SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Freeborne v. Partridge*, 2024 NSSM 34

Date: 20240501
Docket: 529737
Registry: Halifax

Christa Anne Freeborne

Appellant

v.

Penny Partridge and Steve Partridge

Respondent

Adjudicator:	Darrel Pink
Heard:	May 21, 2024, in Halifax, Nova Scotia
Decision:	May 31, 2024
Counsel:	Both parties were self-represented

By the Court:

Introduction

[1] This is an Appeal from an order of the Director of Residential Tenancies. It was heard in person at the Spring Garden Road Courthouse in Halifax. The case involves the obligations of tenants and landlords relating to tenant's property left in a rental unit after a tenancy ends. Section 5 of the *Residential Tenancies Act* stipulates the obligations of parties to a residential lease when a tenant vacates and leaves property behind. A tenant is not entitled to leave personal property in residential premises beyond the end of the tenancy. If a tenant does so, the requirements of the landlord are spelled out in ss. 5(3).

[2] The Appellant left her rented premises quickly in the face of a severe health response to the presence of mould. Most of her belongings and furniture were left behind. The Respondents agreed to the tenant's departure and the consequent termination of the lease. More than three months later the Respondents addressed their obligations relating to their now former tenant's property. They disposed of most of it after advising the Appellant that personal items were available for retrieval.

[3] The tenant seeks compensation from the Respondents for the value of the property discarded by the Respondents.

The Facts

[4] The Appellant leased a 200 year-old house at 25 Hwy 357, Musquodoboit Harbour from the Respondents. The Respondents had purchased the house to renovate, which involved stripping the house to the studs and modernizing it. The evidence suggests the Respondent's financial resources did not allow them to complete the home to the extent they had intended. What remained unfinished is not clear, but there were issues with the roof and shingles.

[5] In late August or early September 2020, during the COVID-19 pandemic, the Appellant, with her partner and two young children, moved into the rental property. When they moved in renovations were incomplete and work continued for many months after the tenancy began.

[6] Equipment for water purification and other essentials were housed in a 'crawl space' under the house. That space was unfinished and was susceptible to flooding. A sump pump, a dehumidifier and a fan were present in the crawl space to manage moisture in that area and from entering the house itself. The Appellant presented video evidence, from October 2023, that showed water pooling in the

crawl space and the long-term effects of water such as rotting wooden posts and beams and material growing on the walls.

[7] In November 2021, the Appellant reported leaking through the roof on the main level in the bathroom. Leaks were reported in December 2021. Without advising the Appellant, the Respondent sent a crew to repair the roof. That lead to an upset between the parties that does not bear on this matter.

[8] In March 2022, the Appellant advised the landlord of further roof leaking – ‘through the vent in the upstairs bathroom, vent in the downstairs bathroom and through the wall in the downstairs bathroom.’ [Ex 1, p 17].

[9] In October 2022, the Appellants sent pictures of damage inside the house from the roof leaks. The Respondents had repairs done to the roof in November, when some shingles were replaced. In December, the Appellant reported further leaking in the downstairs bathroom, as there was damage at the top of the stairs from the leaking.

[10] Each water leak followed a rainstorm.

[11] The Appellant’s evidence was that mould had begun to appear in the house, on the walls, at window frames, on the family's clothing and on her children’s toys. [Ex 1, pp. 53, 54, 55, 59, 61 and 62]

[12] The Appellant is extremely sensitive to mould and other environmental hazards. Her son is asthmatic. Through 2023, the Appellant was frequently ill and missed time from her work in the Halifax school system. Her son was also ill from his asthma.

[13] On October 7, 2023, the Appellant advised the Respondents that due to mould in the house she and her family had to go stay with friends. Her email recounts their history in the house:

> Myself and the children have been sick consistently since June and repeatedly off and on since last fall with respiratory illnesses. Doctors' visits can account for this.
>
> Last fall, I informed you that I could smell mold (sic) in the house coming from the crawl space. You came and had a look and advised me you did not see or smell it. After Fiona, I sent you photos of the roof where there was moisture and damage from the storm but also the year previous, we had a continuously leaking roof as well.
>
> Over the last several months (August, September and now into October) I have been progressively ill, I have had rounds of antibiotics, had two plus weeks off work, chest x-rays and blood work. All things have not shown infection yet I continue to cough up dark green gunk from my lungs and both O… and V…. (children's names) who are asthmatic have been up all night coughing, been out of school and also coughing up green phlegm.

