

ONTARIO

SUPERIOR COURT OF JUSTICE SMALL CLAIMS COURT

BETWEEN:

JOSEPH ALLEN JOLICOUER and JOAN MARIE JOLICOUER

Plaintiffs

- and -

BETTY SCHEIBLER, also known as BETTY WESTOVER

Defendant

REASONS FOR JUDGMENT

This is an action for:

- (i) payment of occupation rent. The Plaintiffs are owners of a two-thirds interest in land which was occupied by the Defendant in her personal capacity from 2018 until 2023 without the permission of the Plaintiffs. The other owner of the occupied land is the Estate of Milton Westover (the "Estate"). The Defendant is the Estate Trustee of the Estate of Milton Westover. The claim for occupation rent is based on use of the home located on the property (the "Home") by the Defendant in her personal capacity from 2018 to 2023;
- (ii) damages for removal of a furnace from the Home at the time the Defendant vacated the Home in 2023; and
- (iii) aggravated, punitive and exemplary damages.

This action was commenced on July 16, 2024. Trial of the action commenced on November 3, 2025.

Evidence was given by the Plaintiffs, Debra Westover-Morriseau (a sister of the Plaintiff Joan Jolicoeur), the Defendant, and Laura McCormack, the Defendant's daughter. The Plaintiffs also rely on written statements provided by several witnesses. All statements were served more than 30 days prior to the trial and no summonses were served by the Defendant on the makers of any of the statements. Under R.18.02, the statements are admissible in evidence.

Background

Milton Westover was a long time owner and occupant of the Home and the land on which the Home was located, a farm of approximately 200 acres. The Home was approximately 100 years old and Milton Westover lived in the Home since the 1950's. Milton Westover transferred a two thirds interest in the parcel of land which included the Home to the Plaintiffs in 1997. He continued to occupy the Home after the transfer, living there alone. In November, 2013, the Defendant, who is one of his daughters, moved into the Home with Milton Westover. The Defendant's significant other, Randy Brannan, later moved into the Home as well, prior to Milton Westover's death.

The Plaintiffs live across the road from the Home.

There is a history of litigation among members of the family of Milton Westover. Milton Westover is the father of the Plaintiff Joan Joliceur, Debra Westover-Morriseau and the Defendant.

In 2017, Milton Westover commenced an action in the Superior Court against the Plaintiffs to set aside the transfer of the land which included the Home that he had made to the Plaintiffs in 1997. During the course of that action, on August 13, 2018, Milton Westover died and the action was continued by the Defendant in her capacity as Estate Trustee of the Estate of Milton Westover.

The Defendant continued to occupy the Home with Randy Brannan after Milton Westover died.

The action was unsuccessful. In his decision dismissing the action issued on August 4, 2022 (2022 ONSC 4550) (the "Trial Decision"), Fitzpatrick J. made certain findings relied on by the Plaintiffs. These findings are summarized by the Plaintiffs, which I accept, as follows:

21. *In the Trial Decision and the Costs Decision, Fitzpatrick J concluded:*
 - a. That the Defendant's evidence was "*self-serving and not persuasive*";
 - b. That *the evidence regarding Milton's wills indicated that the Defendant was exercising undue influence on Milton from the time she moved into the Residence in 2013;*
 - c. *That the Defendant had been living in the Residence rent free since Milton's death;*

- d. That the Defendant was "enjoying most of the rights Milton did have to the Home Property";*
- e. That the Defendant was "unduly influencing Milton to make the claims he did in [the 2017 Action]";*
- f. That Milton's estate's case was "not about asserting rights that would benefit Milton" but about asserting rights that would benefit the Defendant, as the chief beneficiary;*
- g. That the litigation was not in the interests of Milton's estate.*

There was an appeal of the judgment dismissing the action. The appeal was dismissed by the Court of Appeal. Once again, the Plaintiffs rely on certain findings by the Court of Appeal in a decision issued on February 25, 2024 (2024 ONCA 81), (the "Appeal Decision") summarized by the Plaintiffs', which I accept, as follows:

