File #10-7713B

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

- and -

HAY RIVER MOBILE HOME PARK LTD.

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 66(a) of the *Residential Tenancies Act*, the respondent shall pay compensation to the applicant for wrongful disposal of his personal property in the amount of one thousand seven hundred thirty eight dollars and twenty three cents ($1738.23).

DATED at the City of Yellowknife, in the Northwest Territories this 14th day of March, 2005.

Hal Logsdon
Rental Officer

File #**10-7713B**

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.

BETWEEN:

HARVEY WERNER

Applicant

-and-

HAY RIVER MOBILE HOME PARK LTD.

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: **January 13, 2005**
Continued on February 17-18, 2005

Place of the Hearing: **Yellowknife, NT and Hay River, NT**

Appearances at Hearing: **Harvey Werner, applicant**
Graham Watt, representing the respondent
Becky Schaub, witness for the respondent
Jack Rowe, witness for the respondent
Sylvia Arnold, witness for the applicant

Date of Decision: **March 12, 2005**

REASONS FOR DECISION

Harvey Werner's application to a rental officer (File #10-7713, filed on December 18, 2003) was dismissed in a order dated July 29, 2004. Mr. Werner had sought compensation for wrongful sale, disposition or dealing of his personal property pursuant to section 66(a) of the *Residential Tenancies Act*.

Mr. Werner appealed the order in an Originating Notice dated August 16, 2004. The matter was returned to the rental officer for rehearing.

In his Reasons for Decision, the Honourable Justice J.Z. Vertes concluded that the rental officer was wrong in law by concluding that the landlord was not responsible for storing the mobile home, contents and a vehicle in a safe place. As well the Honourable Justice found that the rental officer erred in not considering the claim for compensation on it's merits.

The Honourable Justice Vertes provided some guidance regarding the assessment of the claim for compensation, writing:

> **The actual merits of the claims for compensation are something that must be assessed on the basis of all of the evidence to be presented, both as to the condition of the property, the circumstances under which it was removed, and what value, if any, the property had at the time that it was removed.**

> **The rental officer will also have to consider what costs are recoverable by the landlord, if any, and what impact that will have on any award for compensation. These are matters within the power and discretion of the rental officer to adjudicate, hence my decision to send it back for rehearing.**

The rehearing of the application commenced on January 13, 2005 and was scheduled for half a day in Yellowknife. The hearing could not be concluded and was continued on February 17 and February 18, 2005 in Hay River.

The applicant alleges that his mobile home, contents and a vehicle were wrongfully disposed of by the respondent after an order for eviction was carried out. The applicant seeks compensation for the property in the amount of $58,590.73. The applicant has provided an itemized list of contents and their replacement value, an appraisal of the mobile home, and an appraisal of the vehicle.

The mobile home, contents and a vehicle remained on the landlord's lot following the eviction on August 14, 2002. An order issued by the rental officer on January 29, 2002 ordered the return of the property to Mr. Werner upon payment of storage fees and set the required per diem storage fees and other conditions.

The applicant has previously testified that he tried to make two payments to the landlord after the eviction in satisfaction of the ordered storage costs. The applicant provided two postal money

order receipts, each for $200 and payable to the respondent. The first was dated August 21, 2002 and the latter dated September 24, 2002. The landlord acknowledged receiving one of the money orders which was sent to their legal counsel although it could not be established which one was accepted. The other one was apparently refused by the landlord. At a previous hearing (File #10-7713) Mr. Werner testified that the landlord returned one of these two money orders and confirmed that he redeemed it and returned it to his account.

The applicant's witness, Sylvia Arnold testified that she had tried to pay rent on numerous occasions while residing at the premises with the applicant but the landlord had refused to accept payment. She also testified that she had tried to pay storage fees after the eviction but the landlord had refused to accept payment. Ms. Arnold indicated that she always made or attempted to make payments with money orders. No receipts, other than the two provided by Mr. Werner were provided in evidence. Ms. Arnold testified that when the money orders were returned to Canada Post for refund, the receipt portion was retained by them and no additional receipt was provided.

The property was not retrieved by the applicant. The mobile home, contents and a vehicle were demolished on or about October 8, 2003 without the permission of a rental officer.

The respondent called two witnesses who provided testimony concerning the circumstances under which the property was destroyed. Becky Schaub, an employee of the Hay River Mobile Home Park testified that the Town of Hay River had rejected applications to move the mobile

home to a secure compound because the mobile home was not their property and had not been abandoned by the owner. She also testified that all of the outstanding property taxes would be transferred to the landlord if the mobile home was relocated to their property. Jack Rowe, witness for the respondent, confirmed that the if the mobile home was moved, the outstanding taxes would be transferred to the owner of land to which it was moved. Ms. Schaub testified that after the Fire Marshall's office declared the mobile home a hazard, the landlord felt they had no choice but to demolish the mobile home in order to avert a tragedy. She stated that she had received concerns from other residents of the park regarding the mobile home and reports of unauthorized entry.