[14] The Appellant reports that mould has been found in their clothing. They have been washed many items but cannot be cleaned and have been thrown out. She then continues:

> Needless to say it is not safe to stay there and I cannot bring O… and V… back to the house on Friday. The kids (sic) sheets were full of mold….I am asking to be released from the lease so that we can be healthy and safe and move forward.
>
> …

> I am asking to be released from the lease so that we can be healthy and safe and move forward.

[15] By return email, Steven Partridge wrote – 'I had no idea it was like that, please. By all means, carry on, and we will absolutely let you out of the lease. That goes without saying…'

[16] The Appellants anticipated moving to a new home by October 15. She advised the Respondents of her unsuccessful efforts to clean and remove her property from the house. On October 11, she wrote to the respondents:

> …I have a severe allergy to mold and the physical repercussions of living there have been significant. We spent Saturday, Sunday and Monday (day times) trying to panic pack and salvage anything we could but the more we packed the more mold we found. By Monday evening even with wearing N85 masks my symptoms got really bad. Our entire bodies were itchy, I took yesterday to recover and really focus on getting us a place to live in and see a doctor again.

[17] On October 17, the Appellant advised her landlord that efforts to find a professional firm to clean or address their contaminated belongings have been unsuccessful. She was told by remediation companies they would not provide services to a tenant but only to property owners. She did not ask, and the Respondents did not offer to arrange for an inspection by a qualified cleaning company.

[18] She was concerned about cross-contamination and was not willing to risk bringing mould to their new home. Due to her health and the health of her children,

she felt she had no choice but to move without taking most of her belongings with her.

[19] The Appellant provided the Court with a video taken on October 8, 2023, that shows all the rooms in the house, filled with furniture, clothing, kitchen wares and all one would expect to see in a house occupied by four people. Materials were packed or partially packed, some in bags and boxes, and others were stacked and awaiting placement in boxes for moving. The pictures show a house in a state of transition.

[20] The Appellant and her family did not live at 25 Hwy 357 after October 7, 2023.

[21] The Appellant was in poor health. She did not actively pursue recovery of her personal property after departure from the property.

[22] The Appellant arranged for an independent air quality/mould assessment by Wilcox Inspections Inc. Air was collected by Mr. Wilcox on October 6, 2023, and a report was delivered on October 11. The Respondents were aware of the inspection and were eager to receive a copy of the Report. The Appellant shared it with them. Then they hired the same firm to conduct a second assessment.

[23] The Appellant explained she could not afford to have Mr. Wilcox attend as a witness because of the costs involved. She did not seek to have a subpoena issued or have the Court accommodate Mr. Wilcox as an expert witness who would assist the Court.

[24] Though the reports can be read by the Court, because the author did not testify and explain the findings and both parties interpreted them, I am left with little insight into the true meaning and the conclusion to be derived from the mould assessment.

[25] In the assessment performed for the Appellant, the Report determines the air sampled on the 'main level' and 'upstairs outside guest bedroom' is a 'PROBLEM' (capitalized in the Report). In the comments section the Report states:

> 'Mold concentrations in the air are ABNORMAL and based on the mold counts, you likely have a mold source from which spores are able to become airborne and are an exposure concern to the occupants. Moderate Debris in the sample likely had a limited effect on the mold count.'

[26] With this information, the Appellants concluded her concerns were confirmed, that there was a mould problem and that for the health of her family leaving her home without trying to take anything with her was a correct decision.

[27] Mr. Wilcox returned to do a second sample on October 31, this time for the Respondents. The samples were not taken in the same locations as the first time.

