

IN THE MATTER between **NEIL WOLEDGE**, Applicant, and **HAY RIVER HOUSING AUTHORITY**, 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:

**NEIL WOLEDGE**

Applicant/Tenant

- and -

**HAY RIVER HOUSING AUTHORITY**

Respondent/Landlord

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 66(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant compensation for improper disposal of his personal property in the amount of three hundred sixty two dollars and seventy nine cents (\$362.79).

DATED at the City of Yellowknife, in the Northwest Territories this 24th day of March, 2005.

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Hal Logsdon  
Rental Officer

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**REASONS FOR DECISION**

<b><u>Date of the Hearing:</u></b>	<b>December 17, 2004, continued on March 18, 2005</b>
<b><u>Place of the Hearing:</u></b>	<b>Hay River, NT via teleconference - December 17, 2004 Yellowknife, NT - March 18, 2005</b>
<b><u>Appearances at Hearing:</u></b>	<b>Neil Woledge, applicant Christine Smith, representing the respondent (by telephone on March 18, 2005)</b>
<b><u>Date of Decision:</u></b>	<b>March 23, 2005</b>

**REASONS FOR DECISION**

The applicant alleged that the respondent/landlord disturbed his lawful possession of the premises and improperly disposed of his personal property. The applicant sought the reinstatement of his tenancy and compensation for the property.

The parties entered into a written tenancy agreement commencing August 1, 2003. The applicant was the sole tenant. The tenancy agreement permitted three children to also occupy the premises. On July 8, 2004 the applicant was arrested. The applicant's estranged wife assumed care of the children, who were removed from the premises. The landlord secured the premises.

The landlord filed an application to a rental officer on July 20, 2004 alleging disturbance and seeking an order terminating the tenancy agreement.

Following the arrest of the applicant, the landlord permitted the children to enter the premises on several occasions to retrieve personal property.

On July 28, 2004 a Sheriff's Officer made a seizure of goods at the rental premises pursuant to a writ. The goods were subsequently sold at auction. A list of items seized at the rental premises was obtained by the rental officer and provided to both parties.

The applicant was held in custody until his trial in October, 2004. The respondent testified that

the applicant did not contact them regarding the premises and they considered the premises abandoned in early September, 2004. The applicant testified that he had contacted the landlord after a notice of early termination was served on him in July, 2004 and was told he had to vacate the premises.

The respondent testified that following the seizure by the Sheriff, they considered the remaining property to be worthless and disposed of it. A note to file indicates that the remaining goods were taken to the dump on September 9, 2004 after notifying the family and giving them an opportunity to remove anything else. No inventory of abandoned personal property was filed with the rental officer and no permission was sought by the landlord to dispose of the property.

The landlord withdrew their Application to a Rental Officer on September 22, 2004.

After the landlord took possession of the premises in September, 2004 a number of repairs were undertaken to the premises. Some repairs were considered to be a result of tenant damage and deducted from the security deposit. A statement of the security deposit was prepared indicating a balance owing to the landlord of \$1549.19. The applicant disputed a number of the repairs, stating that some of the damage had occurred prior to the commencement of the tenancy agreement, that some of the costs were unreasonable and some were made necessary due to vandalism.

Section 1(3) of the *Residential Tenancies Act* sets out the definition of abandonment:

- 1(3) For the purpose of this Act, a tenant has abandoned the rental premises and the residential complex where the tenancy has not been terminated in accordance with this Act and**
- (a) the landlord has reasonable grounds to believe that the tenant has left the rental premises; or**
  - (b) the tenant does not ordinarily live in the rental premises, has not expressed an intention to resume living in the rental premises, and the rent the tenant has paid is no longer sufficient to meet the tenant's obligation to pay rent.**

The conditions under subsection (b) are not satisfied as the applicant had a rent credit of \$85.56.

Undoubtedly, the applicant had left the premises. When the landlord decided to declare abandonment, he had been gone for more than two months. No one else had a lawful right to possession as the applicant was sole tenant. The children were minors and not tenants. The landlord, reasonably in my opinion, did not want children occupying the premises without an adult tenant. The landlord was under no obligation to assign the tenancy agreement to the estranged wife as the premises are subsidized public housing. In my opinion the landlord was entitled to consider the premises abandoned and by taking possession, did not disturb the applicant's possession.