The respondent submits that Mr. Werner was never their tenant. The tenancy agreement was made between the Hay River Mobile Home Park and Diane Robinson and no assignment to Mr. Werner was ever made. The respondent argues that section 64(1) of the *Residential Tenancies Act* applies only to property that a tenant has left on the premises. I disagree. Both sections 64(6) and 66 refer to the owner of an item of personal property and permit the owner, who may not be a tenant to retrieve the goods and to file an application to a rental officer seeking remedy. In my opinion, sections 64-66 of the Act must be interpreted so as to be remedial to both tenant and owner.

The respondent challenged Mr. Werner's ownership of the property, stating that the bill of sale, dated July 22, 2002 represented a sale designed solely to put the property beyond the reach of the landlord, who was successful on July 29, 2003 in obtaining an order for a significant sum against

Diane Robinson. The respondent argued that the bill of sale was not valid and Mr. Werner therefore not the owner of the mobile home.

Following a previous application by Mr. Werner seeking the return of his personal property (File #10-7091), this issue was raised by the landlord. At that time, the respondent stated that they believed the sale was a "total fabrication" but stated that, "having said that, we are not going to let that issue stand in the way if Mr. Werner has a reasonable proposal to put on the table about how he's going to get the trailer back". As a result, the rental officer ordered the landlord to return the goods to Mr. Werner following the payment of specified storage fees and other conditions. Having recognized the respondent as entitled to claim the property pursuant to section 66(b), it is not fair, in my opinion, to now determine that he is not the owner of the property.

The respondent argued that the property was unsafe to store and the landlord therefore had the right to dispose of the property without the approval of a rental officer, pursuant to section 64(2)(a) of the *Residential Tenancies Act*. The respondent relied on a report by the Assistant Fire Marshall, dated July 10, 2003 which stated that the mobile home posed "a fire hazard to life and property". In my opinion, the respondent can not rely on section 64(2)(a) to justify the disposal of the property as it was not unsafe to store when the landlord came into possession. The property became unsafe because it was not made secure when the landlord came into possession which is a breach of the landlord's obligation. In my opinion, section 64(2)(a) only relieves the landlord of the obligation to store when, on coming into possession of the goods, they are unsafe or

unsanitary to store.

The respondent's witness gave testimony concerning the cost to move the property and the respondent argued that the cost to move the mobile home and contents exceeded the value of the property. The respondent argued that since the net worth of the property was zero, it could be disposed of without approval by a rental officer pursuant to section 64(2)(b) of the *Residential Tenancies Act.* I do not agree. In my opinion, the mobile home, contents and vehicle have some value notwithstanding the costs required to move the mobile home.

In my opinion, none of the above defenses provided by the respondent serves to relieve them of their obligation to store the personal property of the applicant in a safe place or obtain the approval of a rental officer prior to disposal of the property.

By choosing to "store" the mobile home, contents and vehicle on the premises, the landlord was obliged to take some measures to ensure the security and safety of the property. There is little evidence to indicate that sufficient measures were taken to secure the property. The landlord could have securely boarded up the windows and doors preventing unauthorized entry. This is common practice and is an inexpensive method of securing an unoccupied unit. The respondent's witness testified that she did ask that this be done but could not confirm that it had been done. The applicant, who had occasion to view the mobile home after the eviction, testified that windows were broken.

The Fire Marshall's report of July 10, 2003 described the mobile home as having many broken windows and an unsecured door. The corrective action ordered by the Fire Marshall's office was as follows:

> **Secure this building from unauthorized entry. This includes boarding up all doors, windows and any other points of entry and conducting regular security checks of the building to ensure that the building security has not been breached.**

In my opinion, the landlord failed to meet their obligation to store the property in a safe place. The damage that was inflicted on the property was the direct result of the landlord's failure to meet that obligation and culminated in the loss of all of the property when the landlord disposed of it without permission from a rental officer.

Having concluded that the respondent breached the obligations to store the property in a safe place and to obtain the permission of a rental officer prior to the disposal of the property, the remaining issue is one of compensation. The general starting rule as to the measure of compensation was stated by Lord Blackburn as,

> **That sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation [1]**

---

[1] Livingstone v. Rawyards Coal Co. (1880) 5 App. Cas. 25 at 39.