On October 31, the samples were taken in the ‘upstairs bedroom’ and the ‘living room’. At each location, the determination was ‘NORMAL.’ This is explained as ‘there is no indication, based on the mold counts, that there is any exposure concern to the occupants’.

[28] Because Mr. Wilcox was not present to explain his findings and why there were differences, I am left to draw my own conclusions based on my reading of the two reports. I note that only air tests were performed. There was no sampling done at the locations on walls and windows where the Appellant had reported the presence black marks or what she believed was mould.

[29] While the Appellant was living in the home in early October, the mould counts were a problem and a concern for the occupants. Given the health issues the Appellant and her children had experienced in the summer of 2023, the Appellant’s views were confirmed – the house was not safe. She reasonably concluded, based on the fact she saw mould on clothing, bedding, toys and other items in the house, that cross-contamination was an issue and thus nothing could be removed from the house until it was decontaminated. The house was vacant after October 7 so whatever airborne mould was present may have settled so as not to be detectable by an air test.

Other witnesses

[30] Josh Stevens testified. He assisted the Appellant in packing before they left the house. He described the condition in the house as ‘unbearable’, ‘couldn’t breathe’, and ‘had to wear a mask’. He noted he had been in the house previously and the Appellant’s home was ‘spotless’ and always neat and tidy.

[31] Several of the Appellant’s professional colleagues and friends testified. Christine Walsh, who welcomed the Appellant and her family when they left their rental unit, noted the Appellant was distraught. She would bring nothing with her fearing contaminating Ms. Walsh’s home. Angel MacIvor spoke about how sick the Appellant and her children had been before vacating their premises. She organized a drive to get clothing for the children and household items for the house they were moving to. Birgit McLellan shared a classroom with the Appellant in 2021 and 2022. She suggested to the Appellant that mould might be an issue as she experienced first-hand the nature of the respiratory distress experienced by the Appellant over a couple of years.

[32] The Respondent Steven Partridge testified. He confirmed the Appellant had vacated the premises around October 8, when she emailed the Respondents. He did not enter the premises until October 30 to check on the condition of the house. He provided a copy of an email from HRM Building Inspector Hugh Layton, dated October 23. Mr. Layton had gone to the property and noted there were ‘puddles of

water' in the crawl space and 'some water damage on the ceiling at the top of the staircase, as well as paint bubbling in the downstairs bathroom'. He noted these might be by-law violations but since the tenant had vacated the premises, he could not require any of the identified issues to be addressed. In a subsequent email, Mr. Layton stated 'I did not observe any growth inside the house', which he then qualified by adding 'There were water stains from previous leaks that have since dried up but nothing major. The bathroom windows had a bit of growth which is common, as well as signs of growth on backside of pictures that had been hanging on the wall.'

[33] On October 30, Mr. Partridge entered the house with Mr. Wilcox. He was present when the second air assessment was taken. Mr. Partridge opined that the mould present in the house, the existence of which he did not deny, 'came with her from her previous accommodation.' He offered no evidence to support this theory, though he may have relied on an email from Mr. Wilcox on November 2, 2023, where he stated, 'Belongings such as furniture, clothing, and bedding are areas where dust, moisture and ultimately mold spores can attach to and ultimately grow mold.' Mr. Wilcox's statement is as supportive of the Appellant's position that her personal effects were contaminated while in the rented premises as it is of any conclusion the Respondents have drawn.

[34] Though the Appellant vacated the house in early October, the Respondents took no immediate steps regarding their former tenant's belongings. Mr. Partridge stated he sent a text to the Appellant giving her until January 17, 2024, to come and retrieve her goods from the rental property. He says her response was the Respondents had a duty to store her items for her.

[35] On January 18, 2024, the Respondents submitted Form A: Inventory of Tenant's Abandoned Personal Property to the Director of Residential Tenancies. In valuing the items included in Form A, Mr. Partridge said the Respondents said they used 'yard sale' values, namely what they estimated items would sell for at a yard sale. Efforts to find someone to come and evaluate the tenant's property were unsuccessful. There was no independent evidence that this occurred, who was approached and what their response was. I do not suggest the Respondents did not so, but third party evidence of their efforts would have been helpful.