When personal property is left on premises after a tenant vacates or abandons the premises, the landlord may only dispose of the property if it is worthless, unsanitary, or unsafe to store or if approval of a rental officer is obtained. The applicant is claiming several items of apparent value which do not appear on the Sheriff's list of seized items. A written statement by Mary Woledge states that she went to the dump after discovering that the possessions had been disposed of and retrieved, among other things, clothing, tools, dishes and a dresser. Perhaps these items were of little value for seizure but, in my opinion, they can not be considered worthless. Had their value

been less than the landlord's cost of removal and storage, the landlord could have filed an inventory with the rental officer and sought immediate approval for disposal. I find the respondent in breach of their obligation to deal with abandoned personal property in accordance with the Act by disposing of personal property of some value without the permission of a rental officer.

In determining the value of the disposed property, it is first necessary to determine what the landlord actually disposed of. The list of items provided in evidence by the applicant contains many items which were seized by the Sheriff. The respondent also submitted a list in evidence but it is unclear what it represents. The list is undated and contains a number of items which were seized by the Sheriff as well as items which do not appear on the applicant's list. Complicating the matter further, there is no record as to what items the family may have removed from the premises following the applicant's arrest.

The applicant provided his own estimates of value for items on his list. There is no other evidence to substantiate these amounts. The rental officer obtained a list of the applicant's property, including items which were seized from his property in Fort Resolution, and the price they brought at auction. This list was of some assistance in determining the value of items on the applicant's list. For example, the applicant valued a bicycle at \$100, but a bicycle at auction sold for \$20. Similarly the applicant valued a compressor at \$500 but it sold at auction for \$325.

Comparing the evidence before me, I find the value of the goods remaining in the premises after

the seizure to be worth \$980. A list of the remaining goods and their values appears in the appendix. In my opinion, this is reasonable compensation for the improper disposal of the applicant's personal property.

The applicant disputed the deductions from the security deposit stating that the doors in the premises were damaged prior to the commencement of the tenancy agreement and the repair costs unreasonable. He also stated that a window was broken by vandalism and not by himself or persons he permitted in the premises.

An inspection report was completed at the commencement of the tenancy agreement which was signed by both parties. Any deficiencies are described and the condition of various components are rated "good", "repair", or "replace". Noted on the report are two holes in the front entry door, a small hole on a bedroom door, and a hole in the bathroom door. All three are rated as "repair".

The respondent testified that the condition of the doors at the commencement of the tenancy agreement did not justify replacement as the holes could be repaired. She testified that at the termination of the tenancy, the doors were seriously damaged and beyond repair. One work order for a window repair, submitted in evidence by the respondent and dated December 31, 2003 noted "Also observed that the bathroom door has been kicked in". In my opinion, the evidence supports the need to replace the doors in the premises due to the negligence of the tenant.

However, the work orders appear to replace more doors that actually exist in the unit. The costs related to work order #1008 are therefore denied as it appears to duplicate work performed under work order #1060. I find the costs outlined in work order #1060 to be reasonable.

The applicant testified that someone broke the window from outside. This appears to be outlined in a memo from the applicant to the landlord dated January 6, 2004 where he states that “recently a hard boiled egg was thrown through our second story window....”. Work order #1311 appears to have documented the repair of the window. In my opinion, this is not the responsibility of the tenant as the repair was not made necessary due to his negligence or persons he permitted in the premises. The costs of this window repair are therefore denied.

Work order #935 was also deducted from the security deposit statement and represents costs related to taking the personal effects of the applicant to the dump. As these items were not worthless they should have been inventoried and stored. Any costs which relate to removal and storage are collectable from the tenant on retrieval of the property or through sale after approval for disposal is granted by a rental officer. This is not a cost which may be deducted from a security deposit and is therefore denied.

In summary, taking into consideration the compensation due the applicant, the security deposit, the rent credit and the deductions from the deposit, I find a net amount owing to the applicant in the amount of \$362.79 calculated as follows:

Security deposit and interest	\$441.78
Rent credit	85.86
Compensation to applicant	980.00
Repairs - work order #602	(120.71)
Repairs - work order #1060	<u>(1024.14)</u>
Amount due applicant	\$362.79

An order shall issue requiring the respondent to pay compensation to the applicant for improper

disposal of his personal property in the amount of \$362.79.

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Hal Logsdon  
Rental Officer