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Indexed as: MacGarvie v. Friedmann (No. 4), 2009 BCHRT 47

IN THE MATTER OF THE *HUMAN RIGHTS CODE*
R.S.B.C. 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before
the British Columbia Human Rights Tribunal

B E T W E E N:

Noemi MacGarvie

COMPLAINANT

A N D:

John Friedmann, also known as Jan Stefan Friedmann, also known as Jan
Friedmann, also known as Juan Friedmann, also known as John Freeman, and
also known as Jon Friedman

RESPONDENT

REASONS FOR DECISION

| | |
|------------------------------|---|
| Tribunal Member: | Diane H. MacLean |
| Counsel for the Complainant: | Judith Doulis |
| On his own behalf: | John Friedman |
| Dates of Hearing: | July 24, 25, 26, 2006 and March 12, 13, 14, 15, 16, 2007 |

I INTRODUCTION

[1] Noemi MacGarvie filed a complaint against her landlord John Friedmann, also known as: Jan Stefan Friedmann, Jan Friedmann, Juan Friedmann, John Freeman, and Jon Friedman (“Mr. Friedmann”). Mr. Friedmann’s apartment is an older building consisting of about eight units and is located in East Vancouver. Ms. MacGarvie alleges that Mr. Friedmann sexually harassed her during her tenancy and discriminated against her because of her sex contrary to s. 10 of the *Human Rights Code*. This is a final decision regarding the complaint, and my decision regarding Ms. MacGarvie’s application for costs.

[2] This was the second hearing of Ms. MacGarvie’s complaint. The first hearing was held in March and April 2006. However, the Member recused herself from the hearing. A new hearing had to be scheduled and I was designated to hear the matter.

[3] The hearing proceeded on July 24, 25, and 26, 2006 but had to be adjourned due to Mr. Friedmann’s sudden illness on July 26. The hearing was rescheduled to continue on March 12, 13, 14, 15, and 16, 2007. On March 12, Mr. Friedmann applied for an adjournment, which was denied. Further details regarding the procedural background to this complaint and the reasons for denying the adjournment application are provided in *MacGarvie v. Friedmann (No. 3)*, 2007 BCHRT 133 and will not be repeated here.

[4] Mr. Friedmann left the hearing room before the adjournment application was decided and did not return. The hearing continued in his absence. Ms. MacGarvie was not cross-examined, and Mr. Friedmann did not testify.

[5] In addition to Ms. MacGarvie, seven witnesses testified on her behalf: Heather Thompson, Lauren Thewlis, Rebecca Brazier, Vanessa Zemluk, Asha Marie MacDonald, Stephen Good and Diana Thomson. One other witness, Maria Matias, gave evidence in July 2006 during Ms. MacGarvie’s case, but was Mr. Friedmann’s witness. Except for Diana Thomson, all of the witnesses were former or current tenants of Mr. Friedmann. Because Mr. Friedmann did not participate in all of the hearing, not all of these witnesses were cross-examined.

[6] At the end of the hearing, Ms. MacGarvie requested that closing arguments be done by written submissions. Mr. Friedmann was given an opportunity to provide closing submissions, but did not do so.

[7] The decision is organized as follows. First, I set out Ms. MacGarvie's evidence and the evidence of the other witnesses to the extent that is necessary and appropriate for me to do so. Next, I decide whether the alleged instances of inappropriate behaviour, either individually or cumulatively, constitute sexual harassment or discrimination in tenancy. I then discuss remedy, and conclude with my decision on Ms. MacGarvie's application for costs.

II EVIDENCE

Ms. MacGarvie

[8] Ms. MacGarvie testified to the best of her recollection, and I have no concerns about her credibility. Ms. MacGarvie was not cross-examined, and Mr. Friedmann did not testify. Ms. MacGarvie's evidence is therefore uncontroverted, and I accept it in its entirety.

1. Background

[9] Ms. MacGarvie was born in Sackville, New Brunswick and, at the time of the hearing, was 28 years old. Ms. MacGarvie grew up in Mexico and moved back to Canada at age 15. Prior to settling in Vancouver, she travelled and worked across Canada, travelled in Europe and lived in Spain for about two years. At the time of the hearing, she had been living in Vancouver for four years and was a full-time student at UBC.

[10] In January 2004, Ms. MacGarvie was looking for an apartment convenient to travel both to Capilano College and UBC. She saw an advertisement in the newspaper in early January 2004. She met with Mr. Friedmann and viewed the apartment. She explained to him that she was a student and that she was looking for an apartment where the rent did not increase every year. Mr. Friedmann told her that he had only increased

the rent once when he had replaced the floors. Ms. MacGarvie was also concerned about the cost of hydro, and Mr. Friedmann assured her it was never greater than \$20 a month.

[11] Ms. MacGarvie concluded that the apartment was suitable, Mr. Friedmann agreed to rent it to her for \$625 a month on a one-year lease, and Ms. MacGarvie signed a tenancy agreement. She moved in on February 1, 2004 and moved out, for reasons discussed below, on January 31, 2005

2. *Inappropriate comments and gifts*

[12] Ms. MacGarvie described several incidents that occurred while she lived in the apartment that she alleged constitute sexual harassment.

[13] About three months after she moved in, Ms. MacGarvie looked out her living room window and saw Mr. Friedmann pruning a bush with no shirt on. She testified that it seemed like every time that she looked over, Mr. Friedmann was looking at her. When she looked up, he would look away and tense his entire body. She felt that there was nowhere in the apartment that Mr. Friedmann could not see her while he was pruning the bush, so she left. Ms. MacGarvie provided a photograph of the exterior of her living room window, which shows that the bush was very close to her window.

[14] In June 2004, Mr. Friedmann came to collect the rent. He smiled in what Ms. MacGarvie said was an uncomfortable way and asked three times “Is your boyfriend in?” while clearly pointing to Ms. MacGarvie’s bedroom. Ms. MacGarvie did not have a boyfriend at the time. She was very upset and said “John, stop it.” Mr. Friedmann laughed and then said it to her one more time.

[15] Ms. MacGarvie testified that she felt that every time he came to her apartment, Mr. Friedmann would find an opportunity to make a comment that made her uncomfortable. There was always a reference to her sex life or her appearance; he was not respectful and he made her feel uncomfortable. Ms. MacGarvie also felt that Mr. Friedmann would deliberately come at times when he could catch her in her pyjamas. She was uncomfortable when Mr. Friedmann would look at her body and smile, or look at the bedroom and ask if her boyfriend was in. Once, when he collected the rent, he looked at her lower body and said “Are you not eating, you’ve lost too much weight”.

Ms. MacGarvie said “Yeah, that’s what people tell me.” Mr. Friedmann smiled and made what Ms. MacGarvie described as a “hands out”, “fulsomeness” gesture.

[16] In the early summer of 2004, Mr. Friedmann was talking to Diane Thompson and one of her friends. Ms. MacGarvie told Mr. Friedmann that she had left messages regarding problems with her stove. Mr. Friedmann said “Yes, I will come now.” Ms. MacGarvie briefly talked to Ms. Thompson. Mr. Friedmann said “Oh, look at these beautiful women, my tenants. I am looking for a wife, because no one wants to marry me.” Ms. MacGarvie described Ms. Thompson as looking uncomfortable. Ms. MacGarvie didn’t say anything.

[17] Later, Mr. Friedmann came to her apartment to fix her stove. Ms. MacGarvie asked Mr. Friedmann if he liked soccer. He said he was going to a game that night and asked if Ms. MacGarvie wanted to come. Ms. MacGarvie said “no”. Mr. Friedmann said “sexy, 40’s, hardworking mens”. Ms. MacGarvie did not understand what he was referring to but she hoped he was referring to the other team members. She was uncomfortable that he would use the word sexy, and believed that Mr. Friedmann was referring to himself. She testified that based on materials Mr. Friedmann later filed in response to her human rights complaint, she was confirmed in this view. When Ms. MacGarvie declined his offer, Mr. Friedmann got very stern and left the apartment without saying goodbye.

[18] Ms. MacGarvie also described an occasion when Mr. Friedmann, while fixing her stove, stayed quite a while and fixed several things that Ms. MacGarvie had not asked him to. Mr. Friedmann then left and came back and put a mirrored cabinet next to the bathroom door. Mr. Friedmann decided to install it in the bathroom. Mr. Friedmann said that Ms. MacGarvie needed the extra mirrors because “you are a beautiful woman, you need lots of mirrors.” He also installed a peephole in her front door. He stayed a long time and talked a lot about his own personal life. At that time, Ms. MacGarvie testified that she didn’t feel comfortable in his presence, but she was not yet scared of him.

[19] Ms. MacGarvie also testified that Mr. Friedmann brought her gifts. One day he knocked on her door and had a huge bouquet of flowers. He said “This is for you from my garden.” Ms. MacGarvie was uncomfortable; she felt that giving someone flowers

was an intimate gesture. She didn't feel that she knew him well enough to feel either safe or comfortable in accepting the gift, not knowing his intentions. She testified that Mr. Friedmann knew she was uncomfortable because he left right away.

[20] Mr. Friedmann later also gave her some stained glass, saying "Here, so you can remember the sad boyfriends you left in Mexico." Ms. MacGarvie did not ask for the gift, and she felt uncomfortable with Mr. Friedmann giving it to her. She accepted it, but said she would leave it when she moved out.

[21] Ms. MacGarvie also testified regarding an occasion when Mr. Friedmann knocked on her door and offered her a mirror. Ms. MacGarvie asked if he was sure he wanted to give it away. Mr. Friedmann walked around her and straight into the bedroom and propped the mirror in front of a hole in the wall. He said the mirror was "so you can see yourself" and then he looked over at Ms. MacGarvie's bed. Ms. MacGarvie was nervous that Mr. Friedmann would have to stay awhile to find the studs to mount the mirror, so she said she preferred it on top of her dresser, where it remained. She found it upsetting because Mr. Friedmann invited himself into her apartment.

[22] Ms. MacGarvie provided a photograph showing that, when she moved out, she left all the things that Mr. Friedmann had given her, including the mirror and the stained glass, in one corner.

3. The Bicycle Incident and Ms. MacGarvie's Friend

[23] In July 2004, Ms. MacGarvie had a male friend named John coming to visit from Australia. Ms. MacGarvie told Mr. Friedmann that she was going to be having a friend to visit and asked him if it was alright if her friend stayed with her for a while. She did not mention her friend's gender. She testified that Mr. Friedmann said "O.K." and did not otherwise imply it was a problem.

[24] Ms. MacGarvie testified that she was concerned about John's visit, because she had been told that Mr. Friedmann would start to pick on tenants once he saw that they had male visitors.

[25] The next time Ms. MacGarvie saw Mr. Friedmann, she asked him if he was interested in selling a bike, as she had seen that he had several bikes in the basement.

Later, Mr. Friedmann came to her door and said she could look at the bikes. Ms. MacGarvie went to the basement with him. As they were going to the basement, Mr. Friedmann asked if her friend was a boyfriend and Ms. MacGarvie said “no”. Then Mr. Friedmann asked if he was “an old boyfriend” and Ms. MacGarvie said “just a friend”. She testified that she thought that Mr. Friedmann might have asked her if she would like him (her visitor) to be a boyfriend and Ms. MacGarvie again said “just an old friend”.

[26] When they arrived in the basement, Ms. MacGarvie sat on the bike, and Mr. Friedmann walked straight towards Ms. MacGarvie with a determined expression. He put one hand on the handle bar and one on her buttocks. Ms. MacGarvie testified that it wasn’t an accident, but a very firm feel. Ms. MacGarvie got off the bike feeling quite flustered. She remembered that, as she left, she said she should ask her friend if he liked the bike and would leave a message on Mr. Friedmann’s machine.

[27] Ms. MacGarvie testified that she felt humiliated and embarrassed by this incident. She didn’t talk to Mr. Friedmann about it, but she did leave a message saying she was not interested in taking the bike. Ms. MacGarvie noted that Mr. Friedmann did not deny he grabbed her in his response to her human rights complaint.

[28] Ms. MacGarvie testified that, after the bike incident, she called the police. The police told her that if someone acts inappropriately, then she was to tell them that she didn’t want to be treated that way. Ms. MacGarvie told the police that she couldn’t do that, as it would be like throwing gas on a fire. The police explained about the Human Rights Coalition and the Residential Tenancy office. Ms. MacGarvie asked how she could protect herself and they advised her not to accept any more gifts.

[29] Ms. MacGarvie’s friend arrived on July 31, 2004 and stayed for two weeks. He then went away for a period of time and returned in early October 2004. Ms. MacGarvie explained that, although she only had a one-bedroom apartment, she had bought a hide-a-bed. Therefore, the apartment was large enough for two people. Ms. MacGarvie was not home much, as she was working and doing volunteer work. Her friend was working on a project and needed a quiet place.

[30] Ms. MacGarvie testified that one day when she came home, her friend said that he had run into Mr. Friedmann in the hall and introduced himself, but Mr. Friedmann would

not shake his hand. He said to him “My name is John too”, but Mr. Friedmann appeared to be sulky.

[31] Then, Mr. Friedmann delivered a warning letter to Ms. MacGarvie under her door. This letter, dated November 4, 2004, said:

This is first and last warning letter to you as you are in the breach of the Tenancy Agreement. You have no permission from the Landlord to accommodate another person. This man must leave apartment #1 – 1629 E. 10th Avenue immediately. If this happen again or if you cost any additional problem you will gett 30 days Termination Notice and you must vacate my premises. (reproduced as written)

[32] Ms. MacGarvie was upset when she received the letter. For the 10 months she lived in the apartment, she was never late with her rent, and always polite to Mr. Friedmann. There were no complaints about her from other tenants. Ms. MacGarvie felt she should not have received such a harsh warning without Mr. Friedmann talking to her first.

