

IN THE MATTER between **ARLENE CARMICHAEL**, Applicant, and **TEE PEE HOUSING ASSOCIATION**, 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 **INUVIK, NT**.

BETWEEN:

**ARLENE CARMICHAEL**

Applicant/Tenant

- and -

**TEE PEE HOUSING ASSOCIATION**

Respondent/Landlord

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to sections 66(b) and 83(2) of the *Residential Tenancies Act*, the respondent shall return all personal property held by the respondent to the applicant upon her request. The respondent shall file with a rental officer an inventory of these goods and provide a copy to the applicant. The respondent shall release the goods to the applicant without the application of removal fees, storage fees, rent arrears or any other amount. The respondent shall continue to store the goods in a safe place until the applicant claims the goods or until permission has been granted by a rental officer to dispose of the goods. If the goods have not been claimed by the applicant or her agent after 90 days have passed from the date the inventory is filed with a rental officer, the respondent may request the permission of a rental officer to sell or dispose of the goods.

2. Pursuant to section 34(2)(c) of the *Residential Tenancies Act* the respondent shall pay the applicant compensation for loss suffered as the direct result of the respondent's disturbance of the applicant's possession of the premises in the amount of one thousand three hundred fifty six dollars and fifty one cents (\$1356.51).

DATED at the City of Yellowknife, in the Northwest Territories this 7th day of June,  
2006.

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Hal Logsdon  
Rental Officer

IN THE MATTER between **ARLENE CARMICHAEL**, Applicant, and **TEE PEE HOUSING ASSOCIATION**, 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:

**ARLENE CARMICHAEL**

Applicant/Tenant

-and-

**TEE PEE HOUSING ASSOCIATION**

Respondent/Landlord

**REASONS FOR DECISION**

**Date of the Hearing:** April 28, 2006

**Place of the Hearing:** Inuvik, NT

**Appearances at Hearing:** Arlene Carmichael, applicant (by telephone)

**Date of Decision:** June 8, 2006

**REASONS FOR DECISION**

The respondent was served with a Notice of Attendance by registered mail. The respondent was also notified by phone by the Rental Officer. The respondent failed to appear at the hearing and the hearing was held in their absence.

The applicant alleged that the respondent had disturbed her lawful possession of the premises and had seized her personal property. The applicant sought the return of her possessions, compensation related to the landlord's disturbance of her possession of the premises and an order requiring the landlord to permit her to resume occupancy of the premises.

The applicant stated that she had been a tenant at Tee Pee Housing Association for about 8 years. She testified that she went to Yellowknife for medical reasons on August 9, 2005 and notified the landlord that she would be returning. She had an unknown amount of rent arrears at the time. She returned to the premises on September 9, 2005. On September 11, 2005 she went to Aklavik to take care of her mother and returned on October 10, 2005. She stated that she did not inform the landlord on her departure but the manager, Agnes Noksana contacted her in Aklavik by phone.

The applicant stated that she expressed her intention to return to the premises in early October in a telephone conversation with Ms Noksana. The applicant testified that Ms Noksana did not express any objection or indicate that the premises would be considered abandoned. She also testified that she attempted to pay her rent before she left for Aklavik but there was no one in the landlord's offices who was authorized to accept rent.

The applicant testified that when she returned from Aklavik on October 10, 2005 she was informed that she had abandoned the premises and that her personal possessions would be returned on the payment of rent arrears of \$672 and removal and storage costs of \$3143.49.

The respondent did not file an inventory of abandoned personal property with a rental officer in accordance with section 64(3) of the *Residential Tenancies Act*. The applicant testified that she had not received an inventory and the landlord will not return her telephone calls.

The applicant testified that she had been living with her mother in Aklavik and contributed \$500/month to help with expenses.

Abandonment of rental premises is defined in section 1(3) of the *Residential Tenancies Act*.

- 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.**

In my opinion, the respondent did not have sufficient grounds to consider the premises abandoned. Although the applicant failed to notify the landlord prior to leaving for Aklavik, the respondent was informed of the applicant's intention to return in early October when she phoned her in Aklavik. I find that the respondent breached section 34 of the *Residential Tenancies Act* by

considering the premises abandoned and taking possession, thereby disturbing the applicant's lawful possession. While I realize that the applicant was a tenant in subsidized public housing which is in short supply and should be utilized in the most effective manner, the reasons why the applicant left the premises on the two occasions are quite understandable and reasonable. On both occasions the landlord knew of the reasons for the absence and the intention of the applicant to return.

It appears that although the respondent has failed to prepare and file an inventory of the applicant's goods which were removed from the apartment, they have complied with the provisions to store the goods. While they are entitled to seek removal and storage costs prior to the release of the goods to the tenant, they are not permitted to demand rent in arrears. Section 6 of the *Residential Tenancies Act* prohibits distraint for rent.