In order to determine the appropriate compensation, one must consider the applicant's position immediately after the eviction took place. One must consider the value of the contents, the buildings and the vehicle at that point in time as well as costs related to the applicant's obligation to relocate the property.

THE CONTENTS

The applicant valued the contents of the mobile home at $25,782.99. The applicant noted that the values claimed for the contents of the mobile home were based on replacement cost. Some of the replacement costs were based on quotations from a local retailer and others based on the applicant's own estimates. The applicant provided testimony as to the age of some of the items but was unsure as to the age of others.

The applicant testified that some items; namely a bedframe and mattress, a vacuum, a shop vac, a steam iron, a rocker recliner and a microwave oven were bought second hand. In some cases the applicant was able to recall what he had paid for these items.

The value of several items was based on their alleged value as heirlooms, antiques or collectors items. The applicant valued a set of poker chips at over $1000, a steel box at more than $500 and several boxes of cookbooks in excess of $4000. The applicant did not provide any appraisal, insurance or other evidence to substantiate the value of these items.

Some items on the itemized contents lists were duplicated or included in error. A dog clipper was

included on the list twice. The applicant noted that only one bedframe should have been included.

To provide compensation based on replacement cost would not put the applicant in the same position as he would have been had the landlord not disposed of his goods. It would put him in a considerably better position. Therefore, the valuation of the contents of the mobile home must consider the age and depreciated value of the various items.

I do not find the applicant's testimony credible as it pertains to the stated value of the poker chips, the antique steel orange box or the 3 boxes of heirloom cookbooks. Without some appraisal or evidence of insured value of these items, I can only consider their value to be nominal. While they may have great value to the applicant, he has failed to provide any evidence to substantiate any significant value in order to consider compensation for their loss.

I have also based the value of items purchased second-hand on the depreciated purchase price rather than the depreciated replacement cost.

Based on the testimony of Mr. Werner concerning the age of the goods and reasonable estimates of their useful life, I find the depreciated value of the mobile home contents to be $8917.83 (see Appendix).

THE BUILDINGS

The applicant provided an appraisal of the mobile home completed on June 28, 2002. The appraised value of the mobile home was $10,000. In my opinion, this is a reasonable estimate of it's value at the time of eviction and situated on the landlord's lot.

The applicant also provided a quote from Kincade Contracting dated November 10, 2003 to supply all materials, labour and equipment to build a front entry and rear addition to the trailer to match the past structure, as well as a storage shed. The quoted price for the work was $18,730. The work was not itemized but the applicant stated that the value of the shed alone was $800.The invoice quotes a replacement cost of the addition and porch of the mobile home which are clearly part of the appraisal as evidenced by the appraiser's sketch of the premises. In my opinion the Kincade invoice is not relevant except as it pertains to the construction of the shed, which was also disposed of by the landlord. The shed estimate of $800 is based on the applicant's estimate of it's value.

THE VEHICLE

The applicant also provided an appraisal of the vehicle, a 1994 Ford Escort Wagon completed by Yellowknife Chrysler. The appraised value of the vehicle was $3950.

RELOCATION COSTS

Reasonable compensation for loss of the mobile home must be determined considering the costs the applicant would have assumed had he retrieved the property, moved it to another location and

set it up as a residence. Following the aforementioned principle of compensation, the compensation must be sufficient to put Mr. Werner in the same position as if he had not sustained the wrong. Mr. Werner had been evicted. If he wanted the mobile home, he had to move it from the landlord's lot and set it up. The applicant would have had to assume these costs had the landlord returned the property to the applicant in a good condition.

The applicant testified that he had spoken to someone at Stan Dean and Sons who assured him the mobile home could be moved for approximately $1200. The applicant had previously entered a copy of a work order from Stan Dean and Sons to move the trailer and charge the costs to the NWT Housing Corporation. Prior to the hearing the rental officer made inquiries at Stan Dean And Sons who stated that they had not estimated or initiated any work. They stated that work of that nature would likely cost $10,000.

The respondent's witness, Jack Rowe, gave testimony concerning the work involved in moving a mobile home and the associated costs. Mr. Rowe also provided an invoice for a similar job which had been completed and paid for by the client. As well as moving the mobile home to another location, there would also be some site work involved to level the lot, including a gravel pad, connections for water, electricity and sewer and skirting. Mr. Rowe also stated that the cost of moving small outbuildings such as sheds, often exceeded their replacement value.