28. In affirming Fitzpatrick J in the Appeal Decision, Roberts, Sossin, and Dawe JJA wrote:

- a. That the Defendant unduly influenced Milton to make the claims he made in the 2017 Action;*
- b. That the Defendant's continuation of the 2017 Action after Milton's death was "not reasonable";*
- c. That the Defendant had done little to administer the estate and had "enjoyed living rent-free in [Milton's] home for several years";*
- d. That the Defendant had "pursued litigation that chiefly benefitted her because of her free living arrangements and the possibility of enhancing her portion of the estate"; and*
- e. That the appeal "was meritless and of no benefit to the estate", having been "founded on the same baseless allegations that were rejected at trial".*

Finally, a beneficiary of the Estate, Debra Westover-Morriseau, commenced an application to have the Defendant evicted from the Home. That application was heard by Pierce J. The application was successful. In a decision dated June 14, 2023 (2023 ONSC 3561) (the

“Eviction Decision”), Pierce J. made certain findings relied on by the Plaintiffs. These findings are summarized by the Plaintiffs, which I accept, as follows:

25. In the Motion Decision, Pierce J. stated:

- a. That the Defendant had refused requests that she pay occupation rent to the estate and the Plaintiffs, which she had not paid for nearly 5 years at that point;*
- b. That the Defendant had not disclosed whether she had been paying any expenses for the Home Property;*
- c. That it was in evidence that the Residence had fallen into a state of disrepair since Milton died;*
- d. That the Defendant had refused access to the Residence to the Plaintiffs, despite their legal interest in the Home Property;*
- f. That there was no provision in Milton's will for the Defendant to reside at the Residence as long as she liked.*

The Defendant vacated the Home on or about July 23, 2023.

Based on the findings noted in the Trial Decision, the Appeal Decision and the Eviction Decision (collectively referred to as the “Prior Decisions”), the Plaintiffs moved to strike the Defence. In a Decision I issued on October 9, 2025, the pleadings in Paragraphs 4, 10, 11, 12 and 29 of the Defence were struck out.

The issues for trial are firstly a determination of the Defendant’s liability for occupation rent, and if liable, the quantum of occupation rent, and secondly the issue of liability for removal of a furnace from the Home by the Defendant at the time the Defendant vacated the property.

Occupation Rent

The Defendant was in occupation of the Home prior to the death of Milton Westover. Milton Westover died on August 13, 2018. The Defendant remained in occupation of the Home until she vacated on July 23, 2023 as a result of the Order of Justice Pierce dated June 14, 2023. The evidence is that neither Milton Westover nor the Plaintiffs asked the Defendant to pay rent prior to the death of Milton Westover, nor is it necessary for me to make a determination of the Defendant’s liability, if any, for occupation rent to the Plaintiffs prior to Milton Westover’s death. I do not draw the conclusion that the absence of a claim for occupation rent during Milton

Westover's lifetime is an indication that the Plaintiffs and the Defendant intended that the Defendant could live in the Home rent free indefinitely, even after Milton Westover's death. I regard the absence of any claim related to the period prior to Milton Westover's death as nothing more than deference by the Plaintiffs to Milton Westover's wish to have one of his daughters live with him.

Legal Test of Liability for Occupation Rent

The test for liability for occupation is set out in *Dagarsho Holdings v. Bluestone*, 2004 CanLii 11217 (Ont. S.C.), *Cormpilas v. Ioannidis*, 2020 ONSC 4831 and *Viric v. Blair*, 2016 ONSC 49 (Ont. S.C.).

In summary, liability for occupation rent is a discretionary equitable remedy based on the rebuttable presumption, where there is no relationship of landlord and tenant, that parties have agreed in an implied contract to the payment of reasonable compensation when one party occupies land owned by another. The amount of reasonable compensation can be nil if the intent of the parties is that the occupation is to be without compensation. Liability is based on equitable principles – there must be an enrichment, a corresponding deprivation and an absence of a juristic reason for the enrichment. Occupation rent can be ordered in estate cases where someone occupies estate property after the death of the owner.