**3.(1) No landlord shall distraint for rent payable under a tenancy agreement on the goods and chattels of any person.**

**(2) No person authorized by any Act or other law or agreement to recover rent payable for rental premises shall distraint on the goods and chattels of a tenant of rental premises.**

There is also the question whether the \$3143.49 demanded for removal and storage costs is reasonable. There is no evidence that the respondent provided any detail of this amount to the applicant and they have provided no evidence in their defence to the Rental Officer. I find the respondent has wrongfully dealt with the personal property of the applicant by failing to file an inventory of the stored goods and by demanding rent arrears prior to the return of the goods to the applicant.

Section 66 of the *Residential Tenancies Act* sets out two possible remedies where a landlord is found to have wrongfully sold, disposed of or otherwise dealt with an item of personal property.

**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.**

As it appears the respondent is still in possession of the applicant's personal possessions, in my opinion, the most reasonable remedy is to order the respondent to return the goods to the applicant. The applicant seeks the goods to be returned to her in Aklavik or to be compensated for the costs of shipping the goods to Aklavik since she is now a resident of that community. In my opinion, this is not reasonable. The purpose of compensation is to put the injured party in the same position as he/she would have been in if the breach had not occurred. Shipping the goods to Aklavik or providing money to the applicant to pay for the shipping would enhance the original position of the applicant.

It is difficult to determine from the evidence if the required removal and storage fees demanded by the respondent are reasonable. The list of items provided in evidence by the applicant is very long and includes furniture, kitchen items, clothing and personal goods. It can be assumed that the removal costs were significant based solely on the size and quantity of the goods. One may also assume that the goods would occupy a significant amount of storage space. It is unknown if the storage fees are based on a monthly rate and have continued to accrue since the applicant was

informed in October, 2005 of her obligation to pay \$3143.49. Given the volume of goods removed and stored and the length of time they have been stored (from October, 2005 to present), the removal and storage fees do not appear unreasonable.

The remedies available to a tenant when a landlord has breached the obligation to not disturb the tenant's possession of the premises are contained in section 34(2) of the *Residential Tenancies Act*.

**34.(2) Where, on the application of a tenant, a rental officer determines that the landlord has breached the obligation imposed by subsection (1), the rental officer may make an order**

- (a) requiring the landlord to comply with the landlord's obligation;**
- (b) requiring the landlord to not breach the landlord's obligation again;**
- (c) requiring the landlord to compensate the tenant for loss suffered as a direct result of the breach; or**
- (d) terminating the tenancy on a date specified in the order and ordering the tenant to vacate the rental premises on that date.**

In my opinion, particularly when so much time has passed, it is not practical to order the landlord to put the tenant back in possession of the premises. It is likely that the premises have been re-rented since October, 2005 and are no longer available to rent. In my opinion, compensation is the only practical remedy.

At the hearing the applicant testified that she contributed approximately \$500/month to her mother for the privilege of staying at her home. The applicant was asked to submit to the rental



officer an inventory of goods and their approximate value. She filed this material with the rental officer on May 15, 2006. The applicant also included in that document estimated monthly expenses of \$2000. No explanation was provided for the difference between this document and the applicant's previous testimony and little detail was provided to substantiate the figure of \$2000. I can find no evidence to justify compensation of \$2000/month. The previous figure of \$500/month appears to be a reasonable amount to cover a monthly rent paid to the applicant's mother as well as other incidental expenses directly related to the breach, such as airfare to Aklavik and the replacement of essential clothing seized by the landlord.

The remaining question is the period of time such compensation should cover. It is no longer practical to put the applicant back in possession thereby returning the applicant to the state she was in prior to the landlord's breach. Clearly, the compensation can not continue forever or until the landlord is able to offer another apartment. In my opinion the compensation should commence in October, 2005 when the goods were seized and continue to June, 2006, the month of the issuance of this order. The compensation should be reduced by the storage costs of the goods resulting in total compensation due of \$1356.51.

An order shall issue requiring the respondent to return all personal property held by the respondent to the applicant upon her request. The respondent shall file with a rental officer an inventory of these goods and provide a copy to the applicant. The respondent shall release the goods to the applicant without the application of removal fees, storage fees, rent arrears or any other amount. The respondent shall continue to store the goods in a safe place until the applicant

claims the goods or until the disposal or sale of the goods has been approved by a rental officer. If the goods have not been claimed by the applicant after 90 days have passed from the date the inventory is filed with a rental officer, the respondent may request the permission of a rental officer to sell or dispose of the goods. The order shall also require the respondent to pay compensation to the applicant for disturbing her lawful possession of the premises in the amount of \$1356.51 calculated as follows:

Compensation (\$500 x 9 months)	\$4500.00
less removal and storage costs	<u>3143.49</u>
Amount due applicant	\$1356.51

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Hal Logsdon  
Rental Officer