evidence, I do not believe the assets that could have been recovered are limited to those shown in the photographs from inside the apartment. The POD is full. In addition, this case is similar to one commenced under the tort of conversion. Thus, I feel it just and fair that in the event of ambiguity for value, the benefit of the doubt be given to the wronged party, in this case the Tenant. In addition, in arriving at a value, the parties can expect my best estimate in the manner referred to by Justice Goodfellow.

(78) I find the tenant has proven her entitlement to the loss of the modem (\$360) and the Hewlett-Packard laptop computer (\$1000). She is entitled to compensation for the remaining personal effects. I assign a value of \$5000 for the contents of the apartment inclusive of these items listed.

(79) The Tenant shall also have her costs on appeal (\$33.00) and before the Residential Tenancies Officer (\$31.15) for a total of \$64.15.

### **Relief Ordered**

(80) The Court allows the appeal and sets aside the decision of the Director of Residential Tenancies. The Tenant, Deborah Grandy, shall have judgment against the Landlord, Parkland Investments Limited as follows:

Total Allowed: \$5000.00  
Costs: \$ 64.15  
**Total Judgment: \$5064.15**

(81) An order shall be issued accordingly.

Dated at Halifax, NS,  
on March 28, 2018;

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**Gregg W. Knudsen, Adjudicator**

Original: Court File  
Copy: Landlord(s)  
Copy: Tenant(s)