# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Hill v. Princess Resort and RV Park Partnership (Princess Resort),* 2024 BCSC 1081

Date: 20240620
Docket: S139926
Registry: Kelowna

Between:

**Brian Hill**

Applicant

And

**Princess Resort and RV Park Partnership doing business as Princess Resort**

Respondent

And

**Brian Hill**

Respondent by Counterclaim

- and -

Docket: S136098
Registry: Kelowna

Between:

**Brian Hill**

Applicant

And

**Princess Resort and RV Park Partnership doing business as Princess Resort**

Respondent

And

**Westbank First Nation**

Third Party

Before: The Honourable Justice Wilson

## Reasons for Judgment

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| The Applicant, appearing in person: | B. Hill |
| Counsel for the Respondent: | J. Boutin |
| Place and Date of Trial/Hearing: | Kelowna, B.C.<br>January 17, March 13, and May 10, 2024 |
| Place and Date of Judgment: | Kelowna, B.C.<br>June 20, 2024 |

## Overview

[1] This is an application brought by a former tenant of a mobile home park located on Westbank First Nation ("WFN") land (together, "WFN Land"), regarding his tenancy (the "Tenancy") for a mobile home pad (the "Pad").

[2] Mr. Hill was a tenant at a mobile home park owned by Princess Resort and RV Park Partnership doing business as Princess Resort (the "Landlord"). The Landlord gave Mr. Hill notice to end the Tenancy because it needed to use the property for what it referred to in the notice as "maintenance".

[3] The matter proceeded to an arbitration initiated by Mr. Hill. The arbitrator found that the notice could have been clearer, but she nonetheless upheld the termination of the Tenancy, effective December 1, 2023 (the "Tenancy Termination"), approximately one year after the decision (the "Cheung Arbitration Order").

[4] Mr. Hill sought to appeal the Cheung Arbitration Order but it was denied on the basis that he had filed his appeal out of time.

[5] Subsequently, Mr. Hill initiated a third arbitration that touched upon the manner of removal of the mobile home.

[6] Mr. Hill's original plan was to sell the mobile home to a third party, who would remove the home from the Pad as part of the contract. There were various possibilities as to the route that could be taken to remove it. However, no one removed the home from the Pad as of the Tenancy Termination, albeit it was largely stripped of anything of value. At the Tenancy Termination, what remained on the Pad was a hollow shell. Mr. Hill deposed that he undertook several efforts to have the home removed that were met with opposition from the Landlord.

[7] Because the Landlord's premises are on WFN Land, it is WFN law that governs. WFN Residential Premises Law 2008-03, *A Law to Regulate Residential Premises on Westbank Lands* (22 March 2010) [*RPL*] regulates residential premises

on WFN Lands. Section 46.9 of the *RPL* provides that if a tenancy is terminated under s. 46.8 (which this was), a landlord is to pay to a tenant an amount that is equivalent to 12 months' rent under the tenancy agreement.

[8] Because the Tenancy involved the Pad rental only, the amount is relatively modest, approximately $5,610. However, the Landlord did not pay this amount to Mr. Hill. Instead, the Landlord argued the amount should be set-off due to the cost to remediate the property, primarily to remove what remained of Mr. Hill's mobile home from the Pad.

[9] Before turning to the matters in issue, there are three points that underly these questions:

i. Determination of tenancies on WFN Lands is governed by WFN law which provides for a mandatory arbitration process;

ii. Mr. Hill availed himself, without success, of the arbitration processes under WFN law; and

iii. The Tenancy is at an end. Not only have the arbitration processes been exhausted, he has departed the property.

[10] Mr. Hill's arguments as against the Landlord are as follows:

a) He is owed $5,610 pursuant to s. 48.9 of the *RPL* ("Statutory Payment");

b) He should be entitled to damages for bad faith, citing the following as examples of bad faith:

   i. the Landlord's failure to pay him the Statutory Payment at the Tenancy Termination even though the *RPL* clearly requires it;

   ii. the Landlord tried to bully him into removing the home from the property when he was not required to do so;

iii. the Landlord failed to deal with him in good faith and make any accommodations or provide any alternatives as it relates to the removal of the mobile home from the park;

c) He is owed compensation for the value of the mobile home, which he says was approximately $350,000 on two bases. First, because the Landlord did not make the Statutory Payment, he says the entire termination is void. Second, he says that if the mobile home park were subject to British Columbia law and was being redeveloped, he would be entitled to compensation equal to 110% of the assessed value of the mobile home.