Factors to be considered include the timing of the claim, the duration of the occupancy, the conduct of the occupant, any improvements to value made by the occupant, any reasonable credits to be set off against occupation rent and payment of carrying costs.

The positions of the parties on the applicable test for liability are not materially different.

Determination of Liability for Occupation Rent

The Prior Decisions did not make specific findings that the Defendant is liable for occupation rent. However, certain of the findings in the Prior Decisions are relevant to the component issues to be considered in determining liability.

The Defendant occupied the Home for her own benefit. This was a finding in the Prior Decisions. I make the same finding on the evidence before me. The Defendant used the Home as her residence. If it was her intention in occupying the Home to protect the assets of the Estate, she could have taken steps such as moving goods into storage and locking the property and sharing a key with the Plaintiffs as the co-owners within a reasonable time after the death of

Milton Westover. Instead she did nothing and occupied the Home for five years until evicted by Court Order.

The Defendant was enriched by her occupation of the Home for her personal use.

There is a corresponding deprivation to the Plaintiffs. The Plaintiffs were deprived of the opportunity to rent out the Home during the Defendant's occupation, noting that it would have been necessary to secure the agreement of the Estate to renting the Home. Alternatively, the Home and related property could have been sold and their share of the proceeds invested by the Plaintiffs. There is a clear deprivation of the Plaintiffs as a result of the Defendant's occupation.

There is no juristic basis for the Defendant's enrichment or the Plaintiffs' deprivation by the Defendant. While the Defendant is Estate Trustee of the Estate of Milton Westover, her rights as Estate Trustee do not entitle her to occupy property in which the Estate has an interest. Also, as noted above, the Defendant's occupation was for personal purposes and she has no rights in the Home in her personal capacity.

The Plaintiffs acknowledged that they did not demand payment of occupation rent from the Defendant until 2023, nor had they previously demanded that the Defendant cease occupation of the Home, nor had they ever demanded a key. There is no indication in the case law that a demand is a prerequisite to a claim for occupation rent and I find that absence of a demand for payment of occupation rent is not a bar to the Plaintiff's claim.

One of the factors to be considered in determining liability for occupation rent is whether the Plaintiffs have delayed the bringing of their claim. I note that from the time of Milton Westover's death, the Plaintiffs and the Estate were in litigation as to whether the Plaintiffs even owned an interest in the Home, and the issue was not finally determined until the appeal period from the Court of Appeal's decision in February, 2024 expired.

The Defendant relies on a letter of October 19, 2021 sent to her by the Plaintiffs in which the Plaintiffs, through counsel, make an enquiry as to the Defendant's intentions on whether she is vacating the property. The Defendant argues that this letter shows that the Plaintiffs wanted to the Defendant to stay in the property so they would continue to benefit from the Defendant's payment of the hydro bill and so they would not themselves have to look after the Home. I do not accept that interpretation. I do not think the letter is anything more than an enquiry of the Defendant as to her intentions on vacating. The Plaintiffs did not wish to be in a state of

uncertainty once they learned the Defendant might be moving and merely wished to know the Defendant's intentions so they could act accordingly. The litigation to determine whether or not the Plaintiffs had an interest in the Home had not come to trial at the time the letter of October 19, 2021 was sent. I accept that the Plaintiff's acted reasonably in not commencing an action to enforce their claim to occupation rent until after the Court of Appeal rendered its decision in February, 2024.

I find that the claim of the Plaintiffs to occupation rent is independent of the claims or demands to occupation rent by the beneficiaries of the Estate of Milton Westover. The Plaintiffs are separate owners of an interest and are entitled to take their own position on occupation rent. It is not relevant to determine when, if ever, the beneficiaries advanced a claim to occupation rent, the progress of that claim or whether that claim is settled or abandoned.

The Defendant is therefore liable to pay occupation rent to the Plaintiffs.

Quantum of Occupation Rent

Turning to the issue of the quantum of occupation rent, there are several aspects to be considered.

The extent of the Plaintiff's interest in the Home.

