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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

CHARLES TUBBS, EXECUTOR OF
THE ESTATE OF EDWIN TUBBS,

Appellee and
Cross-Appellant.

vs.

DARWIN M. SANDY,

Appellant.

Filed January 31, 1978

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2-59713

Appeal from Linn District Court - Robert Osmundson, Judge.

Defendant lessee appeals the amount of damages for conversion of his personalty in a suit to enforce a landlord's lien. Plaintiff executor of the landlord's estate cross-appeals the finding of a conversion and the adverse ruling that the statute of limitations had not run on defendant's counterclaim. - Affirmed with modification.

Gene V. Kellenberger, Cedar Rapids, for Appellant.

Robert F. Wilson and William G. Faches, Cedar Rapids, for Appellee, Cross-Appellant.

Submitted to Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Defendant lessee Darwin M. Sandy appeals the amount of damages awarded on his counterclaim for conversion of his personal property in a suit originally brought by Edwin Tubbs to enforce a landlord's lien. Plaintiff Charles Tubbs, executor of Edwin Tubbs' estate, cross-appeals the finding of a conversion and the ruling that Sandy's counter-claim was not time-barred. We affirm the damages awarded Tubbs and modify the damages awarded Sandy on his counterclaim.

A landlord's lien is not a self help remedy; it carries with it no right of possession of the tenant's personalty upon his default under the lease. *Remington Typewriter Co. v. E. G. McArthur*, 145 Iowa 57, 123 N.W. 760 (1909). Proceedings to foreclose or enforce such a lien must be brought by a landlord as provided for by the statute. Sections 570.2 and 570.5, The Code. We agree the lockout terminated the lease. Tubbs had to file an action to foreclose his landlord's lien within six months after the June 1970 termination. *Kerr v. Horn*, 211 Iowa 1093, 1096, 232 N.W. 494, 495 (1931). Tubbs made no attempt to comply with the statute before he began selling the stored items. His petition to enforce the landlord's lien filed in April of 1974 is time-barred.

Tubbs' recovery under the lease itself for unpaid rent is controlled by the petition's claim of an oral lease commencing May 1, 1969 at the rate of \$40 per month. Tubbs was entitled to \$480 for the year expiring with the lockout. The trial court so held. Both parties agree Sandy paid Tubbs \$500 on June 1, 1970, for the release of his Borgward automobile. Sandy's appeal challenges only the trial court's award of damages on his counterclaim and the denial of interest. We are without authority to grant relief beyond that requested and accordingly affirm the trial court's award of \$480 rent to Tubbs without any setoff for the \$500 paid.

Sandy testified he was aware that his personalty was being sold in June 1970, which corresponds to the date of the lockout. His counterclaim for wrongful conversion was filed July of 1974, within the five year statute of limitations for such an action. *Cornick v. Weir*, 212 Iowa 715, 721, 237 N.W. 245, 247 (1931); *McCord v. McCord*, 136 Iowa 53, 60, 113 N.W. 552, 555 (1907).

We agree with the trial court that since the lockout terminated the lease and

denied Sandy access to his property, the subsequent sales of Sandy's personality constituted a conversion:

...a distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his right or rights therein or in derogation exclusion or defiance of such title or rights. *Jensma v. Allen*, 248 Iowa 556, 562, 81 N.W.2d 476, 479 (1957).

Zeman v. Canton State Bank, 211 N.W.2d 346, 350 (Iowa 1973), citing *Jensma*, emphasized that the dominion exercised could amount to a conversion only if it was wrongful. The facts developed at trial indicate the sales were wrongful; Sandy flatly denied ever giving any consent to Tubbs to dispose of his property and to apply the proceeds to "back rent."

The sales produced proceeds of \$885 by Charles Tubbs' own account. Sandy urges us to award conversion damages on an actual value basis as has been done in conversion of household goods and wearing apparel. *McMahon v. City of Dubuque*, 107 Iowa 62, 77 N.W. 517 (1899). We are satisfied the counterclaim for \$48,000 is grossly inflated. Sandy has failed to prove any special value; in fact, he very nearly abandoned his personality under circumstances which invited the deterioration which subsequently occurred. We therefore adopt the \$885 proceeds as the relief appropriate for Sandy's damage claim. Judgment should be entered for Sandy in the amount of \$885. This judgment should be offset by the amount of the plaintiff's judgment of \$480. This net judgment of \$405 should draw interest at the rate of 7% from the date of the trial court's original judgment. Section 535.3, The Code 1975.

Finally, we think Sandy must be allowed sixty days from the filing of the modified judgment to remove his remaining personality from the Tubbs' premises.

Affirmed with modification and remanded with instructions.