[11] The Landlord argues that Mr. Hill was obligated to deliver vacant possession—meaning nothing remaining on the Pad—at the Tenancy Termination, and seeks compensation for the cost to remove his mobile home from their park. The Landlord does not dispute that Mr. Hill was entitled to the Statutory Payment. Rather, it says that it was entitled to withhold the Statutory Payment because it was entitled to set-off the payment against its damages.

**Procedural Background**

[12] This matter has a curious procedural history. The matter was initially brought before the Court by way of a notice of application filed by Mr. Hill in the court file that was opened when the Landlord registered the Cheung Arbitration Order as an order of the Court (“File 136098”).

[13] It was not apparent at the commencement of the application hearing, nor until Mr. Hill's submissions were concluding, that Mr. Hill was seeking broad relief, including a claim for damages regarding the termination of his tenancy. The claims include, but are not limited to, his proposed interpretation of his underlying lease agreement and also arguments where he endeavours to import principles from provincial legislation into this dispute.

[14] Because Mr. Hill's application has been filed in the above noted court file, there are no pleadings. Mr. Hill's notice of application makes clear some of the relief

he was seeking, but it became apparent at the hearing that the relief he was seeking went beyond the relief sought in the notice of application. I raised the pleadings issue with the parties.

[15] Between the second and third day of the hearing, Mr. Hill filed a notice of civil claim, dated March 21, 2024, which commenced court file 139926 ("File 139926"). Thereafter, the following pleadings were filed in File 139926: a response to civil claim dated April 11, 2024; a counterclaim dated April 11, 2024; and a response to counterclaim dated April 29, 2024. Mr. Hill brought an application to join the two matters. The Landlord filed a response to the notice of application, alleging an abuse of process because it was duplicative of the earlier application.

[16] At the outset of the third day of the hearing and prior to hearing the joinder application, I confirmed with the parties that the sole purpose of their respective pleadings was to ensure that all of the matters that had been previously argued were properly before the Court. The parties agreed that neither sought to advance anything new by way of their pleadings in the new court file that had not already been placed squarely before the Court and argued at the earlier attendances.

[17] I conclude that it is in the interests of justice and consistent with Supreme Court Civil Rule 1-3 and the principles of proportionality that I decide the matters that were argued before me. I consider the most appropriate method of accomplishing this is to consider that all of the pleadings in File 139926 have been filed prior to the date of the notice of application filed by Mr. Hill in File 136098, *nunc pro tunc*.

[18] The parties agreed that this was appropriate because neither wished to re-argue the entire matter under the proper File 139926, it having become apparent that the application should likely not have been brought in File 136098.

## Issues

[19] I turn now to the matters in dispute between the parties, which are as follows:

a) Was Mr. Hill required to deliver vacant possession of the Pad at the Tenancy Termination?

b) If yes, what are the Landlord's damages?

c) Was the Landlord entitled to withhold the Statutory Payment as a set-off on account of its damages?

d) Is Mr. Hill entitled to other relief?

[20] For the reasons that follow, I conclude that Mr. Hill was required to deliver vacant possession of the Pad at the Tenancy Termination, but the Landlord was required to pay the Statutory Payment without set-off, regardless of the Landlord's claim for damages.

**Mr. Hill Was Required to Give Up Vacant Possession**

[21] The Landlord argues that Mr. Hill was obligated to give up vacant possession at the Tenancy Termination. It argues that by leaving the shell of his home behind, Mr. Hill was trespassing, which gives rise to a claim for damages associated with having it removed.

[22] Mr. Hill argues that there is nothing in the Cheung Arbitration Order, nor the later arbitration order, that refers to vacant possession. As such, he says he was not required to take any steps to clean up the site upon the Tenancy Termination.

[23] The Cheung Arbitration Order itself is very brief, although her reasons are very detailed. However, as relevant to the issues here, the Cheung Arbitration Order did not include a term requiring the Landlord to pay the Statutory Payment, nor did it provide for vacant possession of the Pad to the Landlord.

[24] Similarly, the lease agreement between the parties does not address the point. Therefore, I will start by addressing whether there is an implied term in the lease agreement requiring a tenant to deliver vacant possession at the end of a tenancy.

