

2006

John K. Crowley v. Chris Black : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

JOHN K. CROWLEY,

Plaintiff/Appellant,

vs.

CHRIS BLACK,

Defendant/Appellee.

:

:

BRIEF OF APPELLANT

:

:

Case No. 2006-0712 CA

:

:

AN APPEAL FROM A FINAL JUDGMENT AND ORDER OF THE THIRD
JUDICIAL DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH, SALT
LAKE DEPARTMENT, The Hon. Glenn K. Iwasaki, Judge Presiding.
(Trial Court Case No. 02-090-4266 CV)

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ORAL ARGUMENT AND PUBLISHED OPINION REQUESTED

**FILED
UTAH APPELLATE COURTS
JAN 16 2007**

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IN THE UTAH COURT OF APPEALS

JOHN K. CROWLEY,

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vs.

CHRIS BLACK,

Defendant/Appellee.

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BRIEF OF APPELLANT

Case No. 2006-0712 CA

Plaintiff/Appellant John Crowley, by and through counsel, Brian M. Barnard,
submits the following Brief of Appellant:

PRIOR OR RELATED APPEALS

There are no prior or related appeals.

STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to Utah Code Ann. § 78-2-2(3)(j). The
Supreme Court has transferred the case to the Court of Appeals. Utah Code Ann. § 78-
2a-3(2)(j).

PRELIMINARY STATEMENT

A. ATTORNEY FEE CLAIM

After trial in this matter, in its oral ruling, the trial Court denied plaintiff's request for an award of attorney fees. The trial Court provided little explanation in its oral ruling as to the factual or legal reason for the denial of an award of attorney fees.

Plaintiff's attorney fees request was based upon the written lease between the parties (Exhibit "P-2" introduced at trial). The written lease, in pertinent part, provides:

ATTORNEY'S FEES: In the event that the Owner shall prevail in any legal action brought by either party to enforce the terms hereof or relating to the demised premises, Owner shall be entitled to all costs incurred in connection with such action, including a reasonable attorney fee.

Plaintiff was the prevailing party because a judgment for past due rent, lost rent and for damages to the rental property was awarded to plaintiff at trial. Plaintiff was required to bring this law suit because of defendant's refusal to pay the last month's rent, damage to the property beyond ordinary wear and tear, etc. At no time did defendant, Chris Black ever admit any wrongdoing, fault, liability or debt. This action and a trial were necessary to collect damages from defendant and to enforce the lease agreement.

Plaintiff incurred attorney fees and out of pocket expenses in excess of seven thousand dollars (\$7,000.00) in pursuit of this action. Among other items, plaintiff was required to hire a private detective to find defendant to serve him with the summons and complaint in this action. Based upon the written lease, plaintiff is entitled to and should have been awarded attorney fees incurred in the successful pursuit of this action.

B. PREJUDGMENT INTEREST CLAIM

In this landlord and tenant dispute, Plaintiff was awarded special damages for unpaid rent, for lost rent, and for damage caused to plaintiff's rental property during defendant's occupancy. All those damages are in amounts certain. All damages were established by evidence or receipts showing payment made by plaintiff in 2001 and 2002. In light of the nature of the damages awarded in specific amounts, plaintiff is entitled to pre-judgment interest.

A trial court's decision to grant prejudgment interest presents a question of law. Lyon v. Burton, 2000 UT 19, P73, 5 P.3d 616 (*quoting Cornia v. Wilcox*, 898 P.2d 1379, 1387 (Utah 1995); Bailey-Allen Co. v. Kurzet, 876 P.2d 421, 427 (Utah Ct. App. 1994); Andreason v. Aetna Casualty & Sur. Co., 848 P.2d 171, 177 (Utah Ct. App. 1993). The law in Utah on this issue is clear:

Where the damage is complete and the amount of the loss is fixed as of a particular time, and that loss can be measured by facts and figures, interest should be allowed from that time . . . and not from the date of judgment. On the other hand, where damages are incomplete or cannot be calculated with mathematical accuracy, such as in the case of personal injury, wrongful death, defamation of character, false imprisonment, etc., the amount of the damages must be ascertained and assessed by the trier of the fact at the trial, and in such cases prejudgment interest is not allowed.

Canyon Country Store v. Bracey, 781 P.2d 414, 422 (Utah 1989) (*quoting First Sec. Bank of Utah v. J.B.J. Feedyards, Inc.*, 653 P.2d 591, 600 (Utah 1982)); *see also* Bellon v. Malnar, 808 P.2d 1089, 1097 (Utah 1991).

With clear and specific factual information, plaintiff's special damages as presented at trial and as found by the Court were measured by "facts and figures" or "calculated with mathematical accuracy." *See Canyon Country Store*, 781 P.2d at 422. Under these circumstances, the plaintiff is entitled, as a matter of law, to prejudgment interest.

ISSUES PRESENTED FOR REVIEW

DID THE TRIAL COURT ERR IN DENYING PLAINTIFF AN AWARD OF ATTORNEY FEES UNDER THE WRITTEN AGREEMENT BETWEEN THE PARTIES WHEN PLAINTIFF PREVAILED AT TRIAL AND WAS AWARDED THE BULK OF THE DAMAGES CLAIMED IN HIS COMPLAINT?

DID THE TRIAL COURT ERR IN DENYING PLAINTIFF AN AWARD OF PREJUDGMENT INTEREST ON LOST RENT, EXPENSES PAID FOR REPAIRS TO THE RENTAL PREMISES, ETC. WHEN THOSE AMOUNTS WERE EASILY CALCULATED, FIXED AMOUNTS AND INCURRED ON A SPECIFIC DATE?

ISSUES RAISED AND CONSIDERED

The issues to be considered on appeal were raised at trial in this matter, and resolved in the Court's oral ruling. Transcript of Trial. R. 154. The issues were raised and considered in post-trial motions. R. 86-92; 128-129.

STANDARD OF REVIEW

A. ATTORNEY FEE CLAIM

“Whether attorney’s fees are recoverable in an action is a question of law [that] we review for correctness.” Cache County v. Beus, 128 P.3d 63 (Ut. Ct. App. 2005) [*quoting* A.K. & R Whipple Plumbing and Heating v. Guy, 47 P.3d 92 (Utah 2004)].

When attorney’s fees are recoverable, “[t]he trial court has broad discretion in determining what constitutes a reasonable fee, and [a reviewing court] will consider the determination against and abuse of discretion standard.” R.T. Nielson Co. v. Cook, 40 P.3d 1119, 1120 (Utah 2002).

“We do, however, insist that a trial court’s decision concerning a motion for attorney’s fees be supported by adequate findings.” Utahns for Better Dental Health-Davis Inc. v. Davis County Comm’n, 121 P.3d 39, 41 (Ut. Ct. App. 2005).

B. PREJUDGMENT INTEREST CLAIM

“A trial court’s decision to grant or deny pre-judgment interest presents a question of law which we review for correctness.” Smith v. Fairfax Realty, Inc., 82 P.3d 1064 (Utah 2003) [*quoting* Cornia v. Wilcox, 898 P.2d 1379, 1387 (Utah 1995)].

STATEMENT OF THE CASE

John Crowley filed suit against Chris Black on May 17, 2002 alleging breach of the written rental agreement by which Black had resided in a rental property belonging to

Crowley. The complaint sought a total of \$5538.00 for lost rent, damages to the property, cost of cleaning, etc. R. 1-5. The complaint sought an award of attorney fees pursuant to the written rental agreement. R. 1-5.

Black answered the complaint on June 13, 2002. R. 8-10.