[33] She called Mr. Friedmann to talk about the letter; he didn’t answer, and Ms. MacGarvie thinks she left a message. Since Ms. MacGarvie couldn’t reach him and was quite upset, she tried to find another tenant to talk to. She spoke to Ms. Matias, who was Mr. Friedmann’s witness at the hearing. Ms. MacGarvie showed her the letter and asked her what she thought. Ms. Matias said she went to court to be a witness for Mr. Friedmann in a proceeding where it was alleged that Mr. Friedmann had hit a woman with a baseball bat. Ms. MacGarvie testified that this “freaked” her out. Ms. Matias also told her that Mr. Friedmann didn’t like it when too many people used hot water, and suggested that she call him and offer something extra for the hot water.

[34] Eventually, Ms. MacGarvie talked to Mr. Friedmann on the phone. She said she had received the letter and needed to talk. Mr. Friedmann said there was “nothing to discuss. This man must leave now.” Ms. MacGarvie explained to Mr. Friedmann what her friend does for a living (a film editor). Mr. Friedmann made fun of that, saying “We don’t need movie stars here.” Mr. Friedmann said “This is a bad man” and he started to discuss Ms. MacGarvie’s sex life, saying “I don’t care who you sleep with, if you’re a lesbian, this man is a bad man and he has to leave.” Ms. MacGarvie then said “John, I

can't live here any longer". Ms. MacGarvie testified that she implied to Mr. Friedmann that the way he was treating her was inappropriate and that she would be giving notice very soon.

[35] There was also a discussion about how to finish painting the bedroom, which Ms. MacGarvie had started to do herself. Ms. MacGarvie said she needed more paint and that she had used one can of her own white paint. Ms. MacGarvie said "How about if I leave the bedroom white?" Mr. Friedmann said "If your friend was such a good man, why didn't he help you paint?" She testified that this comment really upset her. Ms. MacGarvie then said she did not want her friend to paint her walls. In her view, Mr. Friedmann appeared to want to convince Ms. MacGarvie that her friend was a bad man.

[36] Ms. MacGarvie felt that Mr. Friedmann seemed to be interpreting his relationship with her wrongly and inappropriately – more like a jealous boyfriend than a landlord – and he wouldn't discuss the possibility of her friend staying any longer. Mr. Friedmann also said "If you move out, it's a free world – do whatever you want", like a jealous boyfriend. Mr. Friedmann also said "If you move out, I will paint your apartment". Ms. MacGarvie took this as an implication that he was a better person than her friend.

[37] Ms. MacGarvie's friend left her apartment on November 4, 2004 (the day of Mr. Friedmann's warning) and thereafter Ms. MacGarvie was afraid to even have him over to visit. Ms. MacGarvie testified that if Mr. Friedmann decided he doesn't like a tenant, then he would yell at them frequently. For example, there was a male tenant from Bosnia in Apartment 2 across the hall and Mr. Friedmann would bang on the door loudly and say "you stupid idiot". Ms. MacGarvie did not want to find herself in the same circumstances.

[38] After that time, Ms. MacGarvie testified that she received one or two suspicious phone calls; she could hear a T.V. in a foreign language in the background. She also got a call from someone asking for John. She said "John who?" Then the caller got nervous and said he was looking for a Vietnamese guy. It seemed that the question was unexpected. She felt that someone put the caller up to calling her. Ms. MacGarvie explained that after her friend moved out, she felt that she was being checked up on. Ms.

MacGarvie said that no one ever called her on her phone and she felt that she didn't know enough people in Vancouver to be getting crank calls.

[39] When Ms. MacGarvie saw Mr. Friedmann next, he was nice in an exaggerated way. Once when Ms. MacGarvie came home, Mr. Friedmann opened the main front door and said "Welcome home." He also offered to fix things and Ms. MacGarvie told him he could do it when she moved out. Just before she gave her notice, he came to give her bread. Ms. MacGarvie refused it politely and he stormed off. Mr. Friedmann had also given Ms. MacGarvie bread shortly after she moved in.

4. Giving Notice

[40] Ms. MacGarvie next saw Mr. Friedmann on Boxing Day. He was carrying boxes of chocolates and offered her one. Ms. MacGarvie initially refused, but felt bad, so she accepted them. She explained that he had several boxes and she felt it wasn't too personal.

[41] She told him, "I will be giving you one month's notice." Mr. Friedmann said it had to be written notice. Ms. MacGarvie had talked to the Residential Tenancy office who told her to make sure she gave a forwarding address as soon as possible. So, Ms. MacGarvie said "O.K. and I'll give you my forwarding address for now." Mr. Friedmann said "Later." It was agreed that Mr. Friedmann would come the next day to pick up her notice and forwarding address.

[42] Mr. Friedmann did not come the next day and did not call. Ms. MacGarvie was concerned about losing her damage deposit. She felt that Mr. Friedmann had mistreated other tenants and ripped them off. Ms. MacGarvie contacted the police and the Residential Tenancy office for more advice. The police advised Ms. MacGarvie to deliver her notice to Mr. Friedmann's address listed in the phone book.

[43] On December 29, 2004, Ms. MacGarvie went to an address she had found in the phone book for Mr. Friedmann and knocked on the door. The house looked empty and she was not sure if Mr. Friedmann lived there. A neighbour commented "Oh, you're looking for John", so Ms. MacGarvie knew it was his house. The neighbour also told

Ms. MacGarvie about two women tenants who had lived there and an incident involving a baseball bat.

[44] Ms. MacGarvie called Mr. Friedmann several times after Boxing day, but could not reach him. She introduced her January phone bill into evidence, which indicated that she called Mr. Friedmann nine times between December 27 and December 31.

[45] Ms. MacGarvie said she believed she next saw Mr. Friedmann on January 5 or 6, 2005. She explained that when she had come home from work on January 2, there was a Notice of Eviction, dated January 2, 2005, taped to her door. It stated that it was being delivered for failure to pay rent on January 1, and provided a number of days to pay the rent or advised her to move out in 12 days. Ms. MacGarvie explained that she was home all day January 1 and Mr. Friedmann had not come to collect her rent. Normally, every month Mr. Friedmann came to pick up the rent, although he did not always come on the first day of the month.

[46] Ms. MacGarvie noted that the eviction notice referred to Mr. Friedmann's address as apartment 12. This was the first time she had an indication of where his apartment was. She believed that #12 was an apartment with a big padlock in the basement of her building.

[47] Ms. MacGarvie testified that she then got really scared. She thought that Mr. Friedmann could come the next day or the day after. She missed some classes waiting for him and going to the Residential Tenancy office. She testified that she had seen Mr. Friedmann do "mean things" to other tenants, for example, change locks and keep deposits. If Mr. Friedmann changed the locks, there would be a long process to get back her belongings, so Ms. MacGarvie was terrified to leave her apartment. Ms. MacGarvie always had a chair against the door to her apartment; she did not know if he would break in.

[48] On January 5 or 6, Ms. MacGarvie decided to call a moving company. She was all ready to go and had called friends to help her move. Then Mr. Friedmann knocked on her door. Ms. MacGarvie asked where he had been, and why he hadn't come. She did not recall an explanation. She told Mr. Friedmann that she had called a truck. She asked if he wanted her to pay the rent for January or move out. Mr. Friedmann seemed

surprised and said “You have to pay the rent.” Ms. MacGarvie said she would pay the rent if Mr. Friedmann would sign a paper she had prepared. Ms. MacGarvie testified that she went over the document with Mr. Friedmann and explained it. This paper said:

Notice to Landlord.

I Noemi MacGarvie gave landlord John Freidmann verbal notice on December 26, 2004 that I will be vacating apartment #1 – 1629 E. 10th Ave. on January 31, 2005 by midnight.

John Freidman agreed to pick up my notice in writing the next morning – December 27, 2004 – but did not come.

John Freidmann is aware of and will not deduct the following from Noemi MacGarvie’s \$300 deposit: 1) one knob on stove needs repair. 2) Bedroom painting is incomplete.”

[49] Mr. Friedmann said, “I don’t need to sign anything.” Ms. MacGarvie said “So you don’t agree with this?” Then Mr. Friedmann grabbed it back and signed it. Ms. MacGarvie gave Mr. Friedmann a check for the January rent and he left. After Ms. MacGarvie cancelled the moving truck, Mr. Friedmann knocked on the door and said he wanted to cash the cheque right away and the cheque was made out on a bank in Ontario. Ms. MacGarvie assured Mr. Friedmann it was drawn on the same bank as in the past. Mr. Friedmann stood staring at Ms. MacGarvie. He got very angry and said “You’re stupid for going to the Tenancy Board – why did you go to the Board?”

[50] They also discussed when Mr. Friedmann could show the apartment to prospective tenants. Ms. MacGarvie believed she gave him Saturday mornings and Friday evenings. At that time, Mr. Friedmann also said he had come to her apartment on January 2. Mr. Friedmann said that she was home, stating “I saw you – your bedroom door was closed and you were laying there.” Ms. MacGarvie didn’t know how he could have seen her. There was a window into the bedroom, but she kept her blinds closed. Ms. MacGarvie testified that she didn’t say anything to Mr. Friedmann about his comment regarding her lying in bed.

[51] Ms. MacGarvie said that, at the time, she didn’t know if Mr. Friedmann went into her apartment when she wasn’t home. However, based on things Mr. Friedmann had

said during the first hearing, she believed that he had been in, or had seen her in, her apartment. For example, Mr. Friedmann said he did not understand how a single woman, living alone, had four dinner plates. Ms. MacGarvie testified that he would have had to look into every single cupboard to know she had four dinner plates and she never gave him a tour of her cupboards. As well, at the first hearing, Mr. Friedmann said that all Ms. MacGarvie did was sit on the couch and watch movies. Ms. MacGarvie said that she had blinds and drapes on the windows.

[52] Thereafter, Ms. MacGarvie arranged for friends to be with her when Mr. Friedmann was coming over. She wrote down who came to see the apartment. The first time he was to show the apartment, Ms. MacGarvie's friend arrived. When Mr. Friedmann saw her friend, he seemed confused. Within five minutes, Mr. Friedmann said no one was coming and he left. The next viewing day, Ms. MacGarvie had a friend and her friend's husband over.

[53] Ms. MacGarvie testified that Mr. Friedmann had a hard time behaving himself when showing the apartment. Ms. MacGarvie made sure she didn't say anything unless asked. Mr. Friedmann made comments that made it clear that he hated Ms. MacGarvie and that she was a bad tenant.

5. *The Police Incident*

[54] When she moved in, there was a hole in Ms. MacGarvie's bedroom ceiling. After Ms. MacGarvie had given her notice, Mr. Friedmann said he wanted to fill it in. Ms. MacGarvie arranged to have a friend there while the repairs were being done. Mr. Friedmann came and did some repairs and said he would come back to finish. Ms. MacGarvie then called and left a message asking him to reschedule the remainder of the repairs.

[55] On January 12, Ms. MacGarvie was sleeping. Mr. Friedmann knocked on the door. He had all of his painting equipment with him. Ms. MacGarvie testified that she believed that Mr. Friedmann knew she would be alone because it was an unscheduled appointment. Ms. MacGarvie said she needed a half-hour and Mr. Friedmann agreed. Ms. MacGarvie called a friend to come over, but her friend could not come right away. Mr. Friedmann came back before the half-hour was up. Ms. MacGarvie said "Hold on."

Mr. Friedmann wouldn't stop pounding on the door; he was becoming louder and more intimidating. Ms. MacGarvie opened the door and asked why he was being so disrespectful. Mr. Friedmann didn't say anything; he just grabbed his materials and went into the bedroom.

[56] Ms. MacGarvie testified that Mr. Friedmann saw her knocking on a neighbour's door, and that she saw him smile because no one was home. Ms. MacGarvie then went back into the apartment and called the Residential Tenancy office, but couldn't get through. She called the non-emergency police and they said she would have to call 911.

[57] Ms. MacGarvie said to Mr. Friedmann "I have to go to work soon." Mr. Friedmann replied "Go, I don't need you here." Ms. MacGarvie then told Mr. Friedmann that she had been advised to call 911 if he wouldn't go. Mr. Friedmann started yelling at her "You have mental problems – you are sick. You see this hole? This is your damage. You are a filthy animal." Then he went and pointed out the ceiling and said, "This is your damage. You're a fucking animal." Mr. Friedmann was so aggressive that Ms. MacGarvie was afraid for her safety, so she left the apartment and went to the front entrance. She didn't leave the building, as she didn't have keys. Mr. Friedmann stayed in Ms. MacGarvie's apartment. Ms. MacGarvie called 911. While she was waiting for the police to arrive, Mr. Friedmann remained inside the apartment.

[58] When the police came, they returned to the apartment. Mr. Friedmann was on a ladder. He was startled to see the policemen but continued painting. The police officers asked Mr. Friedmann to come down and talk to them. Mr. Friedmann said, "I have nothing to say. This woman is the problem. She called you and you can talk to her." Mr. Friedmann lost his temper when the police insisted that he leave the apartment. He started calling Ms. MacGarvie names like "fucking animal." She could hear him yelling from the entranceway. Ms. MacGarvie was frightened, she could barely talk, and was crying. She told the police that Mr. Friedmann had hit a woman with a baseball bat and that they could look him up.

[59] The constable said that from now on, Mr. Friedmann could not go in to the apartment. Ms. MacGarvie didn't want Mr. Friedmann to be vengeful, so she said that he could come into the apartment provided she had 24 hours notice. Ms. MacGarvie told the

police that Mr. Friedmann was giving her gifts. Ms. MacGarvie testified that she was terrified, and that the police said they would do extra patrols.

[60] Ms. MacGarvie provided a copy of police documents regarding this incident. The Occurrence Report states:

On 05-01-12 at approximately 1015 hrs complainant MacGarvie called Police to report that her landlord Friedman was in her residence at 1629 E. 10th and was yelling at her. MacGarvie states that Friedman is angry at her as she is moving out at the end of the month.

