

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

- and -

HAY RIVER MOBILE HOME PARK LTD.

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 29th day of July, 2004.

Hal Logsdon
Rental Officer

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

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

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BETWEEN:

HARVEY WERNER

Applicant/Tenant

-and-

HAY RIVER MOBILE HOME PARK LTD.

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: July 8, 2004

Place of the Hearing: Hay River, NT

Appearances at Hearing: Harvey Werner, applicant
Bonnie Bouvier, representing the respondent
Jack Rowe, representing the respondent

Date of Decision: July 28, 2004

REASONS FOR DECISION

An application was filed by the Hay River Mobile Home Park on November 10, 1999 against Diane Robinson alleging non-payment of rent. The rental officer found Diane Robinson in breach of her obligation to pay rent and issued an order requiring the payment of rent arrears and terminating the tenancy agreement on March 1, 2000 unless the arrears and rent for January, February and March, 2000 were paid in full. The applicant, on behalf of Ms. Robinson, appealed the order and the appeal was dismissed. The tenancy agreement was terminated on March 1, 2000 when Diane Robinson failed to comply with the order to pay the rent arrears.

A Notice of Motion was filed by the Hay River Mobile Home Park on July 10, 2002 seeking the eviction of Diane Robinson and directing the Sheriff to put the landlord in possession of the premises. The order for eviction issued on July 26, 2002. The Sheriff attended the premises on July 26, 2002 and advised Mr. Werner, that he intended to put the landlord in possession but would permit Mr. Werner to remove his belongings. The Sheriff returned on August 14, 2002 and found the premises locked with a chain. The chain was cut, the door was forced and the landlord put in possession of the premises.

Following the eviction, the respondent's legal counsel submitted a videotape of the eviction taken by the RCMP which also showed in detail the contents of the mobile home. The videotape was submitted "in discharge of any obligation my client has in regards to making an inventory of the abandoned property". A copy of the videotape was provided to Mr. Werner.

The applicant filed an application August 29, 2002 seeking compensation for wrongful sale, or disposition of his personal property pursuant to section 66 of the *Residential Tenancies Act*. The application was dismissed. In the reasons for decision the rental officer wrote,

"In my opinion, this matter can not be determined until the personal property is removed from the land by the applicant or disposed of by the respondent. The remedy pursuant to 66(b) has already been applied. The only remaining remedies lie within section 66(a). The landlord has not sold the property or disposed of it.no compensation can be *finally* determined until either the landlord disposes of the goods or the owner takes possession. Until such time the determination of any damages would be interim.I shall dismiss the application but permit a future application when a *final* determination of damages may be considered."

The applicant, Mr. Werner, now alleges that the mobile home, it's contents and a vehicle have been wrongfully disposed of by the landlord. The applicant seeks compensation in the amount of \$58,590.73. The applicant provided replacement cost estimates for the contents and the replacement of a porch and addition as well as appraisals of the mobile home and vehicle.

The respondent confirmed that he had taken the mobile home, contents and the vehicle to the town dump on or about October 8, 2003. The respondent testified that the applicant had failed to pay the required storage costs or make any arrangements to move the mobile home. He stated that the mobile home had been vandalized and constituted a fire and safety hazard. The respondent stated that he had sought permission from the rental officer to dispose of the property

but had not received a response.

The applicant stated that he had tried to move the mobile home but was unable to obtain a moving permit from the town because the taxes were in arrears. He also stated that the respondent would not permit him on the premises. The applicant stated that he had provided two money orders for \$200 each to the landlord for storage costs and pad rent. He stated that the landlord had refused to accept one of the money orders.

Section 64 of the *Residential Tenancies Act* permits a landlord to remove abandoned personal property from rental premises but obligates the landlord to store the removed property in a safe place and manner and provide an inventory to the rental officer and the tenant. In the context of a mobile home on land in a mobile home park, premises means the land and abandoned personal property can refer to the mobile home, contents and any other property left on the land.

- 64.(1) Unless a landlord and tenant have made a specific agreement providing for the storage of personal property, where a tenant leaves personal property in a rental premises or residential complex that the tenant has vacated or abandoned, the landlord may remove the personal property and, on removal, shall store and dispose of the personal property in accordance with this section.**
- (2) Where a landlord has good reason to believe that an item of personal property removed under subsection (1)**
 - (a) would be unsanitary or unsafe to store, or**
 - (b) is worthless,****the landlord may dispose of the item.**
- (3) Where a landlord removes personal property, other than property described in subsection (2), the landlord shall, at the earliest reasonable opportunity, give the rental officer an inventory of the property in an approved form and, where the address of the tenant is known to the**

landlord, the landlord shall give the tenant a copy of the inventory.

- (4) Where, after receiving the inventory, a rental officer determines that an item of personal property in the inventory could not be sold for an amount greater than the reasonable cost of removing, storing and selling it in accordance with this section or section 65, the rental officer may permit the landlord to sell or dispose of the item in the manner and subject to the terms and conditions that the rental officer may set.**
- (5) Property that has not been disposed of or sold under subsection (2) or (4) must, subject to the direction of a rental officer, be stored in a safe place and manner for a period of not less than 60 days.**

The Act does not obligate the landlord to remove abandoned personal property from rental premises. In the case of a mobile home, the removal and storage expenses may be considerable. In this case, the landlord elected to “store” the mobile home on the lot and did not remove it to another location. Is the landlord then responsible to ensure the mobile home and contents are secure? In my opinion, and particularly in these circumstances where the tenant had ample opportunity to remove his property, the answer is no.

Surely the applicant knew that the tenancy agreement was terminated on March 1, 2000 and that he would be required to vacate. His appeal of that order was dismissed. The applicant argues that he was unable to obtain land or arrange a moving permit during the thirty months he overheld. The applicant argues that he has lost everything, including his false teeth and \$4000 heirloom cookbooks yet he failed to remove even these items after the Sheriff provided him with a weeks grace to remove his personal belongings.

The respondent disposed of the property without the permission of a rental officer. As I outlined

in my order filed on October 8, 2003,

“I am not prepared to consider authorizing the disposal of the goods until the respondent has removed the goods from the premises in accordance with section 64”.

Even after the property was vandalized, I doubt the property could be considered worthless, unsanitary or unsafe to store.

Section 66 sets out the remedies available to a tenant when abandoned personal property is wrongfully disposed of.

- 66. Where, on the application of a person claiming to be the owner of an item of personal property, the rental officer determines that the landlord has wrongfully sold, disposed of or otherwise dealt with an item of personal property, the rental officer may make an order**
- (a) requiring the landlord to compensate the owner for the wrongful sale, disposition or dealing; or**
 - (b) requiring the landlord to give the property to the owner.**

In my opinion, compensation pursuant to section 66(a) is not reasonable. The landlord failed only to obtain the permission of a rental officer before disposing of the property. The property was “stored” on the premises for considerably longer than 60 days. Mr. Werner failed to pay the ordered storage costs. Mr. Werner’s loss does not flow directly from the landlord’s failure to obtain the permission of the rental officer but more directly from his own failure to take reasonable action, in the face of an eviction, to protect his property.

The application is dismissed.

Hal Logsdon
Rental Officer