[36] The Respondents did not show why they made the choices they did in completing Form A, what items they chose to list and what items they left off the inventory. They determined many items had no value. They did not state the basis on which they assigned 'no value – N/V. The value they placed on the items listed in Form A was $409.00. On Form A they did not indicate the 'Status of personal

property[1]' which gives the Director information to assist in assessing an order the Director makes.

[37] The evidence does not disclose that a copy of the inventory was given to the tenant. The significance of this becomes clear when the legal framework applicable here is assessed.

[38] The Respondents set aside some of the Appellant's sentimental and personal items and told the Appellant they could be retrieved.

[39] The Respondents received no direction from the Director regarding the Appellant's property. They disposed of the Appellant's property on a date not identified in the evidence. They did not sell it.

[40] The Respondents did not apply to keep the Appellant's security deposit ($750). They suggested they had a claim against the Appellant for over $16000 to compensate them for their loss of rental income and other expenses incurred to dispose of and clean up the rental property. This claim was not part of the initial residential tenancies application and was not a matter that could properly be considered on this appeal.

[1] The Form A options are – The goods are unsanitary and unsafe to store – dispose of immediately, - The goods are of an estimated value under $500 – landlord requests permission to dispose of them after storing them for 30 days; - The goods are of an estimated value over $500 – landlord will store them for 30 days; - The goods include an abandoned mobile home.

The Appellant's Claim

[41] I have outlined the background, though the topic of this appeal relates only to the Appellant's claim for compensation from the Respondents for wrongfully disposing of her property. The context in which the Appellant left the rental property is relevant to understanding the nature and extent of the Respondent's response to the vacancy and how they dealt with what they considered abandoned property.

[42] The Appellant's claim for lost property totals $49,726.99. (My addition) She lists items in each room of the house and assigned values, some based on what she knew she paid, some based on replacement value and some on her own estimate value.

Analysis

[43] The provisions governing the rights and obligations of landlords and tenants when tenants leave their property behind after a lease ends are found in s. 5 of the Act and regulations 23 and 24 of the RTA Regulations. The Act provisions provide:

> **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) Subject to the regulations, 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 thirty 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. R.S., c. 401, s. 5; 1993, c. 40, s. 3; 1997, c. 7, s. 1; 2002, c. 30, s. 16; 2018, c. 41, s. 3.

[44] The Regulations state:

Inventory of abandoned personal property
23 (1) 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 as follows:

(a) by registered mail, express post or courier to the tenant's new address, if known;

(b) by e-mail, if an e-mail address for the tenant is indicated on the lease; or

(c) if the tenant's new address is not known and no e-mail address for the tenant is indicated on the lease, by registered mail, express post or courier to the address for contact of next of kin, if indicated on the lease.

(2) Subsection (1) does not apply to abandoned personal property that may be disposed of under subsection 24(4).

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 30 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 if 30 days have elapsed since Form A was filed with the Director and mailed to the tenant or the tenant's next of kin.

[45] These provisions make it clear:

1. A tenant has no right to leave personal property in the residential premises after the tenancy has terminated. The expectation is that when the tenancy ends, because of the expiry of the lease or otherwise, the tenant is expected to remove all personal property from the rental premises. Failure to do so may result in the tenant's property rights being extinguished if the tenant's property is sold or disposed of.

2. If a tenant leaves personal property at the premises, the landlord must deal with that property in accordance with the regime established by s. 5. These provisions are not optional. The obligations are mandatory for the landlord.

3. The initial duty of the landlord is to inventory the tenant's property. The language 'the landlord shall do an inventory' creates a mandatory requirement. When 'shall' is used in an act, it creates an 'imperative' duty. Though landlords may see the requirements as a burden or an inconvenience and may think that because the tenant has departed from or abandoned the premises, they may do whatever they wish with the goods remaining at their property. Nothing could be further from the truth. The property in the tenant's goods, even though they are at the landlord's premises, remains with the tenant and those property rights cannot be extinguished or impaired except in accordance with the law. That law, as set out in s. 5, balances the rights of the tenant with the obligations of the landlord to preserve the tenant's property unless otherwise permitted by the Director.