[25] The Landlord referred to this Court's decision in *K&L Land Partnership v. Canada (Attorney General)*, 2014 BCSC 1701 [*K&L*], where the Court concluded that failing to remove chattels from property when the right to occupy has ceased constitutes a trespass. At para. 45, Justice Fisher (as she then was) cited Fleming's *The Law of Torts*, which had been cited by Justice Murray in *Johnson v. British Columbia Hydro & Power Authority* (1981), 27 B.C.L.R. 50, 1981 CanLII 641 (SC):

> If a structure or other object is placed on another's land, not only the initial intrusion but also failure to remove it constitute an actionable wrong. There is a 'continuing trespass' as long as the object remains; and on account of it both a subsequent transferee of the land may sue and a purchaser of the offending chattel or structure be liable, because the wrong gives rise to actions de die in diem until the condition is abated. Likewise, if the chattel was initially placed on the land with the possessor's consent, termination of the licence creates a duty to remove it; and it seems that, according to modern authority, a continuing trespass is committed by a failure to do so within a reasonable time. In all these cases the Mr. Hill may maintain successive actions … This solution has the advantage to the injured party that the statute of limitations does not run from the initial trespass, but entail the inconvenience of forcing him to institute repeated actions for continuing loss.
>
> [Emphasis from *K&L*]

[26] In my view, the above passage from *K&L* summarizes the law in British Columbia and, as such, Mr. Hill was obligated to remove his home at the conclusion of the Tenancy.

[27] Although the Mr. Hill's mobile home was on the property with the Landlord's consent, those rights ended upon the Tenancy Termination. At that point, the Landlord was entitled to have the Pad returned to its prior condition. As such, I conclude that Mr. Hill is liable in trespass because he did not remove the mobile home from the Pad at the Tenancy Termination.

[28] The fact that this was not addressed by Arbitrator Cheung is of no moment because:

a) it is not apparent that she was asked to determine the question; and

b) Mr. Hill's obligation to remove the home is the law as set out above, absent a contractual term to the contrary, and I have not been directed to any such contractual term here.

[29] It follows that Mr. Hill was trespassing when he left the mobile home on the Landlord's property after the Tenancy Termination.

**Landlord's Damages**

[30] The Landlord tendered an affidavit of Mr. Darcy Osberg in support of its claim for damages. Mr. Osberg is the park manager and has been so for more than 10 years. Mr. Osberg deposes that the following items were left at the Pad:

a) a gutted manufactured home with all value removed;

b) additions to the manufactured home, including a covered deck;

c) a gazebo;

d) construction waste; and

e) garbage, including old furniture and shelving.

[31] Mr. Osberg deposes that following the end of the Mr. Hill's lease, he hired a contractor to clean up. The contractor, Dyral Sepp Enterprises Ltd., issued an invoice to the Landlord in the amount of $18,200. I identified certain concerns with the Landlord's claim for damages during counsel's submissions on day two of the hearing. When the parties returned for the third day of the hearing, the Landlord had an additional affidavit from Mr. Osberg, which I allowed to be submitted.

[32] Notwithstanding the additional affidavit from Mr. Osberg, I do not accept that the Landlord has made out its claim for the damages it seeks.

[33] Mr. Osberg provides no information about what he did to obtain estimates before selecting the contractor to perform the work, although the inference is that he sought no other quotes, because he says he used the contractor he has always

used in the past for similar work. Mr. Osberg deposes that he has been the park manager for 10 years and therefore he is “familiar with the costs associated with this sort of work”. Absent quotes or other any experience with other contractors, it is difficult to put any weight on this evidence.

[34] I similarly cannot adequately assess whether the contractor charged a reasonable price for the work done. The contractor's invoice only states “SITE CLEAN UP AND REMOVAL OF MATERIALS FOR SHADY REST #4” as the full extent of the detail for the work undertaken. The invoice does not include any information about what was done or how much time was spent, and there is nothing in Mr. Osberg's affidavit that would inform those questions either.

[35] More significantly, it is not clear that the Landlord suffered any loss at all. The Landlord's reason for the Tenancy Termination was that it needed the Pad because it needed an access point in that location. As note by Arbitrator Cheung in her reasons:

> 66. . . . the Landlord revealed that it was the Landlord's intention that Pad 4 would be converted into an access point for the Park’s vehicles and equipment to access to and from Shady Rest. The Landlord testified that Pad 4 would be left as bare land with no structures to be constructed in the foreseeable future, except for a gate that can be locked to prevent access by any persons who do not hold a key.