A bench trial was held on April 4, 2006, the Hon. Glenn Iwasaki, judge presiding. R. 80-81.

The Court ruled in favor of Crowley awarding damages in a total of \$4679.26 for lost rent, damages to the property, cost of cleaning, etc. The Court denied an award of attorney fees under to the written rental agreement. The Court also denied plaintiff's request for prejudgment interest. R. 130-136; 137-138. Copy attached as Exhibit.

A motion for new trial was made with regard to plaintiff's request for prejudgment interest and the attorney fees claim. R. 86-89; 90-92.

That motion for new trial was denied. R. 128-129.

Findings of Fact, Conclusions of Law and a Judgment were entered on June 26, 2006. R. 130-136; 137-138.

An extension of time as granted in which plaintiff could file an appeal. R. 141-142.

An appeal was filed within the extended time. R.143-144.

STATEMENT OF FACTS

1. Defendant Chris Lee Black leased plaintiff John Crowley's residential property at 8828 South Alpen Way, Sandy, Utah in July 1996 and was a tenant until approximately December 2001. R. 154, Tr. Transcr. 46:25-47 and 60:8-13 (April 4, 2006).

2. A lease agreement (Plaintiff's Exhibit 1, "P-1") executed by defendant Black and the Crowleys' property management agency is dated July 3, 1996 and shows that a security deposit of \$925.00 was paid by defendant Black. R. 154, Tr. Transcr. 56:18-57:6 (April 4, 2006); *see* Plaintiff's Exhibit 1.

3. The original lease agreement ("P-1"), signed by defendant Black, contains an inventory section which indicates that on July 3, 1996, the carpet, paint and blinds in the Alpen Way residence were all new and undamaged. R. 154, Tr. Transcr. 61:22-62:11 (April 4, 2006); Plaintiff's Exhibit 1.

4. Defendant Black made a walk-through inspection of the Alpen Way property in July, 1996, when he first rented it. R. 154, Tr. Transcr. 64:3-5 (April 4, 2006).

5. During or after his July, 1996 inspection, defendant Black did not identify, note nor describe any existing damages in the place designated on the lease agreement which he signed on July 3, 1996. R. 154, Tr. Transcr. 64:6-18 (April 4, 2006).

6. Ms. Nancy Ann Crowley, co-owner of the Alpen Way property with her husband, plaintiff John Crowley, made a walk-through inspection of the entire house and

property shortly after defendant Black commenced his tenancy, on or about July 14, 1996. R. 154, Tr. Transcr. 47:7-18 (April 4, 2006).

7. Ms. Crowley's walk-through inspection on July 14, 1996 occurred approximately ten (~10) days after defendant Black executed the original lease agreement and moved into the Alpen Way residence. R. 154, Tr. Transcr. 57:7-13 (April 4, 2006).

8. At Ms. Crowley's July 14, 1996 inspection, she noted that the house was clean, newly carpeted, newly painted and showed no problems or damages. R. 154, Tr. Transcr. 48:6-12 (April 4, 2006).

9. At Ms. Crowley's July 14, 1996 inspection, she noted that the window blinds throughout the house were new and in working order; all the interior doors were undamaged; and, all light fixtures were present and undamaged. R. 154, Tr. Transcr. 48:13-21 (April 4, 2006).

10. Douglas Reynolds is a property manager for Century 21 Real Estate and has managed plaintiff John Crowley's property at 8828 South Alpen Way for at least five (5+) years. R. 154, Tr. Transcr. 2:21-3:25 (April 4, 2006).

11. Property manager Reynolds and his employer (Century 21) manage approximately two hundred fifty (~250) rental properties. R. 154, Tr. Transcr. 30:6-7 (April 4, 2006).

12. Reynolds managed plaintiff's Alpen Way property during the tenancy of defendant, Chris Black. R. 154, Tr. Transcr. 4:1-2 (April 4, 2006).

13. Reynolds prepared a renewal lease agreement dated October 1, 1997 (Plaintiff's Exhibit 2, "P-2"), by which defendant Chris Black continued to lease from plaintiff, John Crowley, the home and property located on Alpen Way. R. 154, Tr. Transcr. 5:5-16 (April 4, 2006).

14. The renewed lease agreement ("P-2") in October 1997 required that the Alpen Way property would be left in the same condition he received it absent normal and ordinary wear and tear. R. 154, Tr. Transcr. 63:16-64:2 (April 4, 2006); *see* Plaintiff's Exhibit 2.

15. The October 1997 lease provides that upon termination of the lease, defendant Black was to surrender the premises "in as good of condition as received, normal wear and tear excepted." R. 154, Tr. Transcr. 6:16-18 (April 4, 2006); *see* Plaintiff's Exhibit 2.

16. The lease provides that defendant Black was to "maintain any surrounding grounds ... and keep the same clear of rubbish or weeds." R. 154, Tr. Transcr. 6:23-25 (April 4, 2006); *see* Plaintiff's Exhibit 2

17. The lease agreement includes a space designated for the identification of existing problems or defects. R. 154, Tr. Transcr. 7:4-8 (April 4, 2006); Plaintiff's Exhibit 2.

18. Defendant Black did not identify any existing problems at the time the 1997 lease agreement was signed. R. 154, Tr. Transcr. 7:15-17 (April 4, 2006).

19. Defendant Black made no mention of any persistent water leaks or other damage issues in the October 1997 lease agreement renewal (Exhibit “P-2”), executed over one (1+) year into his tenancy at the Alpen Way property. R. 154, Tr. Transcr. 96:12-17 (April 4, 2006); *see* Plaintiff’s Exhibit 2.

20. Plaintiff John Crowley and his wife, Nancy Ann Crowley (“the Crowleys”) maintain records regarding leases, tenant complaints and repairs for each rental property they own, including the Alpen Way property. R. 154, Tr. Transcr. 48:24-49:13 (April 4, 2006).

21. The Crowleys have no record of any complaints or repair requests from Black relating to the Alpen Way property during the tenancy of defendant Black. R. 154, Tr. Transcr. 49:14-18 (April 4, 2006).

22. Defendant Black’s tenancy was one in which very few maintenance problems were reported to property manager Reynolds. R. 154, Tr. Transcr. 27:2-16 (April 4, 2006).

23. Black’s rent payments during his tenancy were consistently late. R. 154, Tr. Transcr. 49:23-50:2 (April 4, 2006).

24. Defendant Black vacated the leased premises in approximately November of 2001. R. 154, Tr. Transcr. 8:2-5 (April 4, 2006).

25. Defendant Black failed to pay rent during and for the last month of his tenancy, November 2001. R. 154, Tr. Transcr. 29:21-30:2 9 (April 4, 2006); R. 154, Tr. Transcr. 66:15-16 (April 4, 2006).

26. Defendant Black did not leave a forwarding address with the property manager upon vacating the premises. R. 154, Tr. Transcr. 30:3-5 (April 4, 2006).

27. Property manager Reynolds visited the vacated property within days of defendant Black's move out. R. 154, Tr. Transcr. 8:6-8 (April 4, 2006).

28. When defendant Black vacated the Alpen Way property, window blinds in the master bedroom, the kitchen and a basement bedroom were broken. R. 154, Tr. Transcr. 65:1-66:4 (April 4, 2006).

29. When defendant Black moved out, there were holes in some interior doors caused by moving furniture and holes in some basement walls caused by pool cues. R. 154, Tr. Transcr. 66:5-14 (April 4, 2006).

30. Black left behind a lot of trash and debris in the yard. R. 154, Tr. Transcr. 8:12-13 (April 4, 2006).

31. The debris left in the yard included auto wheels, tires and assorted trash. R. 154, Tr. Transcr. 9:2-4 (April 4, 2006).