PC's arrived on scene and spoke with MacGarvie who stated that Friedman had began yelling at her when she asked for her damage deposit back. MacGarvie believes that Friedman has acted inappropriately by giving her candy and other gifts in the past and saying that he just wanted to be her friend.

Friedman was advised that he was no longer allowed in MacGarvie's suite unless she invited him in and must give 24 hrs notice prior to showing the suite.

Both parties were advised that the damage deposit is a civil matter and they should seek advise from the tenancy branch.

This concludes PC's involvement. (reproduced as written)

[61] Ms. MacGarvie testified that she was really disappointed with the report. It does not refer to the interaction between Mr. Friedmann and police. They had to yell at him, telling him it was not his apartment – it was her apartment. When Mr. Friedmann was taken out of apartment, he ranted about what a horrible tenant she was. Ms. MacGarvie said she never said anything to the police about candy. Mr. Friedmann never said he just wanted to be her friend, and Ms. MacGarvie never used those words. Ms. MacGarvie mentioned to the police that Mr. Friedmann threatened to sue her and possibly take her damage deposit.

[62] The police constable who attended the apartment and wrote the report was not called as a witness.

[63] In any event, Ms. MacGarvie testified that Mr. Friedmann took his things and left, and that he knew he had to give Ms. MacGarvie 24 hours notice before reentering her

apartment. The police stayed in front of the building for some time. Then her friend arrived and she was able to calm down.

6. *Moving Out*

[64] Ms. MacGarvie provided a letter from Mr. Friedmann to her, dated January 14, 2005. This was the first notice from Mr. Friedmann in regard to showing the apartment. It stated:

Please be advise that I will be showing the apartment #1 – 1629 E. 10th Ave. Van. For new prospective tenant.

Friday, January 14 05 at 6:00 p.m.

Saturday, January 16, 05 at 2:00 p.m. (reproduced as written)

[65] Ms. MacGarvie received the next notice from Mr. Friedmann on January 20, 2005. It stated:

Please be advice that I will show apartment #1 – 1629 E. 10th Ave. for new prospective tenants on Saturday Jan. 22 at 3:00 p.m. Sunday Jan. 23 at 2:00 p.m. (reproduced as written)

[66] Ms. MacGarvie arranged for a friend to be with her when Mr. Friedmann showed the apartment. She testified that when entering with one prospective female tenant, he came to see Ms. MacGarvie in the living room and said “When can I fix the damages you made?” Ms. MacGarvie replied words to the effect of, “No, John. You know you can’t come to my apartment because the police ordered you to only show the apartment and give 24 hours notice and you haven’t fixed things in the year I’ve been here and I think you can wait.”

[67] Ms. MacGarvie moved out on January 31. She hired a truck with two movers. She wanted a lot of people around. She also talked to the police again. They recommended that an officer attend to keep the peace. Ms. MacGarvie called the police, but they came too late.

[68] When Ms. MacGarvie finished cleaning the apartment, she went around with a video camera. Ms. MacGarvie handed the keys to Mr. Friedmann. He said he was going

to check the apartment, so Ms. MacGarvie turned on the camera. Ms. MacGarvie said that she took pictures and videotaped her apartment because Mr. Friedmann had said he was going to blame her for the condition of the apartment and was threatening to sue her. They inspected the apartment together. When he was done checking, Ms. MacGarvie left.

[69] Ms. MacGarvie introduced a videotape into evidence. It showed her apartment and the clean condition it was in when she left. It also showed that Ms. MacGarvie had left all of Mr. Friedmann's gifts at the apartment.

[70] During her testimony, Ms. MacGarvie was asked why she felt that she had been discriminated against, as opposed to Mr. Friedmann being a problematic landlord. She testified that in her view, Mr. Friedmann was easily intimidated by men. She did not notice him bullying, keeping damage deposits, not returning damage deposits or being controlling with male tenants, but he did it consistently with female tenants.

[71] Ms. MacGarvie was asked why she hadn't left earlier. When Mr. Friedmann became very controlling, especially about her male guest and asking about her love life, Ms. MacGarvie knew she had to leave. She testified that once she realized she had to leave, she gave Mr. Friedmann her notice.

7. *Aftermath*

[72] Ms. MacGarvie testified that she gave Mr. Friedmann the Vancouver Eastside Women's Centre as her forwarding address because she was given legal advice to do so and because she did not want to put her friends at a disadvantage by giving their address. She did not want to give Mr. Friedmann her own address – she had been very scared of Mr. Friedmann and once he received the human rights complaint, she was worried that he would try to find her.

[73] Mr. Friedmann sent Ms. MacGarvie a cheque to the Eastside Women's Centre for her damage deposit, less \$40 for cleaning the bathroom ceiling and for replacing painted outlets in the bathroom. Ms. MacGarvie testified that she took the cheque to Mr. Friedmann's branch, who told her that the cheque would bounce if she tried to cash it. She went to the bank two or three times to see if the cheque would clear. She believed it did go through after Mr. Friedmann received her human rights complaint.

8. *Events after Ms. MacGarvie filed her human rights complaint*

[74] Ms. MacGarvie testified that she believed that Mr. Friedmann tried to contact her after she filed her human rights complaint. Her employer told her that a potential employer called for a reference. Ms. MacGarvie testified that she believed it was Mr. Friedmann from her employer's description of the caller's accent, the questions asked, and because she had not applied for any other jobs. Ms. MacGarvie said that she was told that the caller did not ask employment-related questions but rather more personal questions designed to find out where she was. For example, the caller tried to find out what building she worked in.

[75] As well, in Mr. Friedmann's response to Ms. MacGarvie's complaint, he said that once he received the human rights complaint, he went to Ms. MacGarvie's forwarding address to speak to Ms. MacGarvie's new landlord. Ms. MacGarvie felt that Mr. Friedmann would try to defame her, cause problems with her new landlord, and intimidate her not to pursue the complaint. He had no other reason to try to contact her. Ms. MacGarvie testified that she sent a letter dated April 1, 2005, to Mr. Friedmann as a result of this incident, which states:

Please be advised that I am being represent by the Human Rights Clinic in regards to the case I have filed against you. I have been made aware of your phone call to my employer, which is inappropriate, and any further questions or concerns you may have needs to be addressed through my lawyer. (reproduced as written)

9. *Mr. Friedmann's Response to the Complaint*

[76] In his response to Ms. MacGarvie's complaint, Mr. Friedmann said:

This woman is has serious health problem, lazy, liar, bad character. She had a lot of problem before and she is doing same again and again. Deportation order out of Canada is only right decision. She was only who breech Tenancy Agreement, no landlord.

...

... I am doing good service and maintenance but I do not provide medical treatment for ill people. When I interviewed Ms. MacGarvie, she told me she is Spanish and she was from Barcelona and that she had lots of

problems. I asked what kind of problems and she never answered me. She promised she is a clean woman and will be a good tenant. She was a very bad tenant, a liar and causing intentional problems. I am very happy with my decision. I do not have rent for these people and anybody like them.

When I received this paper, I went to address that she gave me at 302 Columbia for I wanted to talk to her new landlord. I was shocked when I saw over 100 women inside. I went out and read the sign outside and it says “Vancouver East Side Women Centre.”

Congratulations, Madam MacGarvie, this is the right place for you before you get deportation order out of Canada.

At 28 years old, she is unable to take care of herself. She is dealing only with RCMP, Mexican police, lawyers, welfare officials and Vancouver East Side Women Centre. She will never be a good citizen in this country. (reproduced as written)

10. *Mr. Friedmann’s Behaviour during the Complaint Process*

[77] Ms. MacGarvie testified that Mr. Friedmann sent a series of letters begging people to stop helping her to pursue her complaint, requesting that she be checked by a psychiatrist and otherwise defaming her.

[78] First, she referred to Mr. Friedmann’s letter of May 3, 2006, which was in response to Ms. MacGarvie’s application for costs. Mr. Friedmann suggested that it was Ms. MacGarvie who sexually harassed him in hope of obtaining free rent, but he was not interested in her advances. Ms. MacGarvie denied this allegation and said that this was the first and only time it was mentioned. In that letter, Mr. Friedmann requested the Tribunal’s opinion concerning:

Ms. MacGarvie’s psychological capacity for rational thought as, in my opinion, she has acted irrationally and without due cause. I would request that the Tribunal order a psychological evaluation of Ms. MacGarvie before further proceeding with the allegations against me.

[79] Ms. MacGarvie also referred to a letter written by Mr. Friedmann to the Tribunal on June 15, 2006. This letter was written after the first hearing had been cancelled and a new hearing had been scheduled for late July, and states:

I would like to request for my hearing start July 24, 2006 a Jury – panels with min. of three people.

I have concerns about Tribunal Heather MacNaughton because of past experience. They hate my name. Enough is enough. I have 27 years experience with the Residential Tenancy office – Vancouver Police and Supreme Court also. This case itself is evidence of the discrimination against me, and I am sick of it. The former Tribunal lost control of herself (yelling at me). I never met this women anywhere. This is laying [lying?] I do not have trust in your office at all. Nobody advise me on preliminary hearing on June 2, 2006.

I am asking Tribunal with experience of Gypsy origin, also experience with tenancy on east side of Vancouver. (reproduced as written; also cc'd to Attorney General)

[80] Ms. MacGarvie also referred to a letter from Mr. Friedmann to the Tribunal, dated August 24, 2006. On the “Re” line it states: “Noemi MacGarvie aka Hernandez, Perez, Gonzales v. John Friedman.” In this letter, Mr. Friedmann referred to a witness of Ms. MacGarvie’s that he did not want to testify and a witness of his that he did want to testify (both of these witnesses did testify eventually). After setting out his concerns, Mr. Friedmann went on to state:

Again, I have not broken any laws. I am upset as well as innocent. I am a very good landlord. My record is perfect as I live for 28 years on same area of east side of Vancouver. I never collect one penny from this Government.

My one mistake is that I did not check the references of Noemi MacGarvie. I gave her a chance and trusted her promise to be a good tenant. She was a very bad tenant. At 28 years old, she owned balangy [?] worth \$200 which she mostly picked up from alleys. He bank is in Ontario. She travels across the country, seeking all adventure, free education, welfare, layers and had lots of experience on Human Rights law. I am not the first victim of this woman. She is a danger to the society. For this reason, I want a telephone conversation between myself, the Tribunal and the Complainant. It is important for justice that I be able to check her renting and personal history. (reproduced as written)

[81] Mr. Friedmann also wrote to Community Legal Assistance Society (who are Ms. MacGarvie’s counsel) on January 19, 2007. The “Re” line stated “Complain on N. MacGarvie Assistance”. The letter states:

You provide a lawyer Judith Doulis in her Human Right case. I want you inform you that this women only got into the apartment building what I mange because she lied. She mad promises that she was clean and she would be a very good tenant. She also told me that she had a lot of problems before.

MacGarvie only lived two years in Vancouver, she has traveled (paid[?]) all across the country taking advantage of the government's social welfare system: free education, layers etc. Bank account in Ottawa, address: East Side Women Centre. She is very unhappy from herself. This women is very dangeros to our society. \$200 balangy [?] from alley.

I am 100% sure that I am not the first victim of this woman and certain that I will not be the last, and it is up to you to stop this criminal. They are responsible for my injury, I can't work today.

My record on the East Side of Vancouver for the last twenty-nine years has been perfect. I do many good services and I never break any laws.

Please check her previous references and cancel her legal assistance.
(reproduced as written; cc'd to Attorney General)

11. Mr. Friedmann's Behaviour during the First Hearing

[82] Ms. MacGarvie described delays during the first hearing. The hearing, originally scheduled for October 2005, was first adjourned at Mr. Friedmann's request because he was trying to get legal representation.

[83] At the first day of the hearing, Mr. Friedmann said he had not received any documents from Ms. MacGarvie's counsel, so they could not proceed. However, Ms. MacGarvie was able to obtain proof that Mr. Friedmann had received the documents and the hearing resumed. This delayed the hearing several hours.

[84] In an affidavit Ms. MacGarvie had sworn in May 2006 in support of her application for costs, Ms. MacGarvie referred to further delay, when after several days of hearing, Mr. Friedmann requested an interpreter. She said that he had participated in the hearing up to that point, entirely in English. As well, she said that all of her dealings with him had been in English and that he always appeared to understand what she was saying.

[85] Ms. MacGarvie also noted that Mr. Friedmann objected to every one of her witnesses.

[86] Ms. MacGarvie referred to the events leading to the Member recusing herself from the first hearing. In her affidavit in support of her costs application, she stated the following:

I am advised by my legal counsel that the hearing must now be heard anew with a different Tribunal Member because Mr. Friedmann followed [the Tribunal Member] on April 7, 2006, and approached her in a confrontational manner.

[87] In Ms. MacGarvie's application for costs dated May 12, 2006, Ms. MacGarvie's counsel recounted in submissions why the hearing had to be rescheduled:

On April 13, 2006, [the Registrar] of the BC Human Rights Tribunal, contacted Counsel for the parties to schedule an emergency telephone conference later that day.

At the telephone conference, the Registrar informed Counsel that the continuation of the hearing of the Complaint scheduled for April 29, 2006, had to be cancelled. She further advised Counsel that the Complaint had to be reheard in its entirety before a new Tribunal Member. The Registrar further informed Counsel that the reason for having to order a new hearing of the Complaint was due to the conduct of the Respondent. Specifically, the Respondent followed [the Tribunal Member] and approached her in a confrontational manner and wrote down the licence number of the car which she occupied at the time. As a result of this incident, the Tribunal involved the police.

[88] Ms. MacGarvie testified that Mr. Friedmann's conduct made her very worried about her own safety. She also referred to Mr. Friedmann's response to the cost application where he wrote:

... Furthermore, and contrary to [the Tribunal Member's] claims, I have not been in the parking lot of the downtown Robson & Denman St. Safeway, and thus I could not have had a confrontation at that place.