4. The landlord will be reimbursed for out-of-pocket expenses, such as storage, involved in preserving the tenant's property. While it may be seen as an inconvenience, it is one of the

costs of doing business assumed by a landlord as part of providing rental accommodations.

5. The inventory of the tenant's property is to be filed with the Director of Residential Tenancies. Using Form A the landlord is to list the property and place a value on it.

6. The inventory must be sent to the tenant or the tenant's next of kin.

7. How a landlord proceeds and deals with the tenant's property is governed by the regulations.

8. The landlord may not dispose of the tenant's property until at least thirty (30) days from filing Form A. It is in that period, the Director will assess the Form and based on the value estimated by the landlord, the Director may allow disposal if the property is valued under $500 or direct the property to be sold 'through a public sale'. Those words are not defined but the nature of such a sale was described by Justice Glen MacDougall in Project Forest Lakes Pte. Ltd. v. Terra Firma Development Corporation Limited, 2021 NSSC 350:

> By ordering a public sale at auction, the Encumbrancers and the trustee will have the opportunity to fully participate in an open, arms length bidding process that will explore and hopefully identify any interested purchasers for the property given current market conditions.

[46] Based on this description, a public sale is an auction or something like it that is designed to use the marketplace as the means of fixing value, as opposed to an arbitrary one put on goods by a seller who wishes to dispose of them.

[47] Though the Act and regulations are silent regarding how 'value is to be assigned to a tenant's property, I interpret the requirements for a public sale as dictating the method for evaluation. The value assigned to property, should be an

estimate of what it would realize at a public sale. That is the approach taken by Adjudicator Knudson in *Grandy v Parkland Investments Ltd,* 2018 NSSM 66:

> (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 ballparking and guestimate."
>
> (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.

Findings

[48] The rental premises were contaminated by mould as a result of moisture entering into the house from roof leaks and the crawl space. I accept the findings of Mr. Wilcox in his first report that indicated there were 'problems' in the house that made it of concern to the occupants. The mould contaminated the Appellant's property, including clothing and furniture. Mould remediation was required.

[49] The Appellant was sensitive to environmental contamination from mould, and it had a negative impact on her health. Her children were sensitive to environmental factors. Her son had asthma.

[50] The Appellant's departure from the home, in light of the mould, was justified. The Respondent consented to her departure and the tenancy ended on October 7, 2023, when the Appellant and her family left the house for the last time. With the termination of the tenancy, the landlord had the right to enter the property and do whatever was required to recover possession of the premises.

[51] When the Appellant vacated the rental property, she took no effective steps to preserve her personal property. Her health and the health of her children affected her behaviour. That does not excuse her. She had a live-in partner. She had friends, who offered any support they could. She had no right to leave her property in the rented house. By doing so she effectively abandoned it, as that concept is used in the Act.

[52] Section 5 creates the obligations of the landlord when the tenant abandons property in the rental premises. The Act establishes a requirement based on the fact that abandonment of personal property does not extinguish the tenant's ownership. That continued ownership is the basis for the obligations in the Act that allow a landlord, with permission of the Director to dispose of or sell a tenant's property.

The requirement for the Director's authority balances the property rights of the tenant with the inconvenience of the landlord and results in an extinction of property rights in a controlled way. The disposition or sale ends the tenant's property rights only after a process of valuation, application to the Director through Form A, a notice to the tenant of the consequences of abandonment and a public sale.

[53] The Respondents did not properly fulfill the obligations imposed on them by s. 5. The Form A they filed was incomplete. It did not list significant property left behind by the Appellant. To suggest a houseful of personal property and furniture, as is clear from the photos, videos and the Appellant's list of property, is worth only about $400 was disingenuous. It is not clear why the Respondents so grossly misstated the values and neglected to list and evaluate items. Maybe they thought by listing items like '87 large bags of soiled clothing/stuff animals' they absolved themselves of their responsibilities. They did not. Full list is required, and though items certainly can be grouped as opposed to listing every individual item, nothing can be intentionally omitted.