32. During the post-move out inspection, property manager Reynolds took photographs (Plaintiff's Exhibit 3, "P-3") to document damages to the house. R. 154, Tr. Transcr. 9:20-10:5 (April 4, 2006).

33. Photographs of damage to sheet rock walls show holes that necessitated repairs such as patching and painting. R. 154, Tr. Transcr. 10:22-11:8 (April 4, 2006); *see* Plaintiff's Exhibit 3.

34. The damages to sheet rock walls are chargeable as tenant damages and are beyond ordinary wear and tear. R. 154, Tr. Transcr. 11:2 and 11:8 (April 4, 2006).

35. Photographs of interior doors show damage which necessitated the replacement of several doors. R. 154, Tr. Transcr. 11:10-11:17 and 12:20-23 (April 4, 2006); Plaintiff's Exhibit 3.

36. The damage to several interior doors and their replacement are chargeable as tenant damages and are beyond ordinary wear and tear. R. 154, Tr. Transcr. 12:22-23 and 13:3-5 (April 4, 2006).

37. Photographs of a shower unit located in the basement show severe damage such as broken tiles, cracked tiles and a shower door wrenched loose from the frame. R. 154, Tr. Transcr. 8:17-22 and 13:7-16 (April 4, 2006); Plaintiff's Exhibit 3.

38. The damaged basement shower unit had to be completely rebuilt, including new tile and a new floor pan. R. 154, Tr. Transcr. 13:14-17 (April 4, 2006).

39. The cost of repair and complete rebuilding of the basement bathroom shower unit (\$1,580.00) was a tenant responsibility and are beyond ordinary wear and tear R. 154, Tr. Transcr. 24:5-6 and 25:9-13 (April 4, 2006).

40. In the opinion of property manager Reynolds, the damage to the basement shower unit and the cost of rebuilding it are chargeable as tenant responsibilities and are beyond ordinary wear and tear. R. 154, Tr. Transcr. 13:20 (April 4, 2006).

41. A photograph of a basement wall near the shower unit shows a damaged piece of sheet rock and a poor repair attempt which necessitated installation of a new piece of sheet rock. R. 154, Tr. Transcr. 13:23-14:7 (April 4, 2006); *see* Plaintiff's Exhibit 3.

42. Photographs of a basement wall show water damage to paint and sheet rock caused by a basement window being left open. R. 154, Tr. Transcr. 14:9-13 (April 4, 2006); Plaintiff's Exhibit 3.

43. The water damage to the basement wall is attributable to tenant carelessness and is a tenant responsibility and is beyond ordinary wear and tear. R. 154, Tr. Transcr. 14:14-16 (April 4, 2006).

44. Photographs of various light fixtures throughout the residence show missing glass covers. R. 154, Tr. Transcr. 15:6-9 (April 4, 2006); Plaintiff's Exhibit 3.

45. The cost of replacement parts for light fixtures are a tenant responsibility and are beyond ordinary wear and tear. R. 154, Tr. Transcr. 15:10 (April 4, 2006).

46. Photographs of vinyl window blinds show damage and the blinds had to be replaced. R. 154, Tr. Transcr. 15:12-17 (April 4, 2006); Plaintiff's Exhibit 3.

47. A photograph of the interior of the oven shows that it needed cleaning and was not cleaned. R. 154, Tr. Transcr. 15:19-16:5 (April 4, 2006); Plaintiff's Exhibit 3.

48. A photograph of the laundry room shows piles of debris and sawdust which were not cleaned up by the tenant. R. 154, Tr. Transcr. 17:21-24 (April 4, 2006); Plaintiff's Exhibit 3.

49. A photograph of the area below the outside deck shows debris such as auto wheels, tires and mattresses which had to be removed before re-leasing the residence. R. 154, Tr. Transcr. 18:5-13 (April 4, 2006); Plaintiff's Exhibit 3.

50. Defendant Black admitted leaving used automobile wheels and tires and various debris in the yard of the Alpen Way property and agreed that expenses incurred for their removal are his responsibility. R. 154, Tr. Transcr. 92:20-23 (April 4, 2006).

51. A copy of a receipt (Plaintiff's Exhibit 4, "P-4") from Daryl C. Payne shows the cost of repairs to a faulty circuit breaker and damaged wiring. R. 154, Tr. Transcr. 19:9-15 (April 4, 2006); Plaintiff's Exhibit 4.

52. The electrical repairs by Daryl C. Payne are part of regular maintenance and so are not a tenant responsibility. R. 154, Tr. Transcr. 19:15-16 (April 4, 2006).

53. An invoice (Plaintiff's Exhibit 5, "P-5") from Dix Keller details the painting, debris-hauling, fixture replacement and various fix-ups which needed to be done after defendant Black moved out. R. 154, Tr. Transcr. 20:5-12 (April 4, 2006); *see* Plaintiff's Exhibit 5.

54. The items and costs detailed in the Dix Keller invoice (Plaintiff's Exhibit 5, "P-5") are tenant responsibilities. R. 154, Tr. Transcr. 20:22-21:1 (April 4, 2006).

55. A document (Plaintiff's Exhibit 6, "P-6") prepared by property manager Reynolds identifies and reflects the costs of various repair jobs completed at the residence by handymen. R. 154, Tr. Transcr. 21:4-9 (April 4, 2006); *see* Plaintiff's Exhibit 6.

56. Certain items listed in this Exhibit ("P-6") such as repairing and re-staining the front door; nailing patio ceiling; repairing the outside stairs and replacing the front door lock sets are not chargeable to the tenant. R. 154, Tr. Transcr. 21:9-22:6 (April 4, 2006).

57. Other items listed in this Exhibit ("P-6") such as miscellaneous bulbs, electrical covers and supplies are chargeable as tenant responsibilities. R. 154, Tr. Transcr. 22:6-11 (April 4, 2006).

58. A receipt from Holbrook Plumbing (Plaintiff's Exhibit 7, "P-7") documents repairs to the upstairs master bathroom which were not chargeable as tenant responsibilities. R. 154, Tr. Transcr. 22:20-25 (April 4, 2006); *see* Plaintiff's Exhibit 7.

59. A second receipt from Holbrook Plumbing (Plaintiff's Exhibit 8, "P-8") documents repairs to the basement bathroom in which the entire shower unit had to be rebuilt. R. 154, Tr. Transcr. 23:6-13 (April 4, 2006); *see* Plaintiff's Exhibit 8.

60. The damages documented by the various photographs (Exhibit "P-3") and receipts (Exhibits "P-5", "P-6", "P-7" and "P-8") are of the kind that should have been noted and described in the appropriate spaces of the lease agreement had they been present during the defendant-tenant's initial walkthrough. All that damage was very noticeable and obvious in 2001. R. 154, Tr. Transcr. 25:23-26:4 (April 4, 2006).

61. The opinion of property manager Reynolds was that the much of the damages and the required repairs to the property were not the result of reasonable or ordinary wear and tear. R. 154, Tr. Transcr. 30:8-11 (April 4, 2006).

62. Property manager Reynolds does not recall any issue or complaints involving the presence of termites at the Alpen Way property. R. 154, Tr. Transcr. 36:15-21 (April 4, 2006).

63. Any sawdust or unidentifiable dust-like matter on basement shelving or floors did not descend from the ceiling inasmuch as there is no ceiling in the unfinished basement. R. 154, Tr. Transcr. 37:6-14 (April 4, 2006).