I ask the Tribunal to stop Ms. MacGarvie because she is not good for our society. I only wasn't Justice. She is a menace to Society and I am an honest, hardworking person. (reproduced as written)

[89] In Mr. Friedmann's response to Ms. MacGarvie's costs application, he said the following about his witnesses:

... While the Tribunal has admitted Ms. MacGarvie's witnesses, my witnesses have not been allowed to assist me in my case. These include my banker, with whom I have frequent and honest dealings, as well as former tenants who would testify on my behalf. I have no idea why my witnesses were disqualified while those of Ms. MacGarvie are allowed to present their respective cases. In regards to this peculiarity, I feel I am being discriminated. (reproduced as written)

[90] In response to this comment, Ms. MacGarvie testified that Mr. Friedmann had no witnesses come in person, but he did come with several letters, from his bank and other tenants. This is what he considered to be his witnesses. The Tribunal Member in the first hearing said the letters would be accepted for a limited purpose. For example, the letter from the bank mentioned he had brought them flowers, so the Member accepted it as evidence for that, but not as general evidence of his character.

12. *Mr. Friedmann's Behaviour during the Second Hearing*

[91] Ms. MacGarvie testified that after she left the apartment, she had not had any direct contact with Mr. Friedmann except at the hearings. Two incidents occurred during the second hearing.

[92] During the first incident, Mr. Friedmann saw Ms. MacGarvie when she was entering the building. He rushed to meet her and called her "fucking garbage". Ms. MacGarvie found this upsetting. Although her concerns had subsided over time, Ms. MacGarvie was still concerned about her safety. She did not know the lengths to which Mr. Friedmann would go. He went out of his way to confront her and was abusive. I directed Mr. Friedmann during the hearing not to speak to Ms. MacGarvie.

[93] On another day, Ms. MacGarvie had come up the elevator to the floor where the hearing was being held. Because no one was there, she went to leave. The elevator door opened, and Mr. Friedmann was inside. Ms. MacGarvie testified that he appeared to look out to see if anyone else was there with her. Ms. MacGarvie felt that there would have been a confrontation if Mr. Friedmann had known no one else was there. Later that day,

Mr. Friedmann came out of a boardroom and started to approach her with a sort of smile on his face. The Tribunal employee at reception asked him what he wanted and redirected him elsewhere. Ms. MacGarvie testified that she had a feeling that Mr. Friedmann wanted to confront her when she was not surrounded by people. That was why, in the last couple of months of her tenancy, she wanted to make sure she would not be alone.

[94] Ms. MacGarvie also felt that Mr. Friedmann was trying to delay the second hearing. Ms. MacGarvie testified that in her view, Mr. Friedmann tried to find every possible way to block the hearing from going ahead, including by providing doctor's notes and not having a lawyer.

[95] Ms. MacGarvie also testified that it had been an awkward experience with witnesses. She said that people told her that they did not want to get involved because they did not want problems with Mr. Friedmann. One potential witness would not take part unless his evidence was anonymous. A couple of witnesses refused to come if Mr. Friedmann was anywhere near the building. Although she had obtained an Order to Appear for a witness who was still a tenant, Ms. MacGarvie testified that the witness asked her not to pursue the Order to Appear at the hearing because he was concerned that his tenancy situation with Mr. Friedmann would become worse. Ms. MacGarvie also believes that Ms. Matias was subpoenaed to testify as Mr. Friedmann's witness, and came unwillingly.

13. Impact on Ms. MacGarvie

[96] In regard to the impact her experience with Mr. Friedmann had on her, Ms. MacGarvie testified that she felt her privacy had been trampled and that Mr. Friedmann used his power as a landlord to make sexual innuendoes, but that she couldn't say much because she had to have a reasonable relationship with him because he was her landlord.

[97] Ms. MacGarvie had told Mr. Friedmann about her financial concerns and that she wanted the apartment for a long term. He also knew that she did not have many friends or family in Vancouver. Once she moved in, Mr. Friedmann seemed very sure he had a right to pursue her, bring her gifts, ask her out; even though she was short with him and

unresponsive. Ms. MacGarvie said that it was hard to keep things appropriate without Mr. Friedmann getting angry.

[98] The circumstances were extremely upsetting by the time she left the apartment. Ms. MacGarvie testified that Mr. Friedmann was angry because he did not think she was going to go through with moving out. He was very nice in November and assumed she was going to stay. However, once Ms. MacGarvie gave her notice, he became very abusive and tried to find ways to bully and punish her. Mr. Friedmann did not let her leave in peace and dignity – he was vindictive, punishing, taking out his anger and keeping part of her damage deposit.

[99] Ms. MacGarvie was also afraid Mr. Friedmann would lie to her new landlord who would try to evict her. She was afraid that Mr. Friedmann would call her old rental references and ruin her reputation and that she would be left with no references.

[100] Ms. MacGarvie said that her last three years in Vancouver have been challenging. In the first couple of months after she moved out, she was very highly stressed. She rarely goes to Commercial drive, which was close to the apartment, although she loves the area. It has almost been overwhelming in arranging time to come to the hearings and being concerned about her safety. She wanted to leave it behind and go on with her life, but believed that Mr. Friedmann was hurting people.

[101] With regard to his various letters, Ms. MacGarvie testified that she believed that Mr. Friedmann was trying to discredit her, including by portraying her as someone on social assistance and by suggesting that she had several last names. She also felt that Mr. Friedmann was trying to derail the hearing and to bully and intimidate the Tribunal. She testified that Mr. Friedmann was trying to ruin her name and every aspect of her life.

[102] Ms. MacGarvie also testified that it was frustrating that Mr. Friedmann would not come to the hearing and defend himself. She believed that he will continue to try to bully and scare her and try to find any means possible to discredit her. She had concerns about future encounters with Mr. Friedmann as a result of pursuing her human rights complaint. She was also concerned that if there is a decision in her favour, Mr. Friedmann will retaliate against her.

Other Witnesses

[103] As noted at the outset of these reasons, at the time of the hearing, Heather Thompson, Lauren Thewlis, Rebecca Brazier, Vanessa Zemluk, Asha Marie MacDonald, Stephen Good and Maria Matias were former or current tenants of Mr. Friedmann. Each of them gave evidence about their own experiences with Mr. Friedmann. Ms. MacGarvie submitted that these witnesses' experiences are evidence of a pattern of behaviour, that is, Mr. Friedmann making inappropriate comments and bullying young, female tenants.

[104] Diana Thomson, who was not Mr. Friedmann's tenant, testified regarding events which led to her receiving injuries as a result of Mr. Friedmann hitting her with a baseball bat. Ms. MacGarvie testified that she knew of this incident, and that it caused her to fear Mr. Friedmann.

[105] Mr. Friedmann was unrepresented during the times he was present at the hearing (July 2006). He did not object to the witnesses giving evidence, and I allowed them to testify. However, I have concerns about the use to which Ms. MacGarvie submits I should put their evidence.

[106] The Tribunal has a broad discretion under s. 27.2(1) of the *Code* to accept evidence that the member considers necessary and appropriate, whether or not that evidence would be admissible in a court proceeding. However, the Tribunal approaches evidence that may amount to similar fact evidence with caution. As the Tribunal explained in *Willis v. Blencoe*, 2001 BCHRT 12:

As a general rule, it is not appropriate to admit similar fact evidence to bolster an argument that a respondent has a propensity which makes it more likely than not that he or she engaged in the alleged conduct. Applied in this context, it would not be appropriate to admit similar fact evidence to show that the respondent is the type of character that is likely to have sexually harassed a complainant.

It may, however, be appropriate, and necessary, to hear similar fact evidence in cases where the respondent puts his or her good character in issue, or where the similar fact evidence goes to bolster the credibility of a witness. In such cases, similar fact evidence that demonstrates a pattern of conduct that is unique or distinctive and coincides with some unique or distinctive pattern alleged in the case before the adjudicator should be, and is, admitted. The question the adjudicator must ask is whether the

probative value of the evidence outweighs its prejudicial effect. (paras. 9-10)

[107] I have no concerns about Ms. MacGarvie's credibility and have accepted her evidence in its entirety, so there is no need for me to rely on evidence of a pattern of conduct in order to bolster her credibility. While Mr. Friedmann put his character at issue, he ultimately did not testify. Also, Ms. MacGarvie has not filed a systemic or group discrimination complaint. Heather Thompson testified that she filed her own human rights complaint, but it was not accepted by the Tribunal because it was out of time. None of the other witnesses testified that they filed their own human rights complaints.

[108] Because Mr. Friedmann did not object to the evidence and ultimately did not participate in the remainder of the hearing, I had no submissions before me regarding the evidence's potentially prejudicial impact and whether this impact outweighed its probative value.

[109] Because Ms. MacGarvie's evidence is uncontroverted and I have no concerns about her credibility, it is not necessary for me to consider the other tenants' evidence for the purposes of establishing a pattern of behaviour. Therefore, in all of the circumstances, I have determined that it is not necessary for me to determine whether the other tenants' evidence concerning Mr. Friedmann's alleged treatment of them meets the evidentiary test for admissible similar fact evidence.

[110] However, some of the other tenants' evidence and Diana Thompson's evidence corroborated Ms. MacGarvie's testimony on certain points or was generally of assistance in putting Ms. MacGarvie's reactions to the various alleged instances of harassment and discrimination into context. Also, Ms. Brazier, Ms. Zemluk and Mr. Good gave evidence regarding Mr. Friedmann's comments to them about Ms. MacGarvie, and Ms. Brazier, Ms. Zemluk, Ms. MacDonald and Mr. Good testified that Mr. Friedmann pressured them to support him in response to Ms. MacGarvie's human rights complaint.

[111] I am satisfied that each of the witnesses testified to the best of their ability. It is possible that, for some of them, their memory was not completely accurate, due to the passage of time. As well, some of them may have at times unintentionally exaggerated

their evidence, but overall, where these witnesses had direct knowledge of certain events, I accepted their evidence as reliable. In regard to Mr. Friedmann's one witness, Ms. Matias, since she was still a tenant of Mr. Friedmann, I treated her evidence with some caution for that reason as well. However, overall, I am satisfied based on the principles set out by the BC Court of Appeal in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 that the witnesses were credible.

[112] Although a great deal of evidence was given by the other tenants and Diana Thomson, because of the purposes for which I accept that evidence, I do not refer to all of it in these reasons, although I have reviewed all of the evidence carefully.

Heather Thompson

[113] Ms. MacGarvie testified that Heather Thompson was present when Mr. Friedmann said "Oh, look at these beautiful women, my tenants. I am looking for a wife, because no one wants to marry me", and Ms. MacGarvie described Ms. Thompson as looking uncomfortable. Ms. Thompson gave very little evidence about this incident. She testified that once on the front lawn, Mr. Friedmann said something about beautiful women and no one wanting to marry him. It was unclear whether she was describing the same incident as Ms. MacGarvie.

[114] The remainder of Ms. Thompson's evidence concerned Mr. Friedmann's alleged treatment of her. Because I have determined that this evidence is not necessary to the disposition of Ms. MacGarvie's complaint, I do not set that evidence out here.

Lauren Thewlis

[115] Lauren Thewlis testified that she only met Ms. MacGarvie once while she was a tenant, and neither she nor Ms. MacGarvie testified that they discussed Mr. Friedmann's behaviour. Ms. Thewlis also did not give evidence that would be potentially relevant to Ms. MacGarvie's costs application. Rather, her evidence was primarily regarding Mr. Friedmann's alleged treatment of her. For the reasons given above, it is not necessary for me to refer to Ms. Thewlis' evidence on this issue.

Rebecca Brazier

[116] Rebecca Brazier moved into Ms. MacGarvie's apartment after Ms. MacGarvie left. Prior to the hearing, she had not spoken to Ms. MacGarvie, although Ms. MacGarvie was present in the apartment when Ms. Brazier viewed it.

[117] Ms. Brazier testified that Mr. Friedmann said he did not like Ms. MacGarvie, that she was troublesome and did not take care of the apartment. Mr. Friedmann said she lied, that she said she was Spanish from Barcelona and that he found out she was Mexican. Mr. Friedmann said that Mexicans are dirty and bad and caused trouble. He also called her crazy.

[118] Mr. Friedmann also told Ms. Brazier that Ms. MacGarvie had a boyfriend move in without asking permission, and that he did not like that. Mr. Friedmann said one time that he met Ms. MacGarvie's friend in the hall. Apparently Ms. MacGarvie's friend wanted to shake Mr. Friedmann's hand. He told Ms. Brazier that he took it as an insult, because apparently younger men don't offer to shake an older man's hand in Eastern Europe.

[119] Ms. Brazier also testified about a letter she wrote, dated March 29, 2005. This letter was addressed "To whom it may concern" and states:

I have been a tenant in apartment #1 since February 2005. My dealings with John Friedman up to date have been few. He did fix my oven shortly after I asked him to, and had other wise been an agreeable landlord. If you have any further questions, please feel free to contact me.

(signed by Ms. Brazier)

P.S. I was witness to a very poor and unfinished paint job in the apartment when I viewed it in January.

[120] Ms. Brazier was asked how the letter came about. She said it happened sometime after she had signed the lease. Mr. Friedmann asked for it because he needed a character reference "that he was a good guy". Ms. Brazier had only been living in the apartment for a couple of months and Mr. Friedmann had been fine up to that point. Ms. Brazier agreed to do it because she did not want to rock the boat. After she provided letter, Mr.

Friedmann asked her to add that she had seen a bad paint job in the bedroom and something on the bathroom ceiling that Ms. MacGarvie was responsible for, so Ms. Brazier added a post script saying that. Ms. Brazier testified that she didn't really want to write the letter but Mr. Friedmann was her landlord and she felt compelled to do it.