It is common ground that the Plaintiffs are the owners of a two-thirds interest in the Home, and that their claim is therefore limited to two-thirds of the occupation rent which would be attributable to the entire interest in the Home.

The extent of occupation of the property of the Plaintiffs.

The Home is part of a farm worked by the Plaintiffs from 2018 to 2023. The Defendant occupied the Home, a garage and the yard near the Home but did not otherwise make use of the remainder of the property and did not farm it. The extent of the occupation is the Home, the garage and a small portion of land on which the Home sits.

The amenities of the Home.

The Home is approximately 100 years old. The Home has one and half storeys. On the main floor, there is a bedroom, a full bathroom, living room, kitchen and dining room. On the second floor, there are three bedrooms, a laundry room and a two piece bathroom. The Home is built on a basement which is unoccupied and unfinished except for the placement of the furnace. The interior finish of the Home appears to be plaster and lath covered by wallpaper, not drywall.

There is no provision for air exchange or ventilation other than the windows. There is grid connected electrical service on the main floor and the second floor was wired with extension cords. Water is drawn from a well. Sanitary services are provided through connection to a septic field. Heat is provided by a wood stove, later augmented by a propane furnace. Plug in infra-red heaters were also used.

The condition of the Home.

There was a stark contradiction in the evidence of the condition of the Home between the Plaintiffs' and Defendant's witnesses.

Debra Westover-Morriseau testified as to condition. She was familiar with the condition of the Home as she lived nearby and she was a frequent visitor, assisting her father with day to day living. Her visits ceased in January, 2018 and she was not in the home again until shortly after the Defendant vacated in July, 2023. She described the condition of the Home in 2018 as "fine" and being in "decent" condition. She stated that there were no plumbing or sanitary sewage issues. She felt the home was "cozy", it was not dirty, and there were no issues with mold of which she was aware.

She stated that on a visit to the Home in 2023 within days after the Defendant vacated, she found that the condition of the Home had significantly deteriorated. She stated that there was a terrible stench from pet waste, rotting food and an unflushed toilet to the point she had to go out for air several times during the visit. She said the condition was "absolutely filthy" and that the condition of the Home had significantly deteriorated. The ceiling was black with mold, wallpaper was peeling, there were mouse droppings in many locations, and there was refuse throughout the Home. She showed photos taken on her visit. The photos depict a property in a condition which appears to me to be uninhabitable.

She stated that on her last visit to the Home in 2018, the Home was clean, there was no evidence of water leaking, there was no evidence of mold and that there was no evidence of pest infestation or pet waste. She described the condition of the Home in 2023 as "horrible" and that there was no comparison at all to the condition of the home in 2018. She believes that some structural damage to the basement occurred between the time the new furnace was installed in 2017 and 2023, being a broken support post and cracked concrete. She speculates that this deterioration was due to the fact that the basement was not heated for some unspecified period of time. It appears that some structural deterioration had occurred by 2023 but there is no evidence as to the timing or the cause.

The Plaintiff Joseph Jolicouer testified as to the condition of the home. He stated that he was a frequent visitor to the Home until 2017. His visits ceased at that time due to a fractious relationship with the Defendant. He stated that while Milton Westover was alive, he had made repairs to the floor and the ceiling and helped with the installation of the new propane furnace. He stated that the Home was habitable at the time of his last visit and that he would have rented the Home out after Milton Westover's death if the Defendant had vacated the Home.

He stated that after Milton Westover's death, the Defendant changed the locks and he was not allowed in the Home. He was present to inspect the home with Debra Westover- Morriseau in 2023 and stated that the photos provided by Debra Westover-Morriseau accurately depicted the condition of the Home at the time of the inspection. He did not believe the Home was repairable and boarded it up. The Home has not been occupied since the Defendant vacated.

The Plaintiff Joan Jolicoeur testified as to the condition of the Home. She was familiar with the Home as she attended regularly up to about 2015 to assist with her father's day to day living. She felt the Home was clean, safe and habitable at the time of her last visit. She stated there was no evidence of water leaking in or the presence of mold.

