

Maynard, Justice, dissenting:

FILED
July 6, 2001
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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED
July 9, 2001
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I dissent because I believe that the majority opinion creates a gross injustice.

At the outset, I admit that the majority, in its opinion, followed the strict confines of our landlord and tenant law. But, while the majority says that it does not condone Mr. Stewart's thievery, that is precisely the result of this decision. In West Virginia, a person can now live in a landlord's apartment, pay no rent whatsoever, steal and then pawn the landlord's property without his consent, plead guilty to a misdemeanor charge involving stolen property, and then sue the landlord for damages and collect. Tolstoy was correct when he wrote "where there is law there is injustice."

Decisions like the instant one make a mockery of the justice system by rewarding blatant dishonesty and criminal misconduct while punishing a reasonable (under these circumstances) deviation from the harsh technicalities of landlord and tenant law. Mr. Stewart's suit against his landlord is simply another example of flagrant abuse. Such abuses cause people to lose confidence in the system which is a dangerous thing in a democratic society. Unfortunately, the majority validates Mr. Stewart's abuse by ensuring that his lawsuit can go forward.

Upon remand, I hope that the landlord will counterclaim for the tort of conversion or, at

the least, receive an offset for any damages awarded to the Stewarts.

For the reasons stated above, I respectfully dissent.