64. A water leak in the upstairs bathroom had apparently existed for the much of defendant Black's tenancy but was not brought to property manager Reynolds' attention until shortly before Black terminated his tenancy. R. 154, Tr. Transcr. 40:7-11 and 40:17-20 (April 4, 2006).

65. The upstairs bathroom leak was eventually repaired, the cost of which is not a tenant-chargeable item. R. 154, Tr. Transcr. 42:12-15 (April 4, 2006).

66. The leak in the upstairs bathroom did not cause any of the damage to the downstairs bathroom and shower unit, the repairs in that area are chargeable as tenant-caused damage. R. 154, Tr. Transcr. 42:18-43:10 (April 4, 2006).

67. Defendant Black left no forwarding address with the Crowleys upon vacating the Alpen Way residence. R. 154, Tr. Transcr. 50:3-5 (April 4, 2006).

68. Defendant Black does not recall ever leaving a forwarding address with the Crowleys or property manager Reynolds. R. 154, Tr. Transcr. 67:13-21 (April 4, 2006).

69. After he moved out, to locate defendant Black and attempt to resolve the issue of damages to the Alpen Way property, the Crowleys hired Paramount Detective Agency at a cost of \$400.00. R. 154, Tr. Transcr. 50:6-14 (April 4, 2006).

70. After defendant Black vacated the Alpen Way residence, repairs to the damaged property required that it remain un-leased and vacant for approximately one (~1) month, during which no rent (at \$975.00 per month) was collected. R. 154, Tr. Transcr. 50:15-23 (April 4, 2006).

71. The repairs detailed by property manager Reynolds were paid for by the Crowleys when they were incurred and the work done. R. 154, Tr. Transcr. 51:1-2 (April 4, 2006); R. 154, Tr. Transcr. 44:23-45:1 (April 4, 2006).

72. Crowley retained counsel, Brian M. Barnard and James L. Harris, Jr. and paid legal fees to pursue the action against defendant Black. R. 154, Tr. Transcr. 51:3-8 (April 4, 2006).

73. Crowley sued for reimbursement for legal fees expended in pursuing the action against defendant Black. R. 154, Tr. Transcr. 51:9-11 (April 4, 2006).

74. The front doors of the residence had consistent problems with misalignment which prevented them from closing or locking properly; these problems existed at the

time defendant Black began his tenancy and continued for the duration of his tenancy. R. 154, Tr. Transcr. 79:15-20 (April 4, 2006).

75. Black brought problems with the front doors to the attention of property manager Reynolds on several occasions during his tenancy. R. 154, Tr. Transcr. 37:24-38:5 (April 4, 2006).

76. Defendant Black complained to property managers several times regarding the front doors of the residence; attempts were made by property managers to correct the problem. R. 154, Tr. Transcr. 79:25-80:4 (April 4, 2006).

77. Property manager Reynolds initiated several attempts to improve the functioning of the front doors during the tenancy of defendant Black. R. 154, Tr. Transcr. 38:5-18 (April 4, 2006).

78. Defendant Black purchased a refrigerator upon moving into the Alpen Way residence and placed it in the kitchen; defendant Black did not remove the refrigerator when he vacated the premises. R. 154, Tr. Transcr. 88:10-16 (April 4, 2006).

79. Defendant Black paid a security deposit upon commencing his tenancy at the Alpen Way property; his deposit was retained by Crowley. R. 154, Tr. Transcr. 94:19-22 (April 4, 2006).

80. Defendant Black's complaints during his tenancy regarding the leak in the laundry room led to successful repairs by the Holbrook Plumbing company undertaken at the behest of property manager. R. 154, Tr. Transcr. 95:12-21 (April 4, 2006).

81. The July 3, 1996 lease agreement (Exhibit "P-1") formed a contract entered into by defendant Black and plaintiff John Crowley; the October 1997 renewal lease agreement continued similar contractual obligations. R. 154, Tr. Transcr. 98:22-99:3 (April 4, 2006); *see* Plaintiff's Exhibit 1 and Plaintiff's Exhibit 2. R. 130-136.

82. The Court found that Defendant Black breached the lease when he failed to pay rent for the last month of his tenancy. R. 154, Tr. Transcr. 99:3-7 (April 4, 2006). R. 130-136.

83. The Court found that with regard to which damages and responsibilities are properly attributable to the tenant and which shall be placed on the plaintiff-owners, the testimony of property manager Reynolds was received as expert testimony given his qualifications; the Court relied upon this testimony in making its findings as to damage apportionment. R. 154, Tr. Transcr. 99:25-100:5 (April 4, 2006). R. 130-136.

84. The Court found that the holes in the walls (depicted in Exhibit "P-3") are not the result of normal wear and tear, and cost of repairs are chargeable as tenant damages and tenant responsibility. R. 154, Tr. Transcr. 99:11-16 (April 4, 2006). R. 130-136.

85. The Court found that the chipping to the walls (Exhibit "P-3") necessitated the painting of the entire areas affected, the cost of which is chargeable as tenant damages and tenant responsibility. R. 154, Tr. Transcr. 99:17-22 (April 4, 2006). R. 130-136.

86. The Court found that the damage to interior doors which required their replacement are tenant damages and tenant responsibility. R. 154, Tr. Transcr. 99:23-24 (April 4, 2006). R. 130-136.

87. The Court found that the problems with regard to the front doors (Exhibit "P-3") were pre-existing and so are not tenant damage nor tenant responsibility. R. 154, Tr. Transcr. 100:5-9 (April 4, 2006). R. 130-136.

88. The Court found that the damage to one interior door and the missing lock-set there (Exhibit "P-3") are tenant damage and tenant responsibility. R. 154, Tr. Transcr. 100:10-12 (April 4, 2006). R. 130-136.

89. The Court found that due to conflicting testimony on the issue, the severely damaged basement shower unit (photos of damage included in Exhibit "P-3") and the cost of its repair and replacement (invoice included in Exhibit "P-8") should be divided between the tenant-defendant and plaintiff-owners, to-wit: \$1,200.00 to be considered tenant responsibility, the balance of \$380.00 to be borne by plaintiff-owner. R. 154, Tr. Transcr. 100:13-19 and 103:14-16 (April 4, 2006). R. 130-136.

90. The Court found that the water damage to the basement wall caused by a window being left open (depicted in Exhibit "P-3") is chargeable as tenant damage and tenant responsibility. R. 154, Tr. Transcr. 100:20-22 (April 4, 2006). R. 130-136.

91. The Court found that the damage consisting of missing light fixture covers (Exhibit "P-3") are tenant damages and tenant responsibility. R. 154, Tr. Transcr. 100:25-101:4 (April 4, 2006). R. 130-136.

92. The Court found that the damage consisting of broken window blinds (Exhibit "P-3") and the cost of replacement are partially owner and partially tenant responsibility. R. 154, Tr. Transcr. 101:5-8 (April 4, 2006). R. 130-136.

93. The Court found that due to the absence of any complaints or notations regarding damage to the premises in either the July, 1996 lease agreement (Exhibit "P-1") or the October, 1997 lease agreement renewal ("Exhibit P-2"), there were no complaints and no defects as to the condition of the premises at those times. R. 154, Tr. Transcr. 101:9-14 (April 4, 2006). R. 130-136.

94. The Court found that as to the refrigerator which defendant Black left at the residence, the lack of any invoice relating to the purchase precludes any credit to defendant *vis-a-vis* damages awarded to plaintiff; the refrigerator to be considered either a gift to plaintiffs or abandoned property. R. 154, Tr. Transcr. 101:22-102:7 (April 4, 2006). R. 130-136.

