

**FILED**

**July 10, 2003**

**RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA**

Starcher, C.J., concurring:

I concur with the majority's decision to remand this case back to the circuit court for full findings. However, on remand, I believe that the circuit court should examine the evidence presented by the plaintiff-landlord to support his "damages." The circuit court should determine what damages claimed by the plaintiff are losses caused by the active misconduct of the defendant-tenant, and what losses are simply "wear and tear" that is expected in the rental of any apartment.

The record presented to this Court includes the plaintiff's claim that the defendant should pay for the cost of replacing the apartment refrigerator – a refrigerator that was 30 to 40 years old – and pay to replace the worn carpet. Also, the plaintiff stated that he normally paid his maintenance man \$10.00 an hour for normal work, yet he presented an invoice that the defendant should pay \$28.50 per hour for 67 hours of labor – \$1,909.00 – to repaint the apartment. Lastly, the plaintiff claimed, in magistrate court, that he bought \$750.00 in supplies from a hardware store for the apartment; in the circuit court, he claimed only \$341.00 in supplies were used in the apartment. Whatever the amount, there is no evidence these supplies were actually used in the apartment. I saw nothing in the record to indicate that any of these expenses – which are exceptionally high – are damages that a

reasonable, prudent apartment dweller should be required to pay upon termination of a lease. It appears as if the plaintiff remodeled the apartment, and now wants the defendant to pay those remodeling costs.

Accordingly, on remand, the circuit court should take care to not impose on the defendant remodeling costs for normal wear and tear to the apartment.