[36] The Landlord’s plan was therefore to clear the site in order to create the access point. Not only would there be no buildings or structures, any infrastructure would need to be removed in order to create the access point. The landlord's evidence before Arbitrator Cheung was that the access point is required to move vehicles and equipment into the park, including a boom lift (Arbitrator Cheung’s decision at paras. 24–39).

[37] It is difficult to determine the Landlord's damages arising solely from the trespass, as distinct from the Landlord’s stated plan that gave rise to the termination, when the only purpose of the Tenancy Termination was to remove Pad 4 as a leased property in its entirety.

[38] At best, the Landlord would be entitled to the additional costs it had to incur to remove the debris and chattels above and beyond the costs it would have had to incur to remove Pad 4. The Landlord cannot look to Mr. Hill to recover the costs associated with returning the property to the state it was in before the mobile home was placed such that another tenant could move in, because the whole premise of the eviction was that Pad 4 was going to be permanently decommissioned.

[39] As such, the evidence as to what work was done is insufficient, such that the underlying premise of the claim is flawed. This is in addition to the difficulty I identified in establishing that the costs incurred were reasonable.

[40] The question then remains if the Landlord is entitled to any damages. In *Skrypnyk v. Crispin*, 2010 BCSC 140, Justice Punnett discussed damages for trespass. At para. 11, Punnett J. cited *Halsbury's Laws of England*, 4th ed., Vol 45(2) (London: Butterworths, 1999) at 343 as follows:

> 526. Damages. In a claim of trespass, if the claimant proves the trespass he is entitled to recover nominal damages, even if he has not suffered any actual loss. If the trespass has caused the claimant actual damage, he is entitled to receive such an amount as will compensate him for his loss. Where the Landlord has made use of the claimant's land, the claimant is entitled to receive by way of damages such a sum as should reasonably be paid for that use. ... where the Landlord cynically disregards the rights of the claimant in the land with the object of making a gain by his unlawful conduct, exemplary damages may be awarded. If the trespass is accompanied by aggravating circumstances which do not allow an award of exemplary damages, the general damages may be increased.

[41] Justice Punnett then went on to discuss the concept of nominal damages:

> [17] "Nominal damages" was defined by Earl of Halsbury L.C. in *The "Mediana"*, [1900] A.C. 113 at 116 (H.L.):
>
> > "Nominal damages" is a technical phrase which means that you have negatived anything like real damage, but that you are affirming by your nominal damages that there is an infraction of a legal right which, though it gives you no right to any real damages at all, yet gives you a right to the verdict or judgment because your legal right has been infringed. But the term "nominal damages" does not mean small damages. The extent to which a person has a right to recover what is called by the compendious phrase damages, but may be also represented as compensation for the use of something that belongs to him, depends upon a variety of circumstances, and it certainly does

> not in the smallest degree suggest that because they are small they are necessarily nominal damages.

[42] The purpose of nominal damages is to acknowledge there has been a breach of the legal right: *Skrypnyk* at para. 18. Nominal damages may be contrasted with compensatory damages which are intended to compensate the party for the harm suffered. It is intended to put the party back in the position it would have been in but for the breach of the legal right.

[43] In this case, Mr. Hill was required to remove his effects from the site upon the Tenancy Termination. By failing to do so, he is liable in trespass.

[44] However, since the Landlord was going to decommission the site in any event, coupled with the lack of evidence to justify its claim for damages, including as to what was actually done and why, I conclude that the Landlord is only entitled to nominal damages.

[45] I fix those damages at $1,000.

**The Landlord Was Not Entitled to Set-Off**

[46] The Landlord concedes that WFN law required it to pay 12 months' rent to Mr. Hill pursuant to s. 46.9 of the *RPL*. The Landlord similarly concedes that the amount due was the Statutory Payment, due at the Tenancy Termination. It is common ground that the Landlord has not paid the Statutory Payment to Mr. Hill.

[47] Instead, the Landlord held back that amount and seeks—by way of set-off—to apply that amount to what it claims are its damages resulting from Mr. Hill's failure to give up vacant possession. On this point, the Landlord says that Mr. Hill left the premises in a state of disrepair and that damages resulted.

[48] There is nothing in the *RPL* that permits set-off, nor would one not expect to find such a provision.