In my opinion, and based on the evidence before me, I find that the applicant would have had to assume costs of approximately $13,300 to remove the mobile home and shed from the landlord's

lot to another location and set it up as a residence as it existed at the original location. I calculate the costs as follows:

Cost to move mobile home	$7000
Gravel pad	2800
Service connections	2750
Skirting	750
Total	$13,300

Taking into consideration the depreciated value of the contents, the appraised value of the mobile home and the estimated value of the shed and the appraised value of the vehicle, I find the value of the property at the time immediately following eviction to be $10,367.83 calculated as follows:

Total depreciated value of property	$23,667.83
Relocation costs	(13,300)
Net Value of Property	$10,367.83

MITIGATION OF LOSS AND RECOVERABLE COSTS BY LANDLORD

Avoidable loss must be considered regarding the contents of the mobile home. While it is unclear which of the money orders was accepted by the landlord, it is true at either the per diem rate of $6.58/day (the equivalent of the lot rent and the overholding charge set by the court) or $4.93/day (the storage fee subsequently by the rental officer) that the tendered money orders would have satisfied the outstanding storage fees.

The applicant could not have been expected to protect all of the property from loss due to the

landlord's breach of the Act. The testimony of both parties outlined the impediments that were involved with moving the mobile home. The applicant had no place to situate the unit. The municipality required either party to pay outstanding taxes prior to issuing a permit. It is also likely that the applicant lacked the financial resources to contract the work. He had recently been evicted and most likely had no place to put many of the household items, particularly furnishings. However, a number of small but valuable items could have easily have been retrieved. It would have been reasonable for him to make arrangements with the landlord to retrieve some of the smaller, more valuable contents after paying storage fees. There is no evidence that he made any efforts to make any such arrangements with the landlord.

Understanding that his property was being damaged due to the landlord's failure to secure the premises, he nevertheless made no arrangements with the landlord to retrieve any of his personal belongings, even after paying what was most likely a sufficient storage fee at that point in time.

H. McGregor writes:

> **The extent of the damage resulting from a wrongful act, whether tort or breach of contract, can often be considerably lessened by well-advised action on the part of the person wronged. In such circumstances, the law requires him to take all reasonable steps to mitigate the loss consequent on the defendant's wrong, and refuses to allow him damages in respect of any part of the loss which is due to his neglect to take such steps. Even persons against whom wrongs have been committed**

> **are not entitled to sit back and suffer loss which could be avoided by reasonable efforts or to continue an activity unreasonably so as to increase the loss.** [2]

The respondent repeatedly stated that they were anxious to have the property removed. From the testimony, it appears the applicant was and is of the opinion that the Act requires a landlord to store the goods until the former tenant or owner decides to retrieve them and pays the applicable storage fees. That is not the case. The Act requires the landlord to store the goods for a minimum of 60 days and obtain the permission of a rental officer to dispose of them. In my opinion, the applicants behavior, in the light of obvious vandalism to his property, contributed to his ultimate loss and the applicant should not be entitled to compensation for those items which he might have been able to retrieve.

Included among the items which I feel the applicant could have easily retrieved are the smaller, more valuable items included on the applicant's inventory as well as the vehicle. The applicant testified that the vehicle was registered and in running order. There is no reason why he could not have made arrangements to have it filled with numerous small household items, driven off the property, and parked elsewhere.

In my opinion, the applicant could have reduced his losses by $6315.33 by making suitable arrangements with the landlord to remove some of the mobile home contents and the vehicle

---

[2] Harvey McGregor, McGregor on Damages, Sixteenth Edition, (London: Sweet & Maxwell Ltd., 1997) 295.

from the lot (See Appendix for details).

The respondent submitted that the rent arrears and compensation for overholding should be recoverable from any claim by the applicant. The respondent noted that section 65(2)(b) permitted a landlord to retain any proceeds of the sale of abandoned personal property to satisfy any order for compensation made in favour of the landlord and argued that the relationship between the applicant and the former tenant, Diane Robinson, was not at arms length.

In my opinion, the landlord is not entitled to deduct the liabilities of Diane Robinson.

There are accrued storage fees which, in my opinion, should be offset against any compensation due to the applicant. As well, the applicant was previously ordered to pay costs to the respondent in a previous matter which I believe remains outstanding. Storage fees are calculated from July 27, 2002 to October 8, 2003 @ $4.93/day in accordance with the previous order, less the $200 paid by the applicant.

Considering the deductions for avoidable loss and recoverable costs of the landlord into consideration I find the compensation due to the applicant to be $1738.23, calculated as follows:

Value of the property at time of eviction	$10,367.83
less reduction for mitigation	(6315.33)
less storage fees	(1964.27)
less outstanding court costs	(350.00)
Compensation due applicant	$1738.23

An order shall issue requiring the respondent to pay compensation to the applicant for the improper disposal of his personal property in the amount of $1738.23.

____

Hal Logsdon
Rental Officer