

IN THE MATTER between **HARVEY WERNER**, Applicant, and **HAY RIVER MOBILE HOME PARK**, Respondent;

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

AND IN THE MATTER of a Hearing before, **HAL LOGSDON**, Rental Officer, regarding the rental premises at **HAY RIVER, NT**.

BETWEEN:

HARVEY WERNER

Applicant

- and -

HAY RIVER MOBILE HOME PARK

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 66(b) and 83(2) of the *Residential Tenancies Act*, the respondent shall return personal property consisting of a mobile home and motor vehicle to the applicant upon payment in full of storage costs which shall be calculated at \$4.93/day, accruing from July 26, 2002 to the date the property is removed from the premises, less \$200 which has previously been paid to the respondent. The applicant shall arrange and pay for a contractor to remove the property from the premises and shall not enter the premises himself. No other conditions shall be required by the respondent for the return of the property.

DATED at the City of Yellowknife, in the Northwest Territories this 28th day of January, 2003.

Hal Logsdon
Rental Officer

IN THE MATTER between **HARVEY WERNER**, Applicant, and **HAY RIVER MOBILE HOME PARK**, Respondent.

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

AND IN THE MATTER of a Hearing before **Hal Logsdon**, Rental Officer.

BETWEEN:

HARVEY WERNER

Applicant

-and-

HAY RIVER MOBILE HOME PARK

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: January 21, 2003

Place of the Hearing: Hay River, NT via teleconference

Appearances at Hearing: Harvey Werner, applicant
Graham Watt, representing the respondent

Date of Decision: January 28, 2003

REASONS FOR DECISION

The tenancy agreement between the respondent and Diane Robinson respecting a lot for a mobile home was terminated by order of a rental officer on March 1, 2000. The order was appealed and the appeal dismissed. The Supreme Court ordered the tenant evicted on July 26, 2002 and the Sheriff put the respondent in possession. The mobile home and a motor vehicle were left on the lot following the eviction.

The applicant claims to be the owner of the mobile home and vehicle and seeks an order requiring the respondent to return the property to him pursuant to section 66 of the *Residential Tenancies Act*.

The respondent indicated that the property had not been removed from the lot because they feared that moving the mobile home would cause damage to the property. The respondent stated that they considered the property to be abandoned personal property. The respondent noted that they originally demanded \$300/month in storage fees but were now willing to accept storage fees equivalent to the monthly lot rental of \$200/month (\$6.58/day). The respondent asked that the removal of the property be done by a contractor as they did not wish the applicant to enter upon the property due to liability issues. The respondent acknowledged receipt of a payment of \$200. The applicant claimed that he had made payments totally \$400 but provided no additional evidence supporting the claim.

The applicant objected to paying any storage costs for the personal property. He stated that the property was now situated on a surveyed road allowance and that the landlord should not be entitled to compensation equivalent to the original lot rental.

Section 64(5) of the *Residential Tenancies Act* obligates a landlord to store abandoned personal property in a safe place or manner.

64. (5) Property that has not been disposed of or sold under section (2) or (4) must, subject to the direction of the rental officer, be stored in a safe place and manner for a period of not less than 60 days.

Given the nature of the personal property, I do not think it unreasonable for the landlord to store the property on the premises.

Section 64(6) of the *Residential Tenancies Act* outlines the landlord's obligation to return abandoned property to the tenant or owner on the payment of removal and storage costs.

64. (6) Where the tenant or owner of an item of personal property stored by the landlord pays the landlord the costs of removing and storing the item, the landlord shall give the item to the tenant or owner and notify the rental officer.

The issue before me appears to be a dispute over the amount of storage fees which are being demanded by the respondent and possibly the condition that the goods be removed without the applicant entering upon the rental premises. There also appears to be a dispute concerning the amount the applicant has paid the respondent to date in respect of storage costs.

The respondent is currently demanding storage fees equivalent to the monthly lot rental or \$6.58/day. In my opinion, the consideration paid for the right to store a mobile home should not

necessarily be the same as the consideration paid for the right to occupy a mobile home lot as rental premises. If the landlord was unable to rent the premises and suffered damages of lost rent then perhaps the storage fees should be equivalent. I am not sure this is the case here. In my opinion, some storage cost is reasonable as the landlord does have obligations under the Act to provide safe storage. In my opinion, \$150/month or \$4.93/day is reasonable. As well, I feel it is reasonable to require that the applicant/owner make arrangements for and pay for a contractor to remove the property from the lot. Given the nature of the property, the applicant would no doubt have to contract this service in order to remove the property from the lot and I see no need to permit the applicant to re-enter the premises.

The applicant indicated that he may bring another action against the landlord if there were damages to the property. In my opinion, this can be the matter of a future application and should not stand in the way of the return of the personal goods to the applicant. An order shall be issued requiring the respondent to return the personal property to the applicant on the payment of storage fees of \$4.93/day to accrue from July 26, 2002 to the day the property is removed from the premises, less the \$200 which has been paid to the respondent. The applicant shall arrange for and pay for a contractor to remove the personal property from the premises and shall not enter upon the premises himself. The respondent shall impose no other conditions on the removal of the property.

Hal Logsdon
Rental Officer