[54] The video hearing of this matter was on May 2, 2024. Both parties appeared and presented evidence. Based on that testimony these facts were established.

[55] The valuation was inadequate as it should have been done based on a market value that would be available from a public sale. Even if the Respondents could not find someone to come to evaluate the property, they had a duty to use a proper basis for evaluation. Using ‘yard sale’ prices was not adequate.

[56] The Respondents by not giving the Appellant a copy of Form A denied her the opportunity to intervene with the Director or with them directly. The insignificant value assigned by the landlord to a house full of property likely would have sparked the Appellant to do something once she learned, as notice would tell her, that her property, valued at just over $400, could be disposed of summarily.

[57] On receipt of Form A, the Director might have concluded there was little property involved and disposition, without a sale was appropriate. We will never know, as the Respondents, having completed an inadequate form, did not await a direction from the Director. They set aside sentimental and personal items and told the Appellant they could be retrieved and disposed of the rest of the property without regard to its proper value.

[58] By acting as they did the Respondents breached s. 5 and deprived the Appellant of value that existed in her property.

[59] There is a gap of close to $50000 in the valuations used by the parties Neither was done in accordance with the approach required by the Act, that of

showing value that would be achieved at a public sale. That is not the replacement cost. That is not the price that was paid when the item was purchased. It is a price a willing purchaser would pay at an auction, or some other process designed to maximize the value and not simply give property away.

[60] Because the Respondents breached their obligations to the Appellants and wrongfully deprived her of her property rights, when they disposed of her property without the Director's permission, the Court must place a value on the property that has been lost. As Justice Goodfellow said in *Durocher v. Durocher* that forces the Court into a process of 'ballparking and guesstimates'.

[61] I have looked at the values placed on items by the Appellant. She did her best to reconstruct her life and capture years of property acquisitions. It is clear from the photos, some of the property was well-used. There was a houseful of items. Some were of sentimental value only. I have looked at the photos and the videos of the belongings left behind. Though I have no direct evidence of value, it is clear items are well used, some appear to be older and the Respondent notes some furniture is broken.

[62] Given the paucity of evidence I'm left to 'ballpark' or 'guesstimate' the value to be assigned to the abandoned property. I conclude that a fair value to put on the property based on what in its entirety it might obtain in a public sale is

$15000.That assumes the auction is truly a public sale, held in person or via the internet, a means many people today use to dispose of small items. I cannot deduct any costs that might have been incurred by the Respondents for sorting, packing, inventorying, storage and selling, as what they did was not to advance a sale but to restore the rental property for their use.

[63] In establishing a value, I do not account for the fact the Appellant did not deal with her personal effects properly. She ought to have taken steps, through others, to retrieve her property and salvage what she could given her belief that contamination was rampant. She ought not to have burdened the Respondents with the onerous responsibility of preserving her property. The Act does not let me sanction her, but in placing value on the property I recognize the Appellant did not want some items she had, as she believed they were contaminated beyond recovery. Her conclusion reduces the value of the property because if she did not want it, there is little likelihood anyone else would. The same is true for the ‘sentimental’ items identified by the Respondents, which appear to have gone unclaimed by the Appellant.

[64] S. 5 might be onerous on a landlord. Retrieving, sorting, inventorying and selling property is burdensome, even if the costs can be recovered from sale proceeds. The time spent by owners through their own efforts are compensable if

they are properly accounted for and reasonable. The Respondents did not appreciate the nature and extent of their obligations, that a simple reading of the Act and regulations would have clarified for them. Perhaps out of frustration, they chose to ignore or reduce their obligations while understating the nature and extent of what they had to deal with.

[65] The Defendants are ordered to pay the Appellant $15000 for the improper disposal of her property. That sum is inclusive of any costs to which the Appellant would be entitled.

[66] The Appeal is allowed, and the Order of the Director is set aside.

Darrel Pink, Small Claims Court Adjudicator