[49] The obligation to make the Statutory Payment under ss. 46.8–46.9 is triggered by a termination issued by a landlord in circumstances where the landlord

intends to use the property. In other words, the termination of the tenancy is not due to the tenant's default or breach of the lease agreement. A tenant who is forced to move a mobile home will necessarily incur expenses to move the mobile home. The displaced tenant would presumably need to pay rent at another property.



[50] The question in these circumstances is whether the Landlord was entitled to withhold the Statutory Payment because it intended to set-off its damages, recognizing that as of the date the Statutory Payment was due, no damages had yet been incurred as Mr. Hill had not breached the lease agreement.

[51] Set-off can arise in two circumstances, legal set-off and equitable set-off. The law of set-off is discussed by the Supreme Court of Canada in *Telford v. Holt*, [1987] 2 S.C.R. 193 at para 25, 1987 CanLII 18. For set-off at law, the following must exist:

a) the obligations existing between the parties must be debts, and they must be debts which are for liquidated sums or demands that can be ascertained with certainty; and

b) both debts must be mutual cross obligations, meaning the debts must be as between the same parties.

[52] Equitable set-off has been discussed in a number of cases. The test was described in *Telford* at paras. 34*,* citing *Coba Industries Limited v. Millie's Holdings (Canada) Ltd.*, (1985) 65 B.C.L.R. 31 at 9–10, 1985 CanLII 144 (C.A.). The requirements can be summarized as follows:

a) The party relying on a set-off must show some equitable ground for being protected against his adversary's demands;

b) The equitable ground must go to the very root of Mr. Hill's claim before a set-off will be allowed;

c) A cross-claim must be so clearly connected with the demand of Mr. Hill that it would be manifestly unjust to allow Mr. Hill to enforce payment without taking into consideration the cross-claim;

d) Mr. Hill's claim and the cross-claim need not arise out of the same contract; and

e) Unliquidated claims are on the same footing as liquidated claims.

[53] In this case, the Landlord's claim can only be described as one that sounds in damages. The Landlord's claim is only that it knew it would incur the cost of hiring a contractor to remediate the property. There are no contractual claims, either by or against Mr. Hill.

[54] I do not accept that the Statutory Payment is clearly connected to the Landlord's unascertained claim for damages such that the Landlord should be entitled to set-off. The Statutory Payment does not arise from the Mr. Hill's conduct, but rather from the statute. The Statutory Payment is to provide some compensation to the tenant on account of a termination in circumstances where the tenant was not in breach. There is no such equivalent payment under *RPL* where the tenancy is ended for nonpayment of rent (s. 42) or cause (s. 43).

[55] The Landlord refers to this Court's decision in *Jarvie v. Banwait*, 2013 BCSC 337, as authority for the proposition that the amounts owed by each party may be set-off. With respect, I do not find the case to be of assistance in these circumstances.

[56] In *Jarvie*, the landlord prevented a tenant's estate from accessing property. The estate sued for conversion and the landlord asserted a claim for unpaid rent. The Court assessed the damages for both claims and offset one against the other. That case is very different because both parties were asserting claims for damages. The Court assessed those damages and in the result offset one amount as against the other.

[57] In this case, the Statutory Payment was due at the Tenancy Termination. At that time, the Landlord had an unquantified and unproven claim for damages. A party cannot ignore its obligations at law in order to secure a future claim. It is not

the case that the parties in this instance had two competing claims for damages such as in *Jarvie.*

[58] The Landlord's refusal to pay the Statutory Payment because it believed (wrongfully, as it turned out, based on my earlier finding) that it had a claim for damages that exceeded the statutory amount, was improper.

## Mr. Hill's Entitlement to Additional Compensation

[59] The *RPL* bylaw includes the following at paragraph 83.1:

> Subject to any applicable limitation period, a landlord or tenant may commence an action or claim in debt or for damages against the other party in respect of a right or obligation under this law or a tenancy agreement".

[60] As such, Mr. Hill is entitled to pursue financial remedies in court, even though his *in rem* interests would be limited to arbitration procedures under the bylaw.

[61] I have already concluded that the Landlord acted wrongfully by withholding the Statutory Payment because it was not entitled to set-off the amount as against its future claim for damages.

[62] The Landlord was obligated to pay Mr. Hill the 12 months' rent as compensation for the termination in the amount of $5,610, and if it wished to seek compensation or damages for trespass, that should have been a separate matter that required proof. Withholding the compensation that Mr. Hill was entitled to by way of the Statutory Payment amounts to nothing more than a self-help remedy to try to secure a prospective claim for damages.