95. The Court found that the cost of repairs to a faulty circuit breaker represented by the receipt from Daryl C. Payne (Exhibit "P-4") are not tenant damage and are not tenant responsibility. R. 154, Tr. Transcr. 102:21-23 (April 4, 2006). R. 130-136.

96. The Court found that the repairs represented by the Dix Keller invoice (Exhibit "P-5"), including painting, fixture replacements, various fix-ups and debris hauling *except* for the \$225.00 charged for hauling away trees and shrubs, are chargeable to Black and are tenant responsibility. R. 154, Tr. Transcr. 102:24-103:5 (April 4, 2006). R. 130-136.

97. The Court found that the repairs represented by the receipts from various handy-men (Exhibit "P-6") are chargeable to tenant only in the amount of \$100.00 which includes only the cost of replacing various bulbs, electrical covers and supplies; the remaining repairs detailed therein are not tenant responsibility. R. 154, Tr. Transcr. 103:6-9 (April 4, 2006). R. 130-136.

98. The Court found that the repairs relating to the upstairs master bathroom detailed in a Holbrook Plumbing receipt (Exhibit "P-7") are not chargeable to tenant and are not a tenant responsibility. R. 154, Tr. Transcr. 103:10-13 (April 4, 2006). R. 130-136.

99. The Court found that the sheet rock patching and painting of the basement, detailed in the Dix Keller receipt (Exhibit "P-5"), are tenant caused damages and tenant responsibility in the amount of \$1,925.00. R. 154, Tr. Transcr. 104:6-20 (April 4, 2006). R. 130-136.

100. The Court found that the total damages in repairs to the Alpen Way premises which are chargeable to defendant-tenant Black and which are to be awarded to plaintiff-

owner Crowley are \$4,679.26. That amount does not include and plaintiff is not awarded pre-judgment interest. R. 154, Tr. Transcr. 104:21-106:18 (April 4, 2006) and Order and Judgment ¶ 2 (June 9, 2006). R. 130-136.

101. The total damages (rent, repairs, expenses, etc.) requested by plaintiff Crowley, in terms of repairs to the Alpen Way property, were \$5,538.00. R. 154, Tr. Transcr. 105:8-12 (April 4, 2006).

102. The Court orally stated that inasmuch as the damages actually awarded to plaintiff Crowley (\$4,679.26) fall short of the damages requested (\$5,538.00), there is no prevailing party under the circumstances of this case. R. 154, Tr. Transcr. 106:19-23 (April 4, 2006).

103. The Court recognizes that the underlying contracts/lease agreements (Exhibits "P-1" and "P-2") contain provision for attorneys fees and that attorneys fees are requested by plaintiff. R. 154, Tr. Transcr. 103:23-25 and 51:9-11 (April 4, 2006). Those contracts specifically state:

In the event that the Owner shall prevail in any legal action brought by either party to enforce the terms hereof or relating to the demised premises, Owner shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee.

Plaintiff's Exhibits 1 and 2 (Lease Agreements dated July 3, 1996 and Oct. 10, 1997). R. 130-136, ¶ 6.

104. The Court denied any award of attorneys fees. R. 154, Tr. Transcr. 106:22-24 (April 4, 2006). R. 130-136, ¶ 27.

105. The Court found that plaintiff is not entitled to pre-judgment interest on the awarded money damages of \$4,679.26. Order and Judgment ¶ 1 (June 9, 2006). R. 137-138.

106. The Court awarded to plaintiff damages in the amount of \$4,679.26 with post-judgment interest from April 4, 2006 as per Utah Code Ann. § 15-1-4 (1953 as amended) at a rate of 6.37% per annum until paid. Order and Judgment ¶ 3 (June 9, 2006). R. 137-138.

SUMMARY OF ARGUMENT

John Crowley sued Chris Black seeking damages for breach of a written rental agreement. Crowley sought \$5,538.00 in the Complaint. After a bench trial, the Hon. Glenn Iwasaki, judge awarded Crowley \$4,679.26 in damages.

The written rental agreement provided that Crowley as landlord and the prevailing party in a lawsuit against the former tenant Black would be awarded attorney fees. The trial court orally ruled there was no prevailing party. The trial court refused to award attorney fees to Crowley. The trial court made insufficient findings to justify the denial of an award of attorney fees.

Crowley was the successful party to the litigation; he was awarded the bulk of damages that he had sought in his complaint. Crowley was the prevailing party and the trial court erred in not awarding attorney fees to Crowley.

The damages suffered by Crowley as a result of Black's mis-conduct were specific and easily calculated with certainty when they were incurred. For instance, Crowley presented receipts showing he paid for the necessary repairs within months of Black's vacating the premises. Crowley sought and was entitled to prejudgment interest. The trial court refused to award prejudgment interest to Crowley. The trial court made insufficient findings to justify the denial of prejudgment interest.

Because damages were incurred in a certain amount and on a certain date, plaintiff was entitled to and should have been awarded prejudgment interest. The trial court erred in not awarding prejudgment interest.

Crowley has incurred attorney fees and court costs in the pursuit of this appeal. He seeks and is entitled to an award of those fees and court costs.

ARGUMENT

I. THE TRIAL COURT'S DENIAL OF PREJUDGMENT INTEREST IS LEGAL ERROR BECAUSE LOSSES INCURRED ARE PRECISE SUMS FIXED AT A DEFINITE TIME.

A trial court's decision regarding entitlement to prejudgment interest is a question of law, which this Court reviews for correctness and to which it will accord no deference. Lefavi v. Bertoch, 2000 UT App. 5, ¶ 23, 994 P.2d 817. Under Utah law, prejudgment interest may be awarded to provide full compensation for actual loss. See Canyon Country Store v. Bracey, 781 P.2d 414, 422 (Utah 1989). The award is proper if the loss is fixed at a definite time and the interest can be calculated with mathematical accuracy.

Coalville City v. Lundgren, 930 P.2d 1206, 1212 (Utah Ct. App. 1997). This Court has explained that an award of prejudgment interest is appropriate in cases where plaintiff has suffered damages due to the “defendant’s delay in tendering an amount clearly owing under an agreement or other obligation,” Campbell, Maack & Sessions v. Debry, 38 P.3d 984, 991 (Utah Ct. App. 2001), and where plaintiff should be fairly compensated for “the depreciating value of the amount owed over time.” Lefavi v. Bertoch, *supra* at ¶ 24.

Here, the court erred in its denial of plaintiff’s request for prejudgment interest because plaintiff’s loss “is fixed at a definite time and the interest can be calculated with mathematical accuracy.” *See Coalville City, supra*.

First, in proceedings below, the court found that the lease agreements between defendant Black and plaintiff Crowley formed a contract and defendant was bound to fulfill the contractual obligations. Statement of Facts ¶ 81, *supra*. The court found that under the terms of the contract, defendant was obligated to leave plaintiff’s property in the same condition he received it, except for normal and ordinary wear and tear. Statement of Facts ¶ 14, ¶ 15, *supra*. The court also found that when defendant failed to pay rent during November 2001, defendant breached the contract. Statement of Facts ¶ 82, *supra*. Furthermore, the court found that upon vacating in November 2001, defendant Black surrendered the premises in damaged condition beyond normal wear and tear—constituting another breach of the contract. *See* Statement of Facts ¶¶ 82-101, *supra*.

These breaches of the contract, and the damages resulting therefrom, can be fixed at a definite time. Statement of Facts ¶ 71; 82 et seq., *supra*.