[121] Ms. Brazier wrote another letter in support of Mr. Friedmann, which is dated December 11, 2005 and addressed "To Whom It May Concern". The letter states:

My name is Rebecca Brazier and I am a former tenant of 1629 E. 10th Ave. In Feb 2005 I signed a lease with John Frieman for one year. After a brief discussion with Mr. Frieman on November 7, 2005 it was agreed that he would release me from my lease, if we were able to find a new tenant for Dec. 01/05. After I placed an ad on line for the apartment there was a large response and the apartment was quickly rented again. As a result I was released from my lease accordingly and as of today (Sunday December 11, 2005) my full damage deposit was returned in cash.

[122] Ms. Brazier testified that she wrote the letter after she gave notice. Mr. Friedmann told her he wanted another character reference for a proceeding. He wanted the letter to state that Ms. Brazier had asked out of lease early and he obliged. Ms. Brazier had been having trouble getting her damage deposit back and did not get it back until she provided the letter. Ms. Brazier testified that she did not want to give Mr. Friedmann another letter of reference. She did not really want to help him out any more, but was afraid she would not get her damage deposit back.

[123] During the first hearing, Mr. Friedmann was represented by a law student. The student asked Ms. Brazier to testify. She told the student that she was not interested in testifying for Mr. Friedmann, that she did not have the best experience at the apartment building and did not want to help him out.

[124] Ms. Brazier ran into Mr. Friedmann on the street and he asked why she would not testify, saying to her that he was a good man and asking her why was she doing this. Ms. Brazier said she did not feel right testifying for him, that she had nothing good to say on his behalf. Ms. Brazier finally had to end the conversation.

Vanessa Zemluk

[125] Ms. Zemluk testified that Mr. Friedmann complained to her about other tenants. Ms. Zemluk thought he complained about Ms. MacGarvie, but she did not remember any specifics. He complained about a girl downstairs who had a cat, a boyfriend who came to stay too often, too many people coming through. He referred to the number of men who came through in a number of months and people being pigs, but Ms. Zemluk was not sure if any of this was in specific reference to Ms. MacGarvie. She also testified that there was also another incident when someone moved in who said they were Spanish and were actually Mexican and Mr. Friedmann went on a tirade. Ms. Zemluk testified that she did not know if these comments related to Ms. MacGarvie.

[126] Ms. Zemluk also testified that Mr. Friedmann asked her to write him letters of reference. In a letter dated March 29, 2005 and addressed “To whom it may concern”, Ms. Zemluk wrote:

I am a resident at 1629 east 10th Ave. where Jon Friedmann is my Landlord. As student I appreciate his determination to maintain a quiet, safe and friendly building. During the time that I have lived here we have often talked about sports particularly hockey, something Mr. Friedmann is quite knowledgeable in. Jon has values based in respect and community, this is something that he has talked about and that he displayed to me when he prepared a delicious turkey for the apartment building shortly after Christmas. During the time that I have lived here I have felt comfortable around Mr. Friedmann and the building that he maintains.

[127] Ms. Zemluk said that this was the second letter of reference that she wrote for Mr. Friedmann. He came and asked for a letter at a time when Ms. Zemluk was not sure if she was going to stay in her apartment. She was quite reluctant to write the letter. Mr. Friedmann had often treated her roommate with hostility. She first wrote a neutral letter that she had not had any problems with Mr. Friedmann. Mr. Friedmann said the letter was not good enough and gave her a “sob story”. Ms. Zemluk then wrote the March 29th letter. She did not particularly want to write it. However, she felt that Mr. Friedmann was her landlord and if she didn’t write the letter, it might jeopardize her tenancy.

[128] Mr. Friedmann told Ms. Zemluk that “people were out to get him” and that he needed her help. Specifically with regard to Ms. MacGarvie’s human rights complaint,

he said that she was no good, not to be trusted, and out to get him. He also talked about Ms. MacGarvie wrecking the apartment and just leaving it.

[129] At one point, Mr. Friedmann called Ms. Zemluk's parents' house to try to get help from Ms. Zemluk's father. He offered to pay in exchange for supporting him in the case.

[130] Ms. Zemluk testified that Mr. Friedmann had also tried to blackmail her by saying that she had taken some furniture from the alleyway. Mr. Friedmann was trying to get Ms. Zemluk's support in defence of Ms. MacGarvie's human rights complaint, but this after he had called Ms. Zemluk's roommate (Ms. MacDonald) a "fucking bitch" because she had refused to help Mr. Friedmann. Ms. Zemluk asked Mr. Friedmann how he could treat people like that and expect them to vouch for his character. Then Mr. Friedmann accused her of taking furniture from the alleyway.

Asha Marie MacDonald

[131] Ms. MacDonald, who was Ms. Zemluk's roommate, also gave evidence that Mr. Friedmann tried to pressure her to support him in his defence against Ms. MacGarvie's human rights complaint.

[132] Ms. MacDonald testified that Mr. Friedmann telephoned her shortly after he found out that he was going to the hearing and asked Ms. MacDonald to support him. Ms. MacDonald sort of brushed it off, telling him that she did not have time to talk about it. Ms. MacDonald thought the conversation was over, but a few weeks later Mr. Friedmann phoned back and asked again. Ms. MacDonald said she did not have time to help him. Mr. Friedmann then called her a "fucking bitch". Ms. MacDonald hung up, and thereafter would not answer the phone when she saw Mr. Friedmann's number on call display. Ms. MacDonald testified that she did not want to support him because, during their tenancy, Mr. Friedmann never did anything helpful for her or Ms. Zemluk.

Stephen Good

[133] At the time of the hearing, Mr. Good still lived in the apartment building. He gave evidence about seeing Mr. Friedmann without a shirt on, negative comments that Mr. Friedmann made about Ms. MacGarvie, and about Mr. Friedmann's requests for reference letters.

[134] Mr. Good testified that he had seen Mr. Friedmann outside without his shirt. On one occasion, he saw him riding his bike in the neighbourhood. However, he couldn't specifically recall seeing Mr. Friedmann doing yard work without a shirt on.

[135] Mr. Good also testified that Mr. Friedmann complained to him about Ms. MacGarvie. Mr. Friedmann said that he was very angry at her. He talked a lot about Ms. MacGarvie being dishonest about where she was from, that is, not from Spain but Mexico, because when she first moved in, she said she was from Barcelona. Also, Mr. Good testified that, as the hearing progressed, Mr. Friedmann referred to Ms. MacGarvie in strong language, and called her a "bitch". Mr. Good said it was hard for him to recall specific things that Mr. Friedmann said. His general tone was that the complainant was never going to amount to anything; she was sort of a gypsy and had all these men coming by.

[136] Mr. Good wrote a reference letter for Mr. Friedmann. He did not want to write the letter, and wrote it because Mr. Friedmann was really insistent about him doing so. The letter, dated April 2, 2005, states:

In the time I have lived here, my dealings with John Friedmann have been casual and friendly. John has offered to replace the kitchen window in my apartment with a more efficient modern window, which we will arrange in the future. Beyond that, he has not volunteered any repairs and none have been requested. Regarding gifts, John has offered me a fish tank, which I declined, and food, which I have accepted. John has been respectful of my privacy. He has never requested to enter my apartment, and has only knocked at reasonable times. John makes an effort to keep the building quiet. Our relationship has been decent overall.

[137] Mr. Good was asked about other people in the apartment around the time that Mr. Friedmann was looking for letters of support. He testified that there was a Japanese couple in the building, and Mr. Friedmann told Mr. Good that he told the couple that friends do 'favours' for each other and if they were friends they would write the letter. Mr. Good said that Mr. Friedmann told him that he also suggested to the couple that he would not give them the 'favour' of having a dog if they did not write the letter. Those tenants moved out shortly after.

[138] Mr. Good was asked if Mr. Friedmann discussed these proceedings with him. Mr. Good replied that Mr. Friedmann had intended to call him as a witness and discussed what he wanted him to say. Mr. Friedmann said he wanted Mr. Good to testify that he trusted him 100%, and to say things that would make him seem like a good landlord. Mr. Friedmann told him that if Ms. MacGarvie's lawyer ever tried to contact him he should hang up the phone. Also, Mr. Friedmann told him that he wanted to take a gun and shoot everyone involved in this case. Mr. Good told Ms. MacGarvie's counsel about this, and Ms. MacGarvie's counsel contacted the police, who contacted him.

[139] Mr. Good testified that he was personally concerned about testifying because, at the time of the hearing, he still lived in the building. It made Mr. Good uneasy because Mr. Friedmann had a key to his apartment. He was concerned that Mr. Friedmann's treatment of him was going to deteriorate, and in fact it already had. Mr. Friedmann's behaviour towards Mr. Good changed, and Mr. Good was concerned that Mr. Friedmann had increased his rent.

Diana Thomson

[140] Ms. Thomson gave evidence regarding an incident where she was a guest of tenants in a downstairs suite in a house that Mr. Friedmann owned and resided in. She testified that Mr. Friedmann hit her with a baseball bat and she sustained injuries as a result. Mr. Friedmann was charged with assault, and was eventually acquitted.

[141] As noted above, Ms. MacGarvie testified that she had heard about this incident from one of Mr. Friedmann's neighbours, and knew that Mr. Friedmann had been charged with assault. Ms. Thomson's evidence is of assistance in providing a context to Ms. MacGarvie's fear of Mr. Friedmann and her resulting behaviour towards the end of her tenancy. Ms. Thomson's evidence is not accepted as evidence of Mr. Friedmann's character or propensity to behave in a certain manner, including towards Ms. MacGarvie.

Maria Matias

[142] Ms. Matias, who was still a tenant at the time of the hearing, was called as a witness by Mr. Friedmann and, to accommodate her schedule, she was allowed to testify in the middle of Ms. MacGarvie's case. She gave evidence about Mr. Friedmann doing

yard work without a shirt and about her discussion with Ms. MacGarvie when her friend John visited.

[143] Mr. Friedmann asked Ms. Matias if she ever saw him around the apartment with no shirt. She testified that she thought she might have seen him that way when he cut the grass, but he might have worn a singlet.

[144] Ms. Matias recalled that Ms. MacGarvie told her that she had to move out because Mr. Friedmann didn't want her boyfriend. Ms. Matias advised her to talk to Mr. Friedmann and offer to pay more money for the extra person, but Ms. MacGarvie moved out.

III ANALYSIS AND DECISION

[145] Ms. MacGarvie filed her complaint under s. 10 of the *Code*, which provides:

- (1) A person must not
 - (a) deny to a person or class of persons the right to occupy, as a tenant, space that is represented as being available for occupancy by a tenant, or
 - (b) discriminate against a person or class of persons regarding a term or condition of the tenancy of the space,
 because of the ... sex ... of that person ...

[146] Ms. MacGarvie alleges both sexual harassment and discrimination on the basis of sex because she says that she was treated differently than male tenants.

[147] I conclude that Ms. MacGarvie has not met her burden in demonstrating that she was discriminated against on the basis of sex. There was scant evidence before me about Mr. MacGarvie's treatment of male tenants. I was not therefore able to reach any conclusions about differential treatment of Ms. MacGarvie based on her sex. However, I come to a different conclusion regarding some aspects of Ms. MacGarvie's sexual harassment complaint.

[148] As the Supreme Court of Canada explained in *Janzen v. Platy Enterprises Ltd.* [1989] 1 S.C.R. 1252, an employment case, sexual harassment may take a variety of forms:

Sexual harassment is not limited to demands for sexual favours made under threats of adverse job consequences should the employee refuse to comply with the demands. Victims of harassment need not demonstrate that they were not hired, were denied a promotion or were dismissed from their employment as a result of their refusal to participate in sexual activity. This form of harassment, in which the victim suffers concrete economic loss for failing to submit to sexual demands, is simply one manifestation of sexual harassment, albeit a particularly blatant and ugly one. Sexual harassment also encompasses situations in which the sexual demands are foisted upon unwilling employees or in which employees must ensure sexual groping, propositions, and inappropriate comments, but where no tangible economic rewards are attached to involvement in the behaviour.

[149] In *Janzen*, the court defined sexual harassment as follows:

Without seeking to provide an exhaustive definition of the term, I am of the view that sexual harassment in the workplace may be broadly defined as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment. It is, as Adjudicator Shime observed in *Bell v. Ladas*, *supra*, and as has been widely accepted by other adjudicators and academic commentators, an abuse of power. When sexual harassment occurs in the workplace, it is an abuse of both economic and sexual power. Sexual harassment is a demeaning practice, one that constitutes a profound affront to the dignity of the employees forced to endure it. By requiring an employee to contend with unwelcome sexual actions or explicit sexual demands, sexual harassment in the workplace attacks the dignity and self-respect of the victim both as an employee and as a human being.

[150] In *Dietrich v. Dhaliwal*, 2003 BCHRT 6, the Tribunal concluded that the Supreme Court's reasoning in *Janzen* with respect to sexual harassment in the workplace is applicable to cases of sexual harassment in a tenancy.

[151] In order to establish sexual harassment, the complainant must establish that the respondent's conduct was unsolicited and unwanted: *Mahmoodi v. University of British Columbia*, [1999] B.C.H.R.T.D. No. 52 (Q.L.), paras. 140-141; *Twohey v. Bartman et al*,

2003 BCHRT 55, para. 202; and *Algor v. Alcan and others* (No. 2), 2006 BCHRT 200, para. 177.

[152] In *Mahmoodi*, the Tribunal held that the test for establishing whether the alleged conduct is unwelcome is an objective one:

...taking into account all the circumstances, would a reasonable person know that the conduct in question was not welcomed by the complainant? A complainant is not required to expressly object to the conduct unless the respondent would reasonably have no reason to suspect that it was unwelcome...

...subtle indications of unwelcomeness may be sufficient to communicate that the conduct is unwelcome. The fact that a complainant submits to or tolerates sexual demands does not necessarily mean they are welcome or solicited. Behaviour may be tolerated and yet unwelcome at the same time. The reasons for submitting to conduct may be closely related to the power differential between the parties and the implied understanding that lack of co-operation could result in some form of disadvantage (at paras. 140 and 141).