### Punitive Damages

[63] If this were a matter under the *Residential Tenancy Act,* S.B.C. 2002, c. 78, punitive damages would not be available (*Gates v. Sahota*, 2018 BCCA 375), because only compensatory damages are permitted.

[64] In this case, no such restriction applies.

[65] Punitive damages are an exceptional remedy that are intended to punish, deter, and denounce misconduct that is "malicious, oppressive and high-handed": *Whiten v. Pilot Insurance Co.,* 2002 SCC 18 at paras. 36, 43, 68, 94.

[66] This Court has awarded punitive damages in other contexts (e.g. employment) where a defendant has withheld payment of their statutory obligations: see e.g. *Fobert v. MCRCI Medicinal Cannabis Resource Centre Inc.*, 2020 BCSC 2043 at para. 116; and *Cho v. Stonebridge Solutions Inc.*, 2020 BCSC 1560 at para. 65.

[67] I have already found that the Landlord breached WFN law when it failed to pay Mr. Hill the Statutory Payment. The Statutory Payment compensates a tenant in circumstances where the termination of the tenancy is unrelated to the tenant's own behaviour and is likely intended to aid the tenant with the costs of relocating.

[68] In these circumstances, I find that it is important for the Court to denounce and deter the Landlord's withholding payment of the Statutory Payment in anticipation of obtaining set-off for an undetermined (and unproven) claim in damages. While it was of course open to the Landlord to seek damages for the costs it alleged to have incurred to clear the Pad, Mr. Hill's statutory entitlement to financial relief was separate and apart from the issue of the remaining chattels.

[69] I conclude that withholding the Statutory Payment was high-handed, especially given Mr. Hill's efforts to remove his mobile home from the Pad and his relative vulnerability to the Landlord. Parties should be deterred from choosing if or when to comply with their statutory obligations—and, in the case, the obligations imposed by Arbitrator Cheung—on the basis of their own expectations and interpretations of the law.

[70] In determining the amount of punitive damages, the Court in *Whiten* set out that the guiding principle is proportionality: paras. 111–126. Justice Fenlon (as she then was) summarized the dimensions of proportionality in *Kelly v. Norsemont Mining Inc.,* 2013 BCSC 147 at para. 131, as follows:

> (i) Proportionate to the blameworthiness of the defendant's conduct -- the more reprehensible the conduct, the higher the rational limits of the potential award. Factors include outrageous conduct for a lengthy period of time without any rational justification, the defendant's awareness of the hardship it knew it was inflicting, whether the misconduct was planned and deliberate, the intent and motive of the defendant, whether the defendant concealed or attempted to cover up its misconduct, whether the defendant profited from its misconduct, and whether the interest violated by the misconduct was known to be deeply personal to the plaintiff.
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> (ii) Proportionate to the degree of vulnerability of the plaintiff -- the financial or other vulnerability of the plaintiff, and the consequent abuse of power by a defendant, is highly relevant where there is a power imbalance.
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> (iii) Proportionate to the harm or potential harm directed specifically at the plaintiff.
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> (iv) Proportionate to the need for deterrence -- a defendant's financial power may become relevant if the defendant chooses to argue financial hardship, or it is directly relevant to the defendant's misconduct, or other circumstances where it may rationally be concluded that a lesser award against a moneyed defendant would fail to achieve deterrence.
>
> (v) Proportionate, even after taking into account the other penalties, both civil and criminal, which have been or are likely to be inflicted on the defendant for the same misconduct -- compensatory damages also punish and may be all the "punishment" required.
>
> (vi) Proportionate to the advantage wrongfully gained by a defendant from the misconduct.

[71] I accept the Landlord may have expected that it was entitled to a set-off, but as I have found above, any expectations regarding a set-off were erroneous. The Landlord withheld the Statutory Payment for some time in the absence of any rational justification. I also accept Mr. Hill's evidence that the situation regarding the Tenancy has been "life altering". In the circumstances, there is an obvious power imbalance between Mr. Hill and the Landlord. Though the Landlord's conduct in this case was not at the highest degree of reprehensibility, and therefore not as egregious as was the case in *Fobert,* I find that its failure to pay Mr. Hill his statutory entitlements in circumstances where Mr. Hill's life was upended is a situation that warrants deterrence.

[72] I find $5,000 in punitive damages to be appropriate in the circumstances.

