

IN THE MATTER between **RAQUEL E. MCNABB**, Applicant, and **FORT RESOLUTION 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 **FORT RESOLUTION, NT**.

BETWEEN:

RAQUEL E. MCNABB

Applicant

- and -

FORT RESOLUTION HOUSING AUTHORITY

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 the wrongful disposition of her property in the amount of five hundred dollars (\$500.00).

DATED at the City of Yellowknife, in the Northwest Territories this 25th day of April, 2006.

Hal Logsdon
Rental Officer

IN THE MATTER between **RAQUEL E. MCNABB**, Applicant, and **FORT RESOLUTION 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.

BETWEEN:

RAQUEL E. MCNABB

Applicant

-and-

FORT RESOLUTION HOUSING AUTHORITY

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: April 18, 2006

Place of the Hearing: Fort Resolution, NT via teleconference

Appearances at Hearing: Raquel McNabb, applicant
Joyce Beaulieu, representing the respondent
Elizabeth Ann McKay, representing the respondent

Date of Decision: April 23, 2006

REASONS FOR DECISION

The applicant alleged that the respondent dealt with her personal property contrary to section 64 of the *Residential Tenancies Act*, causing damage to the property. The applicant sought compensation in the amount of \$3960.

The applicant testified that she was an occupant in the rental premises operated by the respondent but not a tenant. The applicant testified that the tenant vacated the premises in November, 2005 and that she vacated the premises about three weeks later, leaving her personal belongings in the unit. The applicant stated that she moved to her mother's home. The applicant testified that the landlord removed her personal belongings from the premises and placed them outside her mother's house. She stated that they have subsequently been damaged by exposure to the elements and that she has not been able to find any place to store them. The applicant provided an itemized list of the belongings including their cost and current estimated value. The applicant also provided photographs of the goods showing the location where they were stored.

The respondent disputed the applicant's testimony and testified that the tenancy agreement, which was made for a term, expired in March, 2005 and the tenant vacated at that time. The respondent testified that the applicant remained in the premises until April 21, 2005 when the landlord took possession of the premises. The respondent testified that the personal belongings of the applicant remained in the premises until July 18, 2005 when they were removed and taken to her mother's house. The respondent stated that the applicant had been asked on numerous occasions to remove her possessions from the house and that her mother had agreed to have the possessions delivered

to her house and indicated that she would store them in her warehouse. The possessions were not delivered to the warehouse, however, but were placed outside the house of the applicant's mother.

Sections 64 and 65 of the *Residential Tenancies Act* permit a landlord to remove abandoned personal property from the premises but, unless the property is worthless or unsafe or unsanitary to store, obligates the landlord to store the goods in a safe place and to provide an inventory to the rental officer and the tenant. If the owner of the property or the tenant fails to claim the property, the landlord may seek the approval of the rental officer to dispose of the property.

In this matter, the landlord clearly breached the Act by failing to store the possessions in a safe place after removal from the premises and by failing to file an inventory with the tenant and the rental officer. The Act provides a remedy of compensation to the owner or tenant.

The applicant did not appear to have a clear recollection of when she left the premises or when the possessions were delivered to her mother's house. Initially she testified that she vacated in late January, 2006. The application was filed in November, 2005. When questioned about the date she revised the date to November, 2005. In contrast, the respondent noted the exact dates when they took possession of the premises and when the goods were removed. I find the respondent's testimony the most credible which means the personal property remained outside for nearly four months before the application was made and has remained outside for nine months.

Section 5(1) of the *Residential Tenancies Act* applies the principle of mitigation to tenancy agreements.

5.(1) Where a landlord or tenant is liable to the other for damages as a result of a breach of a tenancy agreement or this Act, the landlord or tenant entitled to claim damages shall mitigate his or her damages.

In this matter the applicant was no doubt aware that her goods had been delivered to her mother's house as she was living there. Despite the fact that the landlord breached their obligation to safely store the possessions after removal, the applicant has done little or nothing to prevent the damage to her possessions. The applicant explained her lack of action, stating that there was no room in her mother's warehouse and she had no place to put the goods. In my opinion, some preventative measures could have reasonably been taken to prevent the degree of loss that has been experienced. It would not have been difficult for the applicant to put many of the items in cartons and cover them with a tarp or plastic. The photographs do not indicate any significant protection from the elements.

It is perhaps the case that some of the larger items such as furnishings and electronics could not have been reasonably protected from the elements while stored outside. Given the applicant's lack of any other storage space, some damage could be expected. Other items, for which the applicant has claimed compensation, are not likely to suffer damage despite the elements. Dishes and cleaning supplies will not be damaged by weather.

It is hard to believe that the applicant would not have any room in her mother's house, where she was living, to store clothing or numerous small articles such as CDs. One can understand how the

applicant's furniture could not be stored in her mother's house but if the applicant was living there, it is reasonable to assume she would have room for her clothing and makeup.

In determining the amount of compensation which is reasonable, I have taken into consideration the following factors:

1. What is the value of items which, despite being left outside, will not sustain any damage? (e.g. dishes, household cleaning supplies)
2. What is the value of items which could have been reasonably stored in the applicant's present accommodation? (e.g clothing, make-up)
3. What is the value of items which the applicant could have reasonably covered and protected from the elements?

Eliminating the value of the items which could be included in the above categories, I am left essentially with the value of the large items of furniture and some electronic items. In my opinion, the value of these items is approximately \$500.

I find the landlord in breach of their obligation to safely store abandoned personal property. An order shall issue requiring the respondent to pay compensation to the applicant in the amount of \$500.

Hal Logsdon
Rental Officer