[153] Ms. MacGarvie testified regarding several different instances and types of behaviour that she alleged constitute sexual harassment or sexual discrimination. I will consider each of these different incidents and types of behaviour and whether, taken alone or together, they constitute sexual harassment. While Ms. MacGarvie submitted that Mr. Friedmann's behaviour towards other tenants also constituted sexual harassment, for the reasons discussed above, I have only considered Ms. MacGarvie's allegations.

1. Not wearing a shirt while working

[154] Ms. MacGarvie testified that Mr. Friedmann was outside her living room window pruning a bush with no shirt on. To her it seemed that every time Ms. MacGarvie looked over, he was looking at her, and that when she looked at him, he would look away and tense his entire body. Mr. Good said he had seen Mr. Friedmann outside without his shirt, but he couldn't recall seeing him doing yard work without his shirt. Ms. Matias also testified that she could not remember whether Mr. Friedmann cut the grass shirtless or in a singlet.

[155] In the circumstances, it is difficult to come to any conclusions about this allegation. Mr. Friedmann was the landlord and did his own yard work, including pruning the bushes. Based on the evidence before me, I conclude that there was nothing necessarily offensive about him working with his shirt off, and there was no evidence that he was using pruning bushes as a pretext for looking into Ms. MacGarvie's window. Therefore, I cannot conclude that this one incident constitutes sexual harassment.

2. *Feeling that Mr. Friedmann had been in Ms. MacGarvie's apartment*

[156] Ms. MacGarvie said that she was disturbed by Mr. Friedmann saying he saw her lying in her bedroom when she kept her blinds closed, and by his testimony at the second hearing about the number of dinner plates she had and about her lying on her couch and watching movies. Although I accept Ms. MacGarvie's evidence on these points, I am unable to conclude that he had actually been in her apartment. His comments may have been an attempt at intimidation. Overall, I am not satisfied that there is sufficient evidence to make a finding of sexual harassment.

3. *Residential Tenancy Act breaches*

[157] The evidence is clear that Mr. Friedmann did not faithfully follow the requirements of the *Residential Tenancy Act*. However, the evidence does not establish Mr. Friedmann's failure to follow that legislation amounts to sexual harassment or sexual discrimination against Ms. MacGarvie.

4. *Yelling and name calling*

[158] Ms. MacGarvie testified that after he pushed himself into her apartment to paint her bedroom, he told her she had mental problems, that she was a "filthy animal" and a "fucking animal". He also called her these kinds of names when the police insisted he leave the apartment, and ranted to the police about what a horrible tenant she was. Mr. Friedmann continued with this behaviour in the various pieces of correspondence set out above.

[159] I accept Ms. MacGarvie's evidence on this point. I have no difficulty finding that Mr. Friedmann was bullying and rude, and that his conduct amounted to harassment.

Such behaviour is unacceptable, and may be unlawful. However, harassment is not contrary to the *Code* unless it is related to a ground of prohibited discrimination and Ms. MacGarvie testified that Mr. Friedmann's bullying and yelling extended to all tenants, both male and female. In all of the circumstances, I am unable to conclude that Mr. Friedmann's conduct was sufficiently related to Ms. MacGarvie's sex so as to constitute sexual harassment or differential treatment based on sex under the *Code*. However, as indicated later in this decision, the fact that Mr. Friedmann was bullying and rude made the sexual harassment that did occur much more difficult for Ms. MacGarvie to endure.

5. *Aggressive behaviour*

[160] Ms. MacGarvie testified about an occasion when Mr. Friedmann pushed his way into her apartment when he could have come back later. However, I am not satisfied, based on the evidence, that this was sexual harassment. However, this aggressive behaviour, when coupled with the sexual harassment, made the harassment all the more disturbing and this will be reflected in the remedy.

6. *Inappropriate comments, invitations and gifts*

[161] Ms. MacGarvie testified about a number of inappropriate comments and gifts:

- Giving her stained glass and saying it was so she could remember the sad boyfriends she left in Mexico;
- Offering her bread on two occasions;
- Bringing her flowers, which Ms. MacGarvie considered an intimate gift and which she testified made her uncomfortable;
- Giving her a box of chocolates at Christmas, although she testified that he had several boxes and felt it wasn't too personal;
- Saying "Oh, look at these beautiful women, my tenants" and that he was looking for a wife but no one wanted to marry him;
- An invitation to a soccer game coupled with a reference to sexy, 40's, hardworking men, which Ms. MacGarvie felt referred to himself;
- Asking if her boyfriend was in four times when coming to pick up the rent and repeating the question after she asked him to stop it;

- Coupling the gift of the mirror with a comment that it was so she could see herself and looking over at her bed as he said it; and
- Installing a mirror in bathroom and saying that she needed extra mirrors because she was a beautiful woman and needed lots of mirrors.

[162] Ms. MacGarvie testified that every time he came to her apartment, Mr. Friedmann would find an opportunity to make an inappropriate comment that made her feel uncomfortable. He would look at her body and smile or look at the bedroom and ask if her boyfriend was in or would refer to her figure and ask if she was losing weight.

[163] Ms. MacGarvie testified that these comments were continuous and I accept that they permeated the landlord and tenant relationship. I also conclude that Mr. Friedmann's gifts were used as a pretence to go to Ms. MacGarvie's apartment, where he then made inappropriate comments. In my view, Mr. Friedmann knew or ought to have known that this on-going commentary to a young female tenant would be unwelcome and inappropriate, and that the gifts were also unwelcome and inappropriate. In the circumstances, I am therefore satisfied that this behaviour constituted sexual harassment.

7. *The Bicycle Incident*

[164] Ms. MacGarvie testified that while sitting on a bike in the basement, Mr. Friedmann put his hand on her buttocks. She described this as a very firm feel and not an accident. I note that Mr. Friedmann did not deny this in his response. I conclude that this incident clearly constitutes sexual harassment.

8. *Behaviour regarding boyfriends*

[165] Ms. MacGarvie testified regarding Mr. Friedmann's behaviour relating to boyfriends. First there were unnecessary questions, such as asking if her boyfriend was in and asking if her male visitor was an old boyfriend or if she wished he was her boyfriend. Mr. Friedman also made uncalled-for comments about her male friend being a bad man because he didn't help her with painting, discussing Ms. MacGarvie's sex life, saying he didn't care who she slept with but that her friend is a bad man and had to leave. This behaviour was particularly offensive because Ms. MacGarvie had told Mr. Friedmann that she would be having a visitor, and there was no evidence that this visitor

was disrupting the other tenants or otherwise behaving inappropriately. Mr. Friedmann consistently sexualized her relationship with her old friend and I find that Mr. Friedmann's behaviour constitutes sexual harassment.

9. *Coming early in the morning, coming unannounced, coming too often*

[166] Ms. MacGarvie said that Mr. Friedmann did not provide an address. He came to pick up rent every month in person but didn't say when he would come and didn't say what would happen if no one was home. She also testified that she thought he would come at times when he would catch her in her pyjamas.

[167] I have already concluded that Mr. Friedmann used gifts as a pretence to go to Ms. MacGarvie's apartment. Although Mr. Friedmann's timing in picking up the rent and otherwise calling on Ms. MacGarvie is suspicious, I cannot conclude that his behaviour constituted sexual harassment. I would require more evidence to make a conclusion on this point.

Conclusion

[168] I conclude that Ms. MacGarvie has established that Mr. Friedmann sexually harassed her. I have considered all of the nine categories of allegations both separately and collectively and conclude that some constitute sexual harassment and some do not.

[169] I find that Ms. MacGarvie's complaint against Mr. Friedmann regarding sexual harassment is justified.

IV REMEDY

[170] Section 37(2) provides the Tribunal with the authority to order a remedy if it finds a complaint is justified, and provides:

If the member or panel determines that the complaint is justified, the member or panel

- (a) must order the person that contravened this Code to cease the contravention and to refrain from committing the same or a similar contravention,
- (b) may make a declaratory order that the conduct complained of, or

similar conduct, is discrimination contrary to this Code,

- (c) may order the person that contravened this Code to do one or both of the following:
 - (i) take steps, specified in the order, to ameliorate the effects of the discriminatory practice;
 - (ii) adopt and implement an employment equity program or other special program to ameliorate the conditions of disadvantaged individuals or groups if the evidence at the hearing indicates the person has engaged in a pattern or practice that contravenes this Code, and
- (d) if the person discriminated against is a party to the complaint, or is an identifiable member of a group or class on behalf of which a complaint is filed, may order the person that contravened this Code to do one or more of the following:
 - (i) make available to the person discriminated against the right, opportunity or privilege that, in the opinion of the member or panel, the person was denied contrary to this Code;
 - (ii) compensate the person discriminated against for all, or a part the member or panel determines, of any wages or salary lost, or expenses incurred, by the contravention;
 - (iii) pay to the person discriminated against an amount that the member or panel considers appropriate to compensate that person for injury to dignity, feelings and self respect or to any of them.

[171] Ms. MacGarvie requested the following remedies. First, she sought a mandatory order that Mr. Friedmann cease the contravention and refrain from committing the same or a similar contravention. Ms. MacGarvie submitted that this can be accomplished by requiring the following:

- Mr. Friedmann provide tenants with an address for delivery of their rent and notice as required under the *Residential Tenancy Act*;
- Except in emergencies, that Mr. Friedmann provide tenants with written notice that he intends to enter their suite and the reasons for doing so; and
- That Mr. Friedmann provide his young female tenants with a copy of the *Residential Tenancy Act*, “A Guide for Landlord and Tenants in British Columbia”, a publication available on the Residential Tenancy Branch’s website.

[172] Ms. MacGarvie also sought compensatory orders pursuant to s. 37(2)(ii) for expenses in the amount of \$3,164.59, which she submitted she incurred as a result of Mr. Friedmann's breach of the *Code*:

- \$141.14: cost of additional cell phone minutes by Ms. MacGarvie for January and February 2005 for \$98.24 and \$42.90 respectively;
- \$35.31: cost of change of address;
- \$527.80: cost of camcorder and videotape for the purpose of documenting the harassment;
- \$203.89: moving costs;
- \$22.09: photocopying costs;
- \$12.00: fee paid to B.C. Assessment to obtain Mr. Friedmann's address;
- \$2,182.36: hearing expenses (see attached Table);
- \$100: loss of shift while attending the hearing; and
- \$40: amount wrongfully deducted from damage deposit.

[173] Ms. MacGarvie sought "significant" compensation for injury to dignity, feelings and self-respect. In her written submission, Ms. MacGarvie said:

In this case, the harassment was verbal and physical. It was aggressive and persisted during the currency of Ms. MacGarvie's tenancy. When Ms. MacGarvie made the decision to leave the Apartment Complex, she feared for her physical safety, even in her home which is the one place people should be able to seek protection. Ms. MacGarvie was a single, young woman with few friends and no family living locally. She had no money to relocate and had to obtain a student loan for this purpose. She was particularly vulnerable and Mr. Friedmann exploited her vulnerability.

The psychological impact of the harassment is apparent from Ms. MacGarvie's actions at the time. She sought protection from her friends. She sought advice from the Residential Tenancy Office and the Vancouver Police Department. Ms. MacGarvie did everything necessary to protect herself from Mr. Friedmann. To this day she is still concerned for her safety.

[174] Ms. MacGarvie also seeks both pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79.

[175] Although Mr. Friedmann did not remain for the continuation of the hearing in March 2007, he was nevertheless given an opportunity to respond to Ms. MacGarvie's closing submissions. Mr. Friedmann replied, indicating that, due to health reasons, he was unable to respond to Ms. MacGarvie's submission. He also made a number of allegations against the Tribunal:

I told Ms. McLean that I hold her "responsible for my collapse and following ambulance treatment of July 26, 2006."

The reason is that Ms. McLean was running the hearing as "one way street", totally ignoring my comments.

During 1st hearing, the student from Victoria did not do anything for me. They just came to do learning and Madam Chair lost control of the hearing, and she was at one time yelling at me. She lost control of herself. It was not my fault that the 1st Hearing was not concluded.

MacGarvie's response from March 12th Hearing, for example, says she had a very important job interview in kindergarten and at 29 she still does not have a job, and she is living in a government shelter.

Medical evidence about my health is insufficient to support an adjournment.

Obviously, my health and doctor's letter means nothing to Ms. MacGarvie and is nothing when compared to her priorities.

I maintain that my poor health is caused by the conduct of this Tribunal.

Furthermore, the short deadline of April 3, 2007 for my Closing Submission is plain evidence of discrimination against me, because the Tribunal is not willing to understand that I need time to regain my health and then properly respond.

I am still asking for a new hearing with panel of 3 members, what I was asking before, because I don't have trust in your office anymore. (as written; cc'd to Attorney General)

1. Section 37(2)(a) Cease and Desist

[176] An order under s. 37(2)(a) is mandatory when the complaint is found to be justified. Therefore, I order Mr. Friedmann to cease the contravention and refrain from committing the same or a similar contravention.

2. Section 37(2)(c) Amelioration

[177] I accept Ms. MacGarvie's evidence that Mr. Friedmann's failure to provide an address for delivery, especially when she wished to serve him with her notice of termination of her tenancy, made it very difficult for her. Sections 13(1) and (2) of the *Residential Tenancy Act*, S.B.C. 2002, c. 78, require a landlord to prepare and provide a written tenancy agreement that contains certain terms. Subsection 13(2)(e) requires that the tenancy agreement set out the address for service and the telephone number of the landlord or the landlord's agent. Clearly, the tenancy agreement provided to Ms. MacGarvie did not include this information.