**Mr. Hill's Other Claims**

[73] Mr. Hill refers to various actions or inactions on the part of the Landlord to ground his claim for compensation for the value of his home, which he says was in excess of $300,000. One of the provisions of the *RPL* which he relies is Regulation E, Abandonment of Personal Property.

[74] Section 2.1 provides as follows:

> 2.1 A landlord may consider that a tenant has abandoned personal property where:
>
> (a) the tenant leaves the personal property in residential premises that the tenant has given up possession of or that he/she has vacated after the tenancy agreement has ended or after the term of the tenancy agreement has expired, or
>
> (b) the tenant leaves the personal property in residential premises:
>
> (i) that, for a continuous period of one month, he/she has not ordinarily occupied and remained in possession of, and in respect of which he/she has not paid rent, or
>
> (ii) from which he/she has removed substantially all of his/her personal property, and either:
>
> (A) gives the landlord an express oral or written notice of the tenant's intention not to return to the residential premises, or
>
> (B) by reason of the facts and circumstances surrounding the giving up of the residential premises, could not reasonably be expected to return to the residential premises.

[75] Mr. Hill relies on s. 4.1 which provides as follows:

> 4.1 Where the landlord chooses to deal with the tenant's personal property in accordance with this regulation, the landlord shall:
>
> (a) store it in a safe place and manner for a period of not less than 3 months following the date of removal,
>
> (b) keep an inventory of the property, and
>
> (c) keep particulars of the disposition of the property for 2 years following the date of disposition.

[76] Mr. Hill says that the Landlord did not comply with s. 4.1, but rather disposed of his mobile home within a matter of two or three weeks.

[77] However, s. 4.2 is instructive. Section 4.2 reads as follows:

> 4.2. Notwithstanding subsection 4.1(a), where a landlord is entitled to remove personal property under this section and reasonably believes:
>
> (a) the property has no value,
>
> (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
>
> (c) the storage of the property would be unsanitary or unsafe, the landlord may dispose of the property in a commercially reasonable manner.

[78] There is no evidence before the Court that would indicate that what remained of Mr. Hill's home had any value. To the contrary, the evidence is that Mr. Hill attempted to initially move the home and then when his efforts in that regard were unsuccessful, he sought to have it demolished by a demolition company. When that was unsuccessful, anything of value was removed, leaving a hollow shell. I am not satisfied that the property had any value and therefore I find no breach of s. 4.1.

[79] Similarly, the fact that the landlord did not use a WFN form, “Affidavit of Abandonment and Sale of a Mobile Home", is inapplicable. This form affords for the sale of a mobile home to a purchaser such that the purchaser obtains clear title. There is no evidence here of sale to a third party. To the contrary, the mobile home was demolished and removed.

[80] Mr. Hill further argues that by failing to make the Statutory Payment, the Landlord is in breach of its obligations such that the entire eviction process was a nullity, thus entitling him to compensation. On the issue of compensation, he refers to British Columbia Residential Tenancy Policy Guideline 16 (“Guideline 16”) at paragraph C—Compensation for Damage or Loss:

> **C. COMPENSATION**
>
> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;

- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

. . .

**D. AMOUNT OF COMPENSATION**

In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.



[81] With respect, Mr. Hill's arguments cannot succeed. First, Guideline 16 is irrelevant because this was not a British Columbia residential tenancy. The tenancy was subject to WFN law.

[82] Second, the Landlord's failure to make the Statutory Payment does not render the process to end his tenancy a nullity. His tenancy was determined in accordance with WFN law, and Mr. Hill's subsequent efforts to disturb that finding were unsuccessful. The Tenancy Termination remains effective.

[83] Third, the loss of the value of Mr. Hill's home was not causally connected to the Landlord's failure to pay the Statutory Payment. Indeed, there is no evidence of any particular consequence that flowed from the failure to pay, other than of course the money was clearly due, as I have set out above.

[84] Mr. Hill's claims for additional compensation are dismissed.

## Disposition

[85] Mr. Hill is entitled to judgment against the Landlord in the amount of $5,610 pursuant to the WFN Residential Premises Law section 46.9.

[86] Mr. Hill is entitled to punitive damages against the Landlord for its conduct in unlawfully withholding the payment as set out above, in the amount of $5,000.

[87] The Landlord is entitled to damages from Mr. Hill for trespass, in the amount of $1,000.

"Wilson J."