

IN THE MATTER between **ALCIDE GAGNON**, Tenant, and **NIHJAA PROPERTIES LTD.**, Landlord;

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 **INUVIK, NT.**

BETWEEN:

ALCIDE GAGNON

Tenant

- and -

NIHJAA PROPERTIES LTD.

Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 66(a) of the *Residential Tenancies Act* the landlord shall pay the tenant compensation for wrongful disposition of personal property in the amount of one thousand fifty two dollars and thirty one cents (\$1052.31).

DATED at the City of Yellowknife, in the Northwest Territories this 21st day of November, 2003.

Hal Logsdon
Rental Officer

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ALCIDE GAGNON

Tenant

-and-

NIHJAA PROPERTIES LTD.

Landlord

REASONS FOR DECISION

Date of the Hearing: November 20, 2003

Place of the Hearing: Inuvik, NT via videoconference

Appearances at Hearing: Alcide Gagnon, tenant
Tim Bahr, witness for the tenant
Maureen Cournoyea, representing the landlord

Date of Decision: November 21, 2003

REASONS FOR DECISION

The tenant filed an application to a rental officer on August 21, 2003 seeking the return of personal property which was left in the rental premises after the tenancy was terminated. The matter was initially heard on September 30, 2003 in Inuvik, NT. At that time, the landlord's representative was uncertain if the personal property was in the possession of the landlord. The tenant agreed to provide the landlord with a detailed list of the items allegedly left in the premises and the landlord agreed to look into the matter. The hearing was adjourned. After several inquiries, the rental officer determined that there had been no progress made to resolve the matter. The landlord also filed an application against Mr. Gagnon and joint tenant Eric Shank, seeking payment of alleged rent arrears. The rental officer set the landlord's matter and the continuance of Mr. Gagnon's matter for hearing on November 20, 2003.

The matters were heard separately but related to the same tenancy agreement. In my opinion, one order is sufficient to address both matters.

The landlord attempted to serve Mr. Shank by registered mail at Mr. Gagnon's address and provided that address to the rental officer. Mr. Gagnon indicated that Mr. Shank did not live with him and stated that he did not know his whereabouts. As the services of the application and Notice of Attendance on Mr. Shank were not effected, no order may issue with Mr. Shank as a party. As Mr. Shank and Mr. Gagnon were joint tenants named on the written tenancy agreement, the landlord may proceed against Mr. Gagnon. The order shall reflect only Mr. Gagnon as the tenant.

The tenant testified that he and Mr. Shank entered into a tenancy agreement on April 1, 2003. On or about May 11, 2003 Mr. Gagnon moved out of the premises. Tim Bahr moved into Mr. Gagnon's room, sharing the premises with Mr. Shank. Mr. Gagnon stated that since his new accommodation was furnished, he permitted Mr. Shank and Mr. Bahr to use his furnishings and other belongings. Mr. Shank vacated the premises on or about May 31, 2003.

Mr. Bahr testified that he had spoken to the landlord and believed he would be permitted to rent the premises on Mr. Shank's departure. Mr. Bahr testified that on or about June 6, 2003 the landlord changed the locks on the apartment and would not permit him to remove any of his possessions or those belonging to Mr. Gagnon. Approximately two weeks later, the landlord permitted Mr. Bahr to remove his belongings but would not permit Mr. Bahr to take anything belonging to Mr. Gagnon. Mr. Bahr testified that at the time of the lockout and at the time he removed his belongings from the premises, Mr. Gagnon's personal property, as listed by Mr. Gagnon, was in the premises.

Mr. Gagnon testified that he had approached the landlord after the lockout of Mr. Bahr and requested the return of his property. He stated that the landlord refused, stating that there were rent arrears that had to be paid.

The landlord stated that of the personal property alleged to have been left in the premises, she had only been able to locate some dishes, a coffee table, some utensils, pots, pans and towels. She was not sure if any of these articles belonged to the tenant. None had been returned to the

tenant.

The applicant provided an itemized list of the items with his estimate of their value when new and stated that most of the items were two years old.

The landlord alleged that the tenants failed to pay the full amount of rent owing and failed to clean the apartment at the end of the tenancy. The landlord also claimed that the tenants failed to give adequate notice and sought damages for lost rent for the month of June, 2003. The landlord stated that they retained the security deposit of \$500 and sought an order for \$3875 calculated as follows:

Rent arrears including NSF charges	\$2630
Cleaning costs	245
Security deposit	(500)
Lost rent - June	<u>1500</u>
Amount sought	\$3875

The tenant did not dispute the allegations concerning rent arrears or cleaning but stated that they did not think that any amounts for June should be paid since they were not residing in the premises.

I find that the landlord breached sections 3(1) and 64 of the *Residential Tenancies Act*. The evidence indicates that the landlord failed to inventory and store Mr. Gagnon's personal property after the tenancy agreement was terminated and that the property was held pending payment of outstanding rent. The landlord can not now account for the property and I must therefore

conclude that it was wrongfully disposed of or otherwise dealt with. Section 66 permits a rental officer to make an order requiring the landlord to pay compensation to the owner of the goods.

Based on the tenant's estimates of value when new, which I find reasonable, estimating the reasonable life of the goods and applying straight line depreciation, I find the depreciated value of the personal property to be \$3425. My calculations are contained in schedule "A".

I find that the tenant failed to pay the lawful rent to the landlord. Taking into consideration the security deposit and accrued interest and applying the security deposit first to the undisputed costs of cleaning, I find the rent arrears to be \$2372.69, calculated as follows:

Security deposit	\$500.00
Interest	2.31
Rent arrears	\$2630.00
Cleaning	<u>245.00</u>
Rent Arrears	\$2372.69

Regardless of any lack of notice or abandonment of the premises by the tenants, Mr. Gagnon and Mr. Shank, it is apparent that Mr. Bahr was willing to rent the premises effective June 1, 2003 and was denied a tenancy agreement by the landlord. Section 5(2) of the Act requires a landlord to mitigate loss on the abandonment of a tenant. In my opinion, the landlord failed to do so and the request for compensation for June's rent is denied.

Deducting the rent arrears from the compensation due to the tenant, an order shall issue requiring the landlord to pay compensation to the tenant in the amount of \$1052.31 calculated as follows:

Compensation due tenant	3425.00
Rent arrears	<u>(2372.69)</u>
Amount due tenant	\$1052.31

Hal Logsdon
Rental Officer