[178] As well, Ms. MacGarvie complained about Mr. Friedmann's unannounced visits. This is contrary to s. 29 (1) and (2) of the *Residential Tenancy Act*, which provides:

- (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
 - (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
 - (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
 - (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

[179] Although I agree that Mr. Friedmann should be ordered to follow the requirements of the *Residential Tenancy Act*, I did not find the evidence sufficient to conclude that Mr. Friedmann's behaviour, with respect to the terms and conditions of her tenancy, constituted sex discrimination. Therefore, the requested order is not appropriate in the circumstances.

3. Section 37(2)(d)(ii), Expenses

[180] I have reviewed and accepted some of Ms. MacGarvie's expenses, and have decided to award her a total of \$1,922.84. Attached to this decision is a list of expenses that have been requested and awarded. I am satisfied in the absence of any evidence or argument to the contrary from Mr. Friedmann that they are expenses incurred by Ms. MacGarvie.

[181] It is not appropriate to award Ms. MacGarvie 100% of the costs for the camcorder, given that she still has the use of it. I have therefore awarded her \$100 towards that cost. As well, I have not awarded Mr. Friedmann's deduction from Ms. MacGarvie's damage deposit. This issue was a matter for the Residential Tenancy Branch. Finally, I do not award the expenses specific to the first hearing, that is, Ms. Thewlis' travel expenses and other conduct money. As will be explained later in the costs application portion of this decision, there is insufficient direct evidence before me to conclude that the requirement to have a second hearing with a different Tribunal Member was because of Mr. Friedmann's conduct. Therefore, I have not awarded expenses incurred in the first hearing.

4. Section 37(2)(d)(iii) Injury to Dignity, Feelings and Self Respect

[182] In the past several years, awards for injury to dignity, feelings and self respect in sexual harassment cases have ranged from \$1,200 (*Fougere v. Rallis and Kalamata Greek Taverna*, 2003 BCHRT 23) to \$15,000 (*Harrison v. Nixon Safety Consulting and others (No. 3)*, 2008 BCHRT 463). There has only been one award for sexual harassment in a tenancy situation, where \$1,500 was awarded: *Dietrick v. Dhaliwal*, 2003 BCHRT 6. I also note that there has been an upward trend in these awards over time.

[183] In *Fougere*, the Tribunal adopted the seven considerations to be taken into account when determining compensation for injury to dignity in sexual harassment cases that were set out in *Torres v. Royalty Kitchenware Ltd.* (1982), 3 C.H.R.R. D/858 (Ont. Bd. Inq.). The Tribunal indicated that this list is not meant to be exhaustive, that is, other factors could become important over time. These factors are:

1. the nature of the harassment, that is, was it simply verbal or was it physical as well;
2. the degree of aggressiveness and physical contact in the harassment;
3. the ongoing nature, that is, the time period of the harassment;
4. its frequency;
5. the age of the victim;
6. the vulnerability of the victim; and
7. the psychological impact of the harassment upon the victim.

[184] In this case, the harassment, except for one occasion, was verbal. However, it was inappropriate and continuous. While it never included direct sexual invitations or explicit language, there were many comments about her appearance and references to boyfriends. Ms. MacGarvie testified that, on occasion, she asked Mr. Friedmann to “stop it” and that she told him his remarks about her male visitor were unacceptable. The harassment continued over the course of Ms. MacGarvie’s tenancy, which was approximately one year. Ms. MacGarvie was a young woman, and was a student of limited financial means. Mr. Friedmann had power over her, because nice apartments, at a reasonable price, and in a good location were at a premium.

[185] Due to Mr. Friedmann's abrasive, argumentative and aggressive behaviour, the sexual harassment took on a different character and Ms. MacGarvie started to be afraid of Mr. Friedmann. This intensified when she heard about the baseball bat episode. Ms. MacGarvie was in a situation where she felt she had to move because of Mr. Friedmann's harassment, but then was fearful of the dealings she had to have with him in order to move, that is, giving notice and allowing him to show the apartment. For example, she went to a great deal of trouble to ensure that he could not come to her apartment when she was alone. Ms. MacGarvie's fears were justified in that there was a day when he pushed himself in when she was alone and the police had to be called. Ms. MacGarvie testified that, as of the date of the hearing, she remained afraid for her safety.

[186] After considering all of these factors, I conclude that an award of \$10,000 is appropriate.

5. Interest

[187] Ms. MacGarvie is entitled to interest on the compensation that has been ordered. I order pre-judgment interest in accordance with the *Court Order Interest Act*, R.S.B.C. 1996, c. 79, as amended, for her expenses from March 16, 2007. Post-judgment interest is ordered on compensation for expenses and for injury to dignity, feelings and self-respect.

V APPLICATION FOR COSTS

1. Ms. MacGarvie's Submissions

[188] Ms. MacGarvie seeks costs against Mr. Friedmann pursuant to s. 37(4) of the *Code*, which provides:

The member or panel may award costs

- (a) against a party to a complaint who has engaged in improper conduct during the course of the complaint, and
- (b) without limiting paragraph (a), against a party who contravenes a rule under section 27.3 (2) or an order under section 27.3 (3).

[189] Ms. MacGarvie submits that Mr. Friedmann engaged in improper conduct during the course of the proceedings and has provided substantial details of this alleged improper conduct in her submissions. Ms. MacGarvie summarized her position as follows:

The Complainant submits that it can be expected that counterparties to a human rights complaint may be upset, hurt or angry. Nevertheless, this Tribunal in *Stopps v. Just Ladies Fitness, supra*, [2007 BCHRT 125] clearly stated there are limits to how they can express their upset or outrage. Writing public letters containing exaggerated and defamatory accusations against the counterparty ought not to be sanctioned by this Tribunal. Respondents in a position of power, such as employer and landlords, should be expected to be reasonably careful in securing witnesses who may feel intimidated or coerced into testifying on their behalf. In this case, Mr. Friedmann's conduct in trying to compel witnesses on his behalf [went] far beyond that which is acceptable in a legal proceeding. His threats in some cases went so far as to constitute witness tampering. Mr. Friedmann had a perfectly fair and acceptable forum to defend his name, and ... to present his case to the Tribunal. This is the one thing that he did not do. Instead, he chose to make hostile and defamatory letters about the Complainant, her witnesses, and the Tribunal. Accordingly, a substantial award of costs against Mr. Friedmann is justified pursuant o s. 37(4) of the *Code*. The Complainant submits that this award should be comparable to that awarded by the Tribunal in *Fougere v. Rallis and Kalamata Greek Taverna (No. 3)*, 2003 BCHRT 56.

2. Analysis and Decision/Costs Application

[190] In *McLean v. B.C. (Ministry of Public Safety and Solicitor General – Liquor Distribution Branch)*, 2006 BCHRT 103, the Tribunal reviewed the case law in this area and the Tribunal's approach to costs applications:

... there has been a cautious and gradual expansion of the circumstances in which the Tribunal has been prepared to find a party to have engaged in improper conduct, and thereby be exposed to the possibility of an award of costs: see, for example, *Bains v. Metro College Inc. and others (No. 2)*, 2004 BCHRT 7; *Altakla v. Power and another (No. 3)*, 2004 BCHRT 253; *Jiwany and Jiwany v. West Vancouver Municipal Transit*, 2005 BCHRT 172; *Mahal v. Hartley (No. 2)*, 2004 BCHRT 63; *Jacobs v. Dynamic Equipment Rentals Ltd. and Stewart (No. 2)*, 2005 BCHRT 353; and *Matthews v. Huckleberry Mines and others (No. 2)*, 2006 BCHRT 93. In my view, the Tribunal's increased willingness to consider conduct to be improper, and thereby open a party to an award of costs, is largely related

to characteristics of the direct access system. Many parties before the Tribunal now engage in a significant amount of pre-hearing litigation. The manner in which that litigation is conducted can have a significant effect on the processing and eventual hearing of complaints, and can exact significant costs, financial and otherwise, on both other parties and the Tribunal. Under the *Code*, the Tribunal has very limited tools at its disposal in order to control parties' conduct; findings of improper conduct, and the resulting possibility of costs, are the main tool available.

In my view, the expansion of the circumstances in which the Tribunal is prepared to find conduct to be improper, and thereby subject to the potential of an order for costs, is appropriate. I agree with the comment of the Tribunal in *Ghinis* that the standard set in *Hendrickson* may be too high in some cases. For example, where a party contravenes a rule or an order, such conduct may, under the express terms of s. 37(4)(b), constitute improper conduct. While a party's intention in doing so may be relevant, no specific intention is necessary for the breach of a rule or order to be improper. More generally, while conduct which is the result of intentional wrongdoing may certainly be "improper", in my view, improper conduct is not necessarily limited to intentional wrongdoing. Any conduct which has a significant impact on the integrity of the Tribunal's processes, including conduct which has a significant prejudicial impact on another party, may constitute improper conduct within the meaning of s. 37(4). (paras. 7 and 8)

[191] Since that time, the Tribunal has found improper conduct in a broad range of circumstances. The categories which apply in this case include:

- Failure to abide by the Tribunal's orders or directions;
- Failure to provide disclosure in a timely manner or failure to otherwise abide by the Tribunal's time lines;
- Showing disrespect for the Tribunal, its members and/or staff, or its proceedings;
- Attacking another party, their counsel, or a third party, or otherwise engaging in inappropriate communications;
- Conduct resulting in a serious impact on the integrity of the Tribunal's processes; and
- Engaging in intimidating, coercive and retaliatory conduct.

[192] The allegations of improper conduct in regard to Mr. Friedmann can be divided into roughly four categories: hearing conduct, correspondence with the Tribunal,

intimidating behaviour, and failure to abide by the Tribunal's orders and directions. I will discuss the allegations under each of these subheadings.

A. Hearing Conduct

First Hearing

[193] Ms. MacGarvie testified that Mr. Friedmann delayed the first hearing by claiming that he did not receive documents, and then lied about the fact that he had signed for the documents. Further, although the complaint had been filed in early 2005 and after an adjournment and pre-hearing conferences where special needs could be discussed, Mr. Friedmann caused further delays in the first hearing by arriving at the continuation of the hearing on April 7, 2006 and requesting an interpreter. As well, Ms. MacGarvie testified that Mr. Friedmann objected to all of her witnesses and strongly objected to Ms. Thompson remaining in the hearing room after she had finished her testimony.

[194] In regard to the delay caused on the first day of the hearing when Mr. Friedmann denied receiving documents, I find that this amounts to be improper conduct. I also find that Mr. Friedmann's objections to Ms. Thompson remaining in the hearing room to be improper conduct. The Tribunal's hearings are public and any person may observe the proceedings. Witnesses are excluded until they give their evidence and then they may stay for the rest of the proceedings. For Mr. Friedmann to strongly object to this, in the absence of any evidence that Ms. Thompson was disrupting the proceedings, is improper conduct.

[195] However, I do not have enough information to conclude that Mr. Friedmann's objections to Ms. MacGarvie's witnesses constituted improper conduct. There can be a number of valid reasons for objecting to a witness, for example, that the witness was not on the witness list provided to the party or that the evidence of the witness is irrelevant. Without knowing the context, I cannot conclude that Mr. Friedmann's conduct was improper on that basis.

[196] In regard to the delay required to obtain an interpreter, I agree that this request should have been made much earlier. Suspicious though the timing may be, I cannot

conclude that this request was a delay tactic and thus improper. I must also consider the possibility that as the hearing proceeded, Mr. Friedmann or his representative realized that he was unable to properly understand the witnesses or the proceedings without an interpreter.

Second Hearing

[197] First, Ms. MacGarvie alleged that Mr. Friedmann caused needless delays and interruptions by refusing to take directions from the Tribunal. I agree with Ms. MacGarvie in regard to this allegation. While Ms. MacGarvie's counsel was examining her witnesses, Mr. Friedmann interrupted almost continually. I explained to him many times through his interpreter that he would have an opportunity to cross-examine the witnesses and that he would then have an opportunity to tell his version of events and call his own witnesses. However, Mr. Friedmann continued to interrupt, most often in a loud and angry fashion. His constant interruptions affected Ms. MacGarvie's right to a fair hearing, and his behaviour unduly lengthened the hearing and added to the stress of the parties involved. It was improper conduct.

[198] Ms. MacGarvie also submitted that Mr. Friedmann caused unnecessary delay in the second hearing by appearing at its continuation on March 12, 2007 and requesting an adjournment for medical reasons without proper documentation. She says that this occurred even though the case manager invited the parties to raise any preliminary issues with the Tribunal in advance of the hearing.

[199] In *MacGarvie v. Friedmann (No. 3)*, 2007 BCHRT 133, I outlined the Tribunal's communications with Mr. Friedmann where he was told the nature of the medical information required in order to successfully apply for an adjournment. As well, he was informed that applications should be brought in a timely manner. Mr. Friedmann did not follow these instructions, and instead faxed a very minimal medical note indicating he would be unable to take part in the hearing. Given that the hearing had to be adjourned several times, including the fact that a second hearing had to be conducted after the first hearing was nearly concluded, much more was required from Mr. Friedmann. In these

circumstances, his failure to provide sufficient medical information and to make a timely application to adjourn constitute improper conduct.

[200] Ms. MacGarvie also complained that Mr. Friedmann requested an adjournment to obtain legal counsel, even though he had ample time to have arranged for representation between the start of the second hearing and its continuation in March 2007. She said Mr. Friedmann had representation in this complaint previously and could reasonably be expected to know how to go about retaining legal counsel in a timely way. I agree. To argue that an adjournment to retain legal counsel was reasonable, at that stage of the proceedings, was not reasonable and also was improper conduct.

[201] As well, at the hearing, it was reported to me that Mr. Friedmann had called Ms. MacGarvie “fucking garbage”. I instructed Mr. Friedmann not to address Ms. MacGarvie unless she was on the witness stand. Also, at some point in Ms. MacGarvie’s testimony, Mr. Friedmann interrupted the hearing to call Ms. MacGarvie “a very sick woman.” I told him there were to be no more outbursts. This behaviour constitutes improper conduct.