Finally, the amount of damages incurred by Crowley due to the breach committed by Black are in certain sums and because they originated at a definite time, interest “can be calculated with mathematical accuracy.” City of Coalville, *supra*. Sitting below as fact finder, the trial court determined that upon moving out in November 2001, Black caused damage, beyond normal wear and tear, in the amount of \$ 4,679.26. Statement of Facts ¶ 100, *supra*. The court determined this amount after trial where plaintiff Crowley presented the court with receipts, invoices and testimony indicating that plaintiff had expended money repairing the residence damaged by Black. *See* Statement of Facts ¶ 100, *supra*.

Crowley is entitled to prejudgment interest as a matter of law. Plaintiff’s loss is definite and fixed as to both amount (\$4,679.26) and time (November 2001). *See* Statement of Facts ¶ 100, ¶ 71, *supra*. These two facts allow for the calculation of prejudgment interest “with mathematical accuracy.” *See* City of Coalville, *supra*. As such, the court below committed legal error in denying plaintiff’s request for prejudgment interest.

II. THE TRIAL COURT ERRONEOUSLY DENIED ATTORNEY FEES TO PLAINTIFF DESPITE DEFENDANT’S CONTRACTUAL BREACH.

A. The trial court abused its discretion by finding that plaintiff was not the prevailing party and by denying plaintiff’s request for attorney fees.

“In Utah, attorney fees are awardable only if authorized by statute or contract.”

R.T. Nielson Co. v. Cook, 40 P.3d 1119, 1125 (Utah 2002); *quoting* Dixie State Bank v.

Bracken, 764 P.2d 985, 988 (Utah 1988); *see* also Utah Code Ann. § 78-27-56.5

(1996)(attorney fees may be awarded to a prevailing party based on a written contract).

Sitting as fact finder, the trial court found that the underlying contracts/lease agreements contain provisions for attorney fees. *See* Statement of Facts ¶ 105, *supra*.¹ However, the trial court denied plaintiff’s request for attorney’s fees determining that plaintiff was not the prevailing party and, further, that there was no prevailing party under the facts and circumstances of this case. Statement of Facts ¶ 106, *supra*. The trial court’s determination that plaintiff was not the prevailing party constitutes an abuse of discretion and its denial of plaintiff’s requested attorney’s fees was erroneous.

1. Prevailing party determination.

Whether a party is the prevailing party is a question for the trial court, and depends in large measure on the context of each case. *See* R.T. Nielson Co. v. Cook, 40 P.3d

¹ These contracts specifically state: “In the event that the Owner shall prevail in any legal action brought by either party to enforce the terms hereof or relating to the demised premises, Owner shall be entitled to all costs incurred in connection with such action, including a reasonable attorney’s fee.” *See* Statement of Facts ¶ 105, *supra*; Plaintiff’s Exhibits 1 and 2 (Lease Agreements dated July 3, 1996 and October 10, 1997).

1119, 1126-27 (Utah 2002). Therefore, “it is appropriate to leave this determination to the sound discretion of the trial court.” Id. Considerations for the trial court include, but are not limited to,

(1) contractual language, (2) the number of claims, counterclaims, cross-claims, etc., brought by the parties, (3) the importance of the claims relative to each other and their significance in the context of the lawsuit as a whole, and (4) the dollar amounts attached to and awarded in connection with the various claims. Id.

These criteria allow for a flexible, case-by-case evaluation capable of yielding outcomes where “both, or neither, parties may be considered to have prevailed.” Id. However, in this case, the trial court’s analysis failed to adequately address the R.T. Nielson Co. factors and failed to make the necessary findings; its determination that neither party prevailed falls outside the controlling law.

In relatively simple cases such as this, where there are only two parties, and no counterclaims, cross-claims, etc., “determining the ‘prevailing party’ for purposes of awarding fees [can be] quite simple.” Mountain States Broadcasting Co. v. Neale, 783 P.2d 551, 555 (Utah Ct. App. 1989). Where plaintiff sues for money damages, and plaintiff wins, plaintiff is the prevailing party; if defendant successfully defends and avoids any adverse judgment, defendant has prevailed. Id. Regardless of whether the trial court applies the straight-forward, simple Mountain States Broadcasting Co. analysis or it resorts to the more in-depth R.T. Nielson Co. criteria, the result should be the same: plaintiff Crowley successfully litigated his breach of contract claim and was awarded the

bulk of the money damages prayed for. Thus, plaintiff Crowley was the prevailing party below.

First, the trial court expressly found that defendant Black breached the lease agreement by failing to pay his last month's rent (Statement of Facts ¶ 84, *supra*) and by damaging the leased premises beyond normal wear and tear in the amount of \$4,679.26. Statement of Facts ¶ 102, *supra*. Plaintiff Crowley's sole claim, based on defendant Black's breach of the lease, was thus successfully litigated and yielded money damages. Defendant Black failed to avoid an adverse judgment and brought no counterclaim. As such, the simplified prevailing party analysis in Mountain States Broadcasting Co., *supra*, is appropriate. It premises prevailing party status on the simple determination of whether plaintiff sued for and is awarded money damages.² Proper analysis in the case at bar would similarly dictate an award of a reasonable attorney fee to plaintiff Crowley. The trial court's failure to apply this simple analysis, in spite of its findings that defendant breached the underlying contract and that plaintiff was entitled to damages, is an abuse of discretion.

² In contrast to the simple nature of the case at bar, R.T. Nielson Co. v. Cook, which announced the more complex analysis and four criteria, involved a complicated array of claims (*e.g.*, breach of contract, account stated, breach of fiduciary duty, etc.), counterclaims (*e.g.*, breach of contract, unjust enrichment, breach of fiduciary duty, etc.) and substantial money damages which necessitated the in-depth analysis prescribed. 40 P.3d 1119, 1127 (Utah 2002).

Second, even though the trial court's decision³ to apply the more in-depth and complicated analysis prescribed by R.T. Nielson Co., *supra*, falls within its discretion, the trial court failed to properly apply this analysis and based its determination on an inadequate review of the R.T. Nielson Co. factors. The R.T. Nielson Co. analysis should include a detailed review of each of the four criteria. See Carlson Distributing Co. v. Salt Lake Brewing Co., 95 P.3d 1171, 1181 (Utah Ct. App. 2004)(*stating* with approval that "The trial court addressed the R.T.Nielson Co. factors in detail and determined that neither party was the prevailing party."). The court below summarily denied plaintiff Crowley's request for attorney's fees based solely on its determination that inasmuch as the damages actually awarded to plaintiff (\$4,679.26) fell short of the damages requested (\$5,538.00), there was no prevailing party. Statement of Facts ¶ 104, *supra*. This observation by the trial court comprises the entirety of its prevailing party analysis. There were no findings of fact to support the determination. As such, there is insufficient basis under the R.T. Nielson Co. framework to support the court's denial of attorney's fees.

Under R.T. Nielson Co., a prevailing party determination must include analysis including: 1) contractual language; 2) the number of claims, counterclaims, cross-claims, etc.; 3) the importance of the claims relative to each other and their significance in the context of the lawsuit as a whole; and, 4) the dollar amounts attached to and awarded in connection with the various claims. 40 P.3d at 1127 (Utah 2002). Here, the trial court

³ The trial court failed to indicate any legal authority upon which it relied.

failed to mention, much less analyze, the first, second or third R.T. Nielson factors.

These failures alone render the trial court's analysis inadequate to support its prevailing party determination, and make its denial of attorney's fees an abuse of discretion.