She was present to inspect the Home shortly after the Defendant vacated. She agreed that the photos taken by Debra Westover-Morriseau in July 2023 accurately depicted the condition of the Home at that time. She stated that the condition of the Home had significantly deteriorated from the time of her last visit.

The Defendant testified as to the condition of the Home. She stated that at the time of Milton Westover's death, the roof was leaking and that some of the wall boards had pulled away from the walls. She described the condition as "livable". She showed photos of a cracked pillar in the basement which she stated depicted the condition of the post prior to Milton Westover's death. She stated that the Home had been shifting on its foundations. She stated that when she left in July, 2023, the Home was in "tip top" condition and was clean. She stated that the home had not deteriorated from the time of Milton Westover's death. She stated that she lived in the Home and became used to the drafty condition, and that she was staying to protect the estate's interest. I note that this statement contradicts the findings in the Prior Decisions and I place no weight on that statement. The Defendant stated that the photos provided by Debra Westover- Morriseau were falsified or fabricated and do not depict the condition of the Home in July, 2023.

The Defendant's daughter Laura McCormack testified. She provided anecdotal evidence about the condition of the Home as it was her grandparent's residence and something of an anchor or home base for the family over the years. She indicated that the Home was a very old, drafty farmhouse that had never been updated at the time of Milton Westover's death. She said she had seen evidence of water leaks. She stated the condition was "very poor", that there had been water damage and the basement was unsafe. She said that Milton Westover would not allow children to go into the basement. She said she didn't believe the house was safe and had on occasion encouraged the Defendant to move out. She expressed the view that the Home was Mr. Westover's residence, and that while others might find it was unsatisfactory as a residence, it was his home and had been so for decades and that he was satisfied to live there. She doubted the acceptability of the condition of the Home to others. She did not give evidence as to the condition of the Home at any specific point in time.

I accept the evidence of Joan Jolicoeur and Debra Westover-Morriseau that the photos provided depict the condition of the property in July 2023 and I do not believe the Defendant's evidence that the property was left in a clean condition. I find that the condition of the property deteriorated significantly during the period of the Defendant's occupation. As noted, the issue for trial is not the liability of the Defendant, if any, for the deterioration. However, because of the Defendant's occupation, the Plaintiffs were not permitted to take control of their interest in the Home and either take steps to arrest the deterioration, make repairs or sell the Home before it deteriorated further. I find that the Defendant's liability for occupation rent is to be determined based on the condition of the Home at the time the Defendant's personal occupation commenced and not based on the condition at the time her occupation ceased.

I find that the Home was, at the time of Milton Westover's death, a farm home in the range of 100 years of age. It was in deteriorating condition, being drafty and with indications of water leakage. The electrical facilities were incomplete for the second floor. The Property was shifting on its foundations and Milton Westover was concerned with the safety of the basement. The Home was in habitable condition but, in my view, if exposed to the rental market, would have required repairs to the roof, walls, electrical power facilities, heating and basement to bring it to acceptable standards. While the condition was acceptable to Milton Westover, it was his home for over 50 years, and I do not draw the conclusion that what was acceptable to him would have been acceptable to a tenant paying market rent without improvements to its condition, or recognition of its condition in setting the reasonable rent.

The Location of the Home.

The Home is located in a rural area of Chapple Township near Barwick, ON. Barwick is itself a rural community located west of Fort Frances, ON. The Home is located on a gravel year round road several kilometres from Highway 17.

Rental Value of the Home.

There is no specific expert evidence in which an opinion as to quantum of rent is expressed. There is an appraisal done by Leslie Barr as of June 5, 2023, arranged for by the Defendant. Ms. Barr states, concerning the condition and value of the Home at the time of the appraisal, that the Home did not contribute to the value of the farm property as a whole, i.e. that it was worthless in the condition it was in at the time of her inspection and was a detriment to the value of the property as a whole. This statement is consistent with the evidence of the Plaintiffs and Debra Westover-Morriseau as to the condition of the Home in July 2023 and is inconsistent with the statement by the Defendant that the Home was in “tip top” condition at that time.

Ms. Barr did not have the opportunity to view the Home in its condition at the time of Milton Westover’s death.