B. Correspondence with the Tribunal

[202] Ms. MacGarvie says that Mr. Friedmann made unfounded accusations or smears against Ms. MacGarvie, her witnesses and the Tribunal in his response to the complaint, and in letters to the Tribunal and the Community Legal Assistance Society, some of which were copied to the Attorney General. I have reviewed Mr. Friedmann’s Response and letters and find that they are full of smears and invective, in particular against Ms. MacGarvie. In summary, Mr. Friedmann stated that Ms. MacGarvie was:

- A bad tenant;
- A liar;
- Mexican rather than Spanish (although Ms. MacGarvie was born in Canada);
- Mentally ill, including requesting that the Tribunal order a psychological evaluation;

- Unable to take care of herself;
- Intentionally causing problems; and
- A danger and a menace to society.

Mr. Friedmann also stated that he is “not the first victim”, and that Ms. MacGarvie:

- Will never be a good citizen and should be deported;
- Deals only with the RCMP, Mexican police, lawyers, welfare officials, and Vancouver East Side Women’s Centre;
- Travels across the country seeking adventure, welfare, and a free education; and
- Does not have a job and is living in a government shelter.

[203] Mr. Friedmann also made allegations against members of the Tribunal, as follows:

- He had concerns about the Tribunal Chair because of past experience, saying “They hate my name”;
- The Tribunal Member who conducted the first hearing lost control of herself and yelled at him;
- That Tribunal Member who conducted the first hearing lied about him;
- That Tribunal Member who conducted the first hearing admitted Ms. MacGarvie’s witnesses but not Mr. Friedmann’s (to which Ms. MacGarvie responded that what Mr. Friedmann wanted admitted were not witnesses but letters, which were accepted for a limited purpose);
- That he held me responsible for his collapse on July 26, 2006, because I was running the hearing as a “one way street” and totally ignoring his comments; and
- That his poor health is caused by the Tribunal’s conduct.

[204] In *Bakhtiyari v. BCIT* (No. 6), 2007 BCHRT 320, the Tribunal said:

Since September 2006, Ms. Bakhtiyari has made negative references about Tribunal staff, BCIT personnel and BCIT’s legal counsel. In my view, this type of conduct cannot be condoned by the Tribunal. Ms. Bakhtiyari also accused the Tribunal staff of lying, taking bribes and being prostitutes. As the Tribunal stated in *Stone*, no participant before this Tribunal, nor their counsel, should be subjected to this kind of scurrilous attack on their

character. As in *Stone*, Ms. Bakhtiyari does not defend her conduct and, in my view, no defence is possible. Further, although many of Ms. Bakhtiyari's negative references were directed at Tribunal staff and its processes, BCIT was required to address these issues thereby increasing the delay and costs to it.

After my decision in *Bakhtiyari (No. 5)*, Ms. Bakhtiyari continued to make unfounded and very serious allegations in emails and letters. These were sent to various media outlets, politicians and BCIT personnel who had nothing to do with this complaint. These communications continued to have an adverse effect on the processing of this complaint and those involved in this process. In this respect, they fall within the meaning of improper conduct.

[205] Mr. Friedmann, throughout the entire period that the complaint has been before the Tribunal, has made slanderous remarks against Ms. MacGarvie based on no evidence. No party to a complaint should have to tolerate this kind of behaviour.

[206] Therefore, I conclude that Mr. Friedmann's remarks in his response and various letters to the Tribunal about Ms. MacGarvie and the Tribunal constitute improper conduct.

C. Intimidating Behaviour Outside of the Hearing

[207] Ms. MacGarvie made a number of accusations about Mr. Friedmann's behaviour outside of the hearing room. First, she alleged that, after she filed her complaint, Mr. Friedmann defamed her to other tenants in his building, which she said was damaging to her reputation. I have set out the evidence in this regard above.

[208] Second, Mr. Friedmann coerced his tenants into providing him with letters of support. As discussed above, Ms. Brazier testified that she wrote a letter of support for Mr. Friedmann because she was worried about not getting her damage deposit back. Ms. Zemluk also said she was concerned that if she didn't write a letter in support of Mr. Friedmann, it might jeopardize her tenancy. She also testified that Mr. Friedmann offered to pay her father in exchange for his support. Mr. Good said that he did not want to write a letter of support, but he did it because Mr. Friedmann was really insistent.

Finally, Ms. MacDonald said that Mr. Friedmann called her a “fucking bitch” because she would not support him.

[209] As well, during a conversation with Mr. Good, Mr. Friedmann made a serious threat of violence against witnesses and participants in these proceedings. At a time when he knew that Mr. Good might be a witness for Ms. MacGarvie, Mr. Friedmann said he wanted to take a gun and shoot everyone involved in this case. This threat was reported to the police.

[210] There is no reason for me to disbelieve Mr. Good’s testimony regarding Mr. Friedmann’s threats. Mr. Friedmann knew or ought to have known that these comments would have a chilling effect on Mr. Good (a potential witness) and that they could make their way back to Ms. MacGarvie and other participants in the hearing. In my view, Mr. Friedmann’s behaviour was very serious misconduct.

[211] Finally, Ms. MacGarvie alleged that the necessity for a new hearing was caused by Mr. Friedmann’s improper conduct. In *MacGarvie v. Friedmann* (No. 2), 2006 BCHRT 330, I wrote the following:

Ms. MacGarvie referred to instances of improper conduct during the hearing. However, her claim for costs is mainly focused on the necessity for a new hearing, due to Mr. Friedmann’s improper conduct. Mr. Friedmann denies the improper conduct. After reviewing all of the materials filed by both parties with respect to this application, I am not persuaded that I have sufficient, reliable information that Mr. Friedmann engaged in improper behaviour which resulted in a new hearing having to be scheduled.

In all the circumstances of this case, I am of the view that the matter of costs should be deferred to the end of the hearing. This will give Ms. MacGarvie an opportunity to explore Mr. Friedmann’s behaviour in the course of the previous hearing, in particular during Mr. Friedmann’s cross-examination. That being said, the allegations made by Ms. MacGarvie regarding Mr. Friedmann’s conduct during the hearing process are, if proved, the kinds of misbehaviour that would attract a substantial order of costs. Therefore, Ms. MacGarvie’s application for costs is deferred. (paras. 12 and 13)

[212] At the second hearing, Ms. MacGarvie testified about the events that she said necessitated a second hearing. However, her evidence was not direct evidence of what

had transpired: the Member presiding over the first hearing told the Registrar what had happened, the Registrar told the parties' counsel at a pre-hearing conference what the Member had told her, and Ms. MacGarvie's counsel then told Ms. MacGarvie. Ms. MacGarvie's counsel did not testify, and Ms. MacGarvie's evidence about what her counsel told her is hearsay. I know however that a new hearing was necessary.

[213] The only other information before me regarding why the Member presiding over the first hearing recused herself are statements about what transpired set out in Ms. MacGarvie's submissions on her costs application. Information contained in submissions is not evidence, and I cannot rely on it. As well, although Ms. MacGarvie's counsel said that the police were contacted regarding these events, no police reports were submitted into evidence.

[214] Therefore, I continue not to have sufficient, reliable information that Mr. Friedmann engaged in improper behaviour which resulted in a new hearing having to be scheduled.

D. Failure to Abide by the Tribunal's Orders and Directions

[215] Ms. MacGarvie submitted that Mr. Friedmann did not comply with an order for disclosure made at a pre-hearing conference on July 13, 2006. As I understand it, the disclosure that Mr. Friedmann failed to make was the following:

- After Mr. Friedmann said that he had taken part in hearings at the Residential Tenancy Branch, Mr. Friedmann was ordered to produce copies of all Residential Tenancy Branch decisions within the last five years; and
- Contact information for persons who rented out Ms. MacGarvie's apartment after her, as well as contact information for his witnesses.

[216] The failure to abide by the Tribunal's orders for disclosure, without reasonable excuse, also constitutes improper conduct.

E. Quantum

[217] I have found that Mr. Friedmann engaged in improper conduct in many respects. In *Kelly v. ICBC*, 2007 BCHRT 382, the Tribunal stated:

Unlike other monetary awards by the Tribunal, the primary purpose of an award of costs is punitive, not compensatory. In addition, such an award is meant to act as a deterrent to prevent future participants from committing similar acts. In *Bains v. Metro College Inc. and others (No. 2)*, 2004 BCHRT 7, the Tribunal stated that an award of costs “should be sufficient to signal the Tribunal’s condemnation of the complainant’s conduct and to serve the punitive purpose of such an award”. (at para. 18)

Flowing from this, the primary factor taken into account by the Tribunal in determining the quantum of a cost award has been the nature and severity of the behaviour which is being sanctioned, and the impact of that behaviour on the integrity of the Tribunal’s processes. In addition, and in appropriate circumstances, the Tribunal has taken into account other factors, including the following:

- the ability of the party against whom costs are awarded to pay any award: *Mahal v. Hartley*, 2004 BCHRT 63;
- the relative culpability of the party with respect to the behaviour in question: *Neuls v. Ann Davis Transition Society and Jacob (No. 2)*, 2007 BCHRT 5;
- any factors, such as a disability, which may have contributed to the behaviour in question: *Stopps, Bakhtiyari*; and
- any other consequences to the party which have arisen as a result of the sanctioned behaviour: *Bakhtiyari*; *Glumac v. Fusco and others (No. 4)*, 2006 BCHRT 578 (paras. 90 and 91)

[218] After considering these factors, I believe that a substantial award of costs is appropriate. Mr. Friedmann threatened the participants in this hearing, and made unfounded allegations about virtually every party involved, including the Tribunal. He delayed the conduct of this case by his behaviour in the hearing and by his failure to follow the Tribunal’s orders and directions. He made life very difficult for Ms. MacGarvie, in particular, and she testified that as of the date of the hearing, she continued to be fearful. As well, his behaviour has seriously impacted the Tribunal’s processes.

Ms. MacGarvie provided evidence that Mr. Friedmann owns several properties in Vancouver and therefore has the means to pay a substantial award of costs. In all of these circumstances, I have decided that an order for costs of \$7,500 is appropriate in this case.

[219] Ms. MacGarvie is entitled to post-judgment interest on these costs in accordance with the *Court Order Interest Act*, R.S.B.C. 1996, c. 79, as amended.

VI CONCLUSION

[220] In conclusion, I have found the complaint to be justified and make the following orders:

- (a) Pursuant to s. 37(2)(a) of the *Code*, Mr. Friedmann is to cease and desist the contravention of s. 13 of the *Code*;
- (b) Pursuant to s. 37(2)(d)(ii), Mr. Friedmann is to pay Ms. MacGarvie \$1,922.84 for her expenses;
- (c) Pursuant to s. 37(2)(d)(iii), Mr. Friedmann is to pay Ms. MacGarvie \$10,000 in respect of injury to her dignity, feelings and self respect;
- (d) Pursuant to s. 37(4), Mr. Friedmann is to pay Ms. MacGarvie \$7,500 as costs for his improper conduct; and
- (e) Pursuant to the *Court Order Interest Act*, pay Ms. MacGarvie pre-judgment and post-judgement interest on the amount ordered for expenses in (b), and post-judgment interest on the amounts ordered in (c) and (d).

Diane H. MacLean, Tribunal Member

| Claim for Expenses Table | | |
|---|----------|-------------------|
| A. Incurred because of breach of Code | Claimed | Awarded |
| | | |
| Cell phone minutes | | |
| January 2005 | \$98.24 | \$98.24 |
| February 2005 | \$42.90 | \$42.90 |
| Change of address | \$35.31 | \$35.31 |
| Camcorder and videotape | \$527.80 | \$100.00 |
| Moving expenses | \$203.89 | \$203.89 |
| Photocopying costs | \$22.09 | \$22.09 |
| BC Assessment fee | \$12.00 | \$12.00 |
| Wrongful deduction from damage deposit | \$40.00 | |
| Subtotal: | | \$514.43 |
| B. Incurred during complaint process | | |
| Loss of shift while at hearing | \$100.00 | \$100.00 |
| courier fees for letters | | |
| May 3, 2006 | \$14.21 | \$14.21 |
| May 12, 2006 | \$6.82 | \$6.82 |
| May 17, 2006 | \$7.16 | \$7.16 |
| July 5, 2006 | \$ 6.73 | \$6.73 |
| July 6, 2006 | \$7.12 | \$7.12 |
| July 19, 2006 | \$6.73 | \$6.73 |
| Return air fare/Ms. Thewlis/first hearing | \$518.25 | |
| Hotel/Ms. Thewlis/first hearing | \$92.43 | |
| Conduct money/first hearing | | |
| Ms. Thewlis | \$90.00 | |
| Mr. Hall | \$60.00 | |
| Ms. Thompson | \$20.00 | |
| Airfare/Ms. Thewlis/second hearing | \$382.36 | \$382.36 |
| Conduct money/second hearing | | |
| Ms. Thewlis | \$90.00 | \$90.00 |
| Ms. Thompson | \$20.00 | \$20.00 |
| Ms. Brazier | \$25.00 | \$25.00 |
| Ms. Zemluk | \$25.00 | \$25.00 |
| Ms. MacDonald | \$25.00 | \$25.00 |
| Mr. Good | \$25.00 | \$25.00 |
| Ms. Thomson | \$25.00 | \$25.00 |
| Invoice from Triad Communications Ltd. (to prepare copy of tape for hearing) | \$36.43 | \$36.43 |
| City of Vancouver/production of records | \$100.00 | \$100.00 |
| Hotel/Ms. Thewlis/second hearing (anticipated) | \$92.43 | \$92.43 |
| West Coast tax search | \$303.69 | \$303.69 |
| West Coast Court Registry search | \$24.61 | \$24.61 |
| West Coast land search | \$44.99 | \$44.99 |
| West Coast Provincial Court Search | \$40.13 | \$40.13 |
| Subtotal: | | \$1,408.41 |
| Total Expenses Awarded: | | \$1,922.84 |