Properly applied, the second factor-- review of the number of claims, counterclaims, cross-claims, etc.-- would lead to a finding that plaintiff Crowley brought one claim for breach of contract which resulted in damages itemized and presented to the court. Defendant Black brought no counterclaim. The trial court's finding that defendant Black breached the underlying contracts (Statement of Facts ¶ 82 et seq., ¶ 100, *supra*) means under the second factor plaintiff prevailed: plaintiff brought a breach of contract claim and the court found that defendant breached the contract.

As to the third factor--review of the importance of the claims relative to each other and in the context of the lawsuit as a whole-- proper application yields the conclusion: plaintiff's breach of contract claim was the *only* claim and was the *whole* lawsuit. Inasmuch as the trial court found that defendant breached the contract (Statement of Facts ¶ 84, ¶ 102, *supra*), plaintiff must be the prevailing party under the third factor.

The fourth R.T. Nielson Co. factor--comparison of the dollar amounts attached to and awarded in connection with the various claims-- is the only factor touched upon by the trial court. However, the court's bald and singular observation that the damage amount awarded fell short of the specific amount requested (Statement of Facts ¶ 104, *supra*) is not a proper application of this factor. This Nielson factor says nothing about

comparing damage amounts requested with damage amounts awarded with respect to a single claim. Rather, the fourth R.T. Nielson Co. factor simply directs a review of “the dollar amounts attached to and awarded in connection with the various claims.” 40 P.3d at 1127. The trial court could not compare various claims because there were none other than plaintiff’s one claim. Instead, the trial court erroneously compared the damages awarded with those requested, concluding that plaintiff Crowley did not prevail because he was not awarded *all* damages associated with his cause of action.⁴

Properly applied, this last factor would yield the conclusion that on the only claim asserted by plaintiff (breach of contract), defendant was liable (he breached the contract) and the damages awarded were \$4,679.26. *See* Statement of Facts ¶ 102, *supra*. Defendant Black did not bring any counter-claim and failed to defeat the claim brought by plaintiff. The fact that the sole claim, successfully asserted, did not yield *all* of the money damages requested by plaintiff does not render the claim unsuccessful under the fourth R.T. Nielson Co. factor. This factor weighs in favor of a finding that plaintiff Crowley was the prevailing party.

Because the trial court failed to carry out the proper prevailing party analysis, its ultimate conclusion that neither party prevailed represents an abuse of discretion. The failure of the trial court to make any findings make appellate review difficult, if not

⁴ Had plaintiff’s complaint simply prayed for damages as “to be determined at trial” (rather than a specific amount), perhaps the trial court’s analysis may have been different.

impossible. *See* Cabrera v. Cottrell, 694 P.2d 622, 624 (Utah 1985)(*stating* “an award [or denial] of attorneys fees must generally be made on the basis of findings of fact supported by evidence and appropriate conclusions of law.”). Given the trial court’s improper prevailing party analysis and failure to make findings, the resulting denial of plaintiff Crowley’s requested attorney’s fees constitutes clear legal error and should be reversed by this Court.

Plaintiff requests an award of his attorney’s fees incurred in pursuing this appeal. Management Servs. Corp. v. Development Assoc., 617 P.2d 406, 409 (Utah 1980) (*holding* that a contract provision for attorney fees includes those incurred by the prevailing party on appeal as well as at trial). The terms of the underlying contract (Statement of Facts ¶ 105, *supra*; Plaintiff’s Exhibits 1 and 2 (Lease Agreements dated July 3, 1996 and October 10, 1997)) mean that if plaintiff Crowley prevails on appeal, he should be awarded reasonable attorney’s fees including those incurred in pursuing such appeal.

CONCLUSION AND RELIEF

A. ATTORNEY FEE CLAIM

The trial court denied plaintiff’s request for an award of attorney fees. The trial court provided little explanation in its oral ruling as to the factual or legal reason for the denial of an award of attorney fees. The trial court prepared inadequate findings regarding attorney fees.

Plaintiff's attorney fees request was based upon the written lease between the parties.

Plaintiff was the prevailing party because a judgment for past due rent, lost rent and for damages to the rental property was awarded to plaintiff at trial.

Plaintiff incurred attorney fees in excess of seven thousand dollars (\$7,000.00) in pursuit of this action. Based upon the written lease, plaintiff is entitled to and should have been awarded attorney fees and out of pocket expenses incurred in the successful pursuit of this action.

B. PREJUDGMENT INTEREST CLAIM

In this landlord and tenant dispute, Plaintiff was awarded special damages for unpaid rent, for lost rent, and for damage caused to plaintiff's rental property during defendant's occupancy. All those damages are in amounts certain. All damages were established by evidence or receipts showing payment made by plaintiff in 2001 and 2002. In light of the nature of the damages awarded in specific amounts, plaintiff is entitled to prejudgment interest.

With clear and specific factual information, plaintiff's special damages as presented at trial and as found by the Court were measured by "facts and figures" or "calculated with mathematical accuracy." Under these circumstances, the plaintiff is entitled, as a matter of law, to prejudgment interest.

This Court should rule that plaintiff is entitled to attorney fees and prejudgment interest.

Plaintiff should be granted his costs and attorney fees incurred on appeal.

DATED this 16th day of JANUARY 2007.

UTAH LEGAL CLINIC
Attorney for Plaintiff/Appellant

By 
BRIAN M. BARNARD

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed two (2) true and correct copies of the foregoing APPELLATE BRIEF to:

RANDALL T. GAITHER
Attorney for Defendant/Appellee
159 West 300 South Street, Ste. 105
Salt Lake City, Utah 84111

on the 16th day of JANUARY 2007, postage prepaid in the United States Postal Service.

UTAH LEGAL CLINIC
Attorney for Plaintiff/Appellant

By 

BRIAN M. BARNARD

ATTACHMENTS

ATTACHMENT “A”: Findings of Fact and Conclusions of Law,
R. 130-136

ATTACHMENT “B”: Final Judgment, R. 137-138

ATTACHMENT “A”

Findings of Fact and Conclusions of Law

13

Randall Gaither
Attorney for Defendant
159 West 300 South
The Broadway Lofts, # 105
Salt Lake City, Utah 84101

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY

SALT LAKE DEPARTMENT

JOHN K. CROWLEY,

Plaintiff,

vs.

CHRIS BLACK,

Defendant.

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FINDINGS OF FACT &
CONCLUSIONS OF LAW

Civil No. 02-090-4266 CN

(Hon. Glenn Iwasaki)

The above captioned matter having come before this Court for trial on April 4, 2006, the Hon. Glenn K. Iwasaki presiding. The plaintiff, John K. Crowley being present in person and being represented by counsel, BRIAN M. BARNARD and JAMES L. HARRIS, JR. The defendant, CHRIS BLACK, being present and being represented by counsel RANDALL T. GAITHER. The parties having presented testimony and evidence and the matter having been argued and submitted, the Court having reached and announced its decision. The Court on June 9, 2006 having denied plaintiff's request for a

new trial and having sustained defendant's objection to an award of pre-judgment interest. Based thereon and for good cause appearing, the Court hereby makes and enters the following:

FINDINGS OF FACT

1. This action involves a written residential lease entered into and to be performed in Salt Lake County, Utah.

2. The defendant is a resident of Salt Lake County, Utah.

3. Plaintiff owns a home and real property located at 8828 South Alpen Way, Sandy, Utah.

4. Plaintiff John K. Crowley and defendant, Chris Black entered into a written lease agreement on or about October 1, 1997, by which Black leased from plaintiff the home and property located on Alpen Way.

5. The lease provides that upon the termination of the lease, defendant Black was to leave the home "in good condition as received, normal wear and tear excepted."