An appraisal of the property was done by John Ladouceur in October, 2017, in which he indicated that the depreciated cost of the home was between \$30,000 and \$42,000. However, Mr. Ladouceur was not allowed to inspect the interior of the Home for purposes of his appraisal.

A statement from Trevor Judson sworn September, 2025 was introduced. Trevor Judson did not testify. He states that he owns two rental properties in Barwick. One is a three bedroom one bath home rented for \$1,550 per month. One is a two bedroom home rented for \$1,500 per month. There were no photographs of these properties provided on which a comparison of the condition of the three properties can be made. He states that there are limited properties available for rent in the Barwick area. He states that he believes the rent’s he is charging are representative of the market for the Barwick area and that rents have been stable for the past three years. He states he is “familiar” with the Jolicoeur’s farm property. He makes no specific mention of the Home or its condition, only that he is aware of the location.

An affidavit was provided by Peter Howie in which he stated that he searched for rental information on properties owned by the Rainy River District School Board in 2025. He stated that the asking rent for a one bedroom apartment is \$957 and for a two bedroom is \$1,235. No information on the condition of these properties in comparison to the Home is provided. I note also that the rents stated are for apartments, not homes.

Determination of Quantum of Occupation Rent.

The Court has a discretion to be exercised based on the evidence available. I find that the Home was in poor condition at the time of Milton Westover's death and that the condition deteriorated during the course of the Defendant's occupation. There is no evidence that the Defendant made any upgrades during the period of her occupation. Having found liability, the issue of quantum is based on a determination of the rental value of the property.

The Plaintiffs rely on the fact that the Mr. Westover lived in the residence as indicating that it must therefore have been in good or at least average or adequate condition, as they would not have allowed Mr. Westover to live in substandard housing. I do not find those statements persuasive. It is apparent from the evidence from the Prior Decisions that Mr. Westover was a determined man, set in his ways, very resistant to change and that he was determined to live in the Home as long as it met his needs as he saw them. The Home was habitable, but aged and deteriorating and in my view was in objectively poor condition at the commencement of the Defendant's occupancy.

The Plaintiffs testified that the Defendant had not contributed to payment of the realty taxes or the insurance attributable to Home during the period of her occupation. In my view, realty taxes and insurance are typically expenses borne by the Landlord of a rental property and are not the responsibility of a tenant.

The Plaintiff Joseph Jolicoeur stated that he was not aware of any improvements made to the Home by the Defendant during her occupation.

The Defendant paid for hydro, propane, wood for heating, her phone bill, and septic field pumping during her period of occupation. In my view, these are typically expenses paid for by a tenant of a rental property.

The Defendant agreed that she had not paid any amounts for occupation rent.

The Plaintiff Joseph Jolicoeur stated that he used the same well which provided water to the Home in his farming operations and that the Defendant had paid to replace the well pump after it failed. The Defendant stated that the cost of the well pump was approximately \$975.00. Replacement of the pump is typically a repair responsibility of a landlord and the Defendant is entitled to credit for the cost of replacement of the well pump. The Plaintiffs also used the electricity provided for the Home to power the electric fence they used to control their cattle.

Joseph Jolicouer stated that while electricity was available at some outbuildings, he did not use those buildings in farming operations.

With respect to electricity, the Plaintiff Joan Jolicoeur stated that after the Defendant moved out in 2023, the hydro account was transferred to the Plaintiffs. No hydro was thereafter used for the Home, only for farm operations. The bills for hydro ranged from \$40 to \$100 per month after the Defendant vacated the Home. The average hydro bill is \$70 per month and I find that the Plaintiffs derived a benefit in that amount for the use of electricity paid for by the Defendant during the period of her occupation of the Home.

The best evidence of the rental value of the home in its 2018 condition comes from the statement of Trevor Judson. He expresses a view on the rental value of homes, not apartments, which are located only kilometres from the Home. Based on that evidence, the rental value of a three bedroom home is \$1,500.