6. The lease provides that in the event suit is commenced and plaintiff is successful to enforce any term of the lease, the defendant shall be responsible for plaintiff's reasonable costs including attorney fees and court costs.

7. Defendant terminated the lease and vacated the premises in December 2001.

8. Defendant did not pay the last month's rent (December 2001) owed to plaintiff in the sum of \$975.00.

9. Defendant's security deposit of \$925.00 should be credited against the judgment entered against defendant.

10. The refusal to pay last month's rent was a breach of the lease.

11. Upon termination of the lease, defendant failed to leave the home in as good condition as received, normal wear and tear excepted. That was a breach of the lease.

12. During the term of the lease, extensive damage occurred to the home and premises, beyond ordinary wear and tear. That was a breach of the lease.

13. The damage to the home included holes made in doors and sheet rock, missing light fixtures and door knobs, damaged blinds, damage to the bathrooms, etc.

14. Plaintiff incurred costs in repairing the damage to the home which occurred during defendant's occupancy.

15. Plaintiff incurred costs in removing debris left by defendant after his occupancy.

16. Plaintiff has incurred expenses in repairs to the home as a result of damages caused during defendant's tenancy.

17. Plaintiff incurred expense of \$1,580.00 to rebuild the shower and surrounding area of a bathroom due to damage by the

defendant. The defendant is responsible for and should pay \$1,200.00, a portion of that expense.

18. Plaintiff incurred expense of \$1,925.00 to prepare and paint the basement interior due to damage from the defendant. The defendant is responsible for and shall pay said \$1,925.00 of that expense.

19. Plaintiff incurred expense of \$476.50 to replace and stain five damaged interior doors damaged beyond repair during the defendant's tenancy. The defendant is responsible and should pay said \$476.50 for that damage.

20. Plaintiff incurred expense of \$100.00 to repair and replace a sliding door. Plaintiff incurred expense of \$200.00 to clean the premises after defendant vacated the tenancy. Plaintiff incurred expense of \$50.00 to replace two (2) broken window blinds. The defendant is responsible for that damage and should pay \$350.00 for those costs.

21. Plaintiff incurred expense of \$75.00 to replace missing light fixture covers and light bulbs. The defendant is responsible for that damage and should pay \$75.00.

22. Plaintiff incurred expense of \$225.00 to haul debris from the property left by defendant along with other yard waste from trees, etc. The plaintiff shall be responsible and bear this expense.

23. Plaintiff incurred expense of \$150.26 to repair and stain the front door of the home. The plaintiff shall be responsible and bear this expense.

24. The plaintiff incurred expense of \$100.00 for miscellaneous repairs, missing electric outlet covers and supplies and \$15.26 to take pictures of the damage done to the property. The defendant is responsible for and should pay \$115.26 for said expenses.

25. Plaintiff incurred expense of \$307.00 for plumbing repairs to the bathrooms and kitchen. The plaintiff shall be responsible and bear this expense.

26. Plaintiff lost rent during the time necessary to effect repairs to the property. Defendant should pay half of one month's lost rent in the sum of \$487.50.

27. Each party shall bear their own attorneys fees.

28. Plaintiff incurred expense of fees of \$400.00 to hire a private detective to locate defendant after he moved out and failed to provided his new street address. Plaintiff shall be responsible for this expense.

29. Any conclusion of law more appropriately a finding of fact should be so considered and incorporated herein by reference.

CONCLUSIONS OF LAW

1. The court has personal jurisdiction over the defendant, Chris Black.

2. The court has jurisdiction over the subject matter of this action.

3. Defendant breached the lease agreement between the parties.

4. The damage to the property, by defendant and/or during his tenancy, is beyond reasonable wear and tear.

5. Defendant failed to pay last month's rent in violation of the lease agreement. Plaintiff is entitled to collect the last month's rent in the amount of \$975.00.

6. Plaintiff is entitled to damages for repairs to the property in the amount of \$4,141.76.

7. Plaintiff is entitled to a portion of lost rent during the time necessary to effect repairs to the property in the amount of \$487.50.

8. Each party shall bear their own attorneys fees. Plaintiff should be awarded his court costs pursuant to Rule 54(d) of the Utah Rules of Civil Procedure.

9. The defendant should be given a \$925.00 credit for his security deposit.

10. Plaintiff should be awarded a judgment after credit for the security deposit for the total money damages of \$4,679.26.

10. Plaintiff should not be awarded pre-judgment interest.


11. Plaintiff should be awarded courts costs in the sum of \$327.80.

12. The judgment shall bear post judgment interest from April 4, 2006 as per Utah Code Ann. § 15-1-4 (1953 as Amended) at a rate of 6.37% per annum.

13. Any finding of fact more appropriately a conclusion of law should be so considered and incorporated herein by reference.

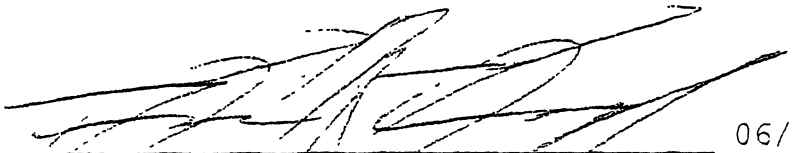
DATED this _____ day of JUNE, 2006.

BY THE COURT:



GLENN K. IWASAKI
Judge

APPROVED AS TO FORM:



BRIAN M. BARNARD
Attorney for Plaintiff

06/09/2006 .

ATTACHMENT “B”

Final Judgment and Order

Randall Gaither
Attorney for Defendant
159 West 300 South
The Broadway Lofts, # 105
Salt Lake City, Utah 84101

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY

SALT LAKE DEPARTMENT

JOHN K. CROWLEY,

Plaintiff,

vs.

CHRIS BLACK,

Defendant.

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ORDER AND JUDGMENT

Civil No. 02-090-4266 CN

(Hon. Glenn Iwasaki)

The above captioned matter having come before this Court for trial on April 4, 2006, the Hon. Glenn K. Iwasaki presiding. The plaintiff, John W. Crowley being present in person and being represented by counsel, BRIAN M. BARNARD and JAMES L. HARRIS, JR. The defendant, CHRIS BLACK, being present and being represented by counsel RANDALL T. GAITHER. The parties having presented testimony and evidence and the matter having been argued and submitted, the Court having reached and announced its decision. The Court on June 9, 2006 having denied plaintiff's motion for

new trial and having sustained defendant's objection to pre-judgment interest. The Court having previously made and entered its Findings of Fact and Conclusions of Law, based thereon and for good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:


1. Plaintiff is awarded a judgment against defendant in the amount of four thousand six hundred seventy-nine dollars and twenty-six cents (\$4,679.26), which does not include pre-judgment interest.

2. Plaintiff is awarded courts costs in the sum of \$327.80.

3. The judgment shall bear post judgment interest from April 4, 2006 as per Utah Code Ann. § 15-1-4 (1953 as amended) at a rate of 6.37% per annum until paid.

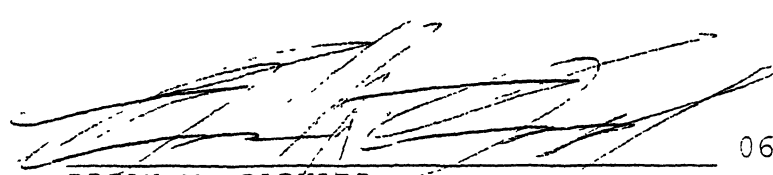
DATED this _____ day of JUNE, 2006.

BY THE COURT:



GLENN K. IWASAKI
Judge

APPROVED AS TO FORM:



BRIAN M. BARNARD
Attorney for Plaintiff

06/09/2006