Exercising my discretion based on the evidence of rental value presented, I find that, based on its poor condition at the time of Milton Westover's death, that the Home would have rented for \$750 per month during the period of the Defendant's occupation. This is one half of the value stated for a three bedroom Home in Barwick as stated by Trevor Judson, which I have discounted due to the more remote location of the Home and based on the poor condition of the Home.

Furnace

With respect to the issue of the furnace, Debra Westover-Morrisseau stated that the propane furnace was purchased in January, 2017 from a supplier named Tomkins in Emo, ON for \$2,260 including HST. Milton Westover wished to pay \$3,000 to include the cost of installation. Debra Westover-Morrisseau stated she was personally involved in the payment arrangements and paid Tomkins \$3,000 in cash provided by Milton Westover. The Tomkins statement provided in evidence says the furnace was sold to "Milton".

The Defendant states that she purchased and paid for the propane furnace. I accept the evidence of the Plaintiffs that Milton Westover paid for the furnace. I find that at or about the time the furnace was purchased, the Defendant had purchased a vehicle, a Chevrolet Trail Blazer, with money provided by Milton Westover and that the evidence as to any payments made by the Defendant were payments for that vehicle, not payments for the propane furnace.

The Defendant admits that she removed the furnace when she moved out of the property. The furnace was purchased new, installed, for \$3,000 and became a fixture and so part of the Home. While the furnace depreciated due to use and would not necessarily have sold for its original cost in 2023, the real damage sustained by the Plaintiffs is the requirement for replacement as the Home would be otherwise unheated. The furnace was, however, never replaced and Home has been unheated and unoccupied. I find that the damage sustained by the Plaintiffs as a result of the wrongful taking of the furnace is \$1,000, being the original \$3,000 cost of the furnace, depreciated by 50% and multiplied by two thirds as the Plaintiffs are the owners of a two thirds interest in the Home.

Limitations Act

The Defendant pleads this action is statute barred under the provisions of the Limitations Act. The Defendant argues that the Plaintiffs should have commenced this action within two years from the date of Milton Westover's death. The Plaintiffs rely on the provisions of s.5(1)(a)(iv) of the Limitations Act which provides that:

- 5 (1) A claim is discovered on the earlier of,
- (a) the day on which the person with the claim first knew,
 - (i) that the injury, loss or damage had occurred,
 - (ii) that the injury, loss or damage was caused by or contributed to by an act or omission,
 - (iii) that the act or omission was that of the person against whom the claim is made, and
 - (iv) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; and

I find that the limitation period did not begin to run until February, 2024 when the decision of the Court of Appeal was released. Until that time, the Plaintiffs were in a position of litigation uncertainty as to whether or not they had a potential claim for occupation rent. If the Court of Appeal found for the Defendant and set aside the transfer of an interest in the Home to the Plaintiffs, the Plaintiffs would have no claim to occupation rent and so it was entirely appropriate for them to wait for final judicial determination of their ownership interest in the Home. I find that the Plaintiffs discovered their claim for occupation rent commencing from the date of Milton

Westover's death in 2018 in February, 2024. As this action was brought in July, 2024, the action was commenced in time.

Conclusion

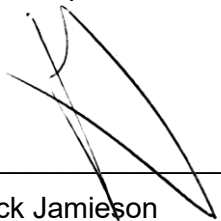
The amount due by the Defendant is calculated as follows:

Occupation rent at \$750 for 59 months x 2/3rds		\$29,500
Less:		
Hydro used by the Plaintiffs and paid for by the Defendant		
\$70 per month for 59 months	(\$4,130)	
Cost of replacement \$975 well pump paid for		
by the Defendant x 2/3rds	<u>(650)</u>	<u>(4,780)</u>
Net occupation rent		24,720
Furnace		<u>1,000</u>
Total due to Plaintiffs by the Defendant		\$25,720

The claim for aggravated or punitive damages was not specifically addressed in the evidence or in submissions and no award is made.

As to costs, counsel did not advise whether or not any offers had been made under the Rules. I may be spoken to on the question of costs if required.

Dated April 6, 2026



Jack Jamieson
Deputy Judge

