File #10-10636

IN THE MATTER between **DEAN HOYLE**, Applicant, and **CRAIG ROSS**, 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 **SANDY LAKE, NT.**

BETWEEN:

DEAN HOYLE

Applicant/Tenant

- and -

CRAIG ROSS

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 66(b) of the *Residential Tenancies Act*, the respondent shall return, at no cost, all personal property of the applicant left on the rental premises after he gave up possession on or about November 26, 2008. All possessions shall be returned no later than May 15, 2009.

DATED at the City of Yellowknife, in the Northwest Territories this 15th day of April, 2009.

Hal Logsdon
Rental Officer

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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:

DEAN HOYLE

Applicant/Tenant

-and-

CRAIG ROSS

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing:	**March 27, 2009**
Place of the Hearing:	**Hay River, NT via teleconference**
Appearances at Hearing:	**Dean Hoyle, applicant** **Craig Ross, respondent**
Date of Decision:	**April 15, 2009**

REASONS FOR DECISION

The respondent's first name was mis-spelled on the application. The style of cause of the order shall reflect the proper spelling of the respondent's name.

The applicant alleged that the respondent had failed to return the personal possessions he left on the premises when he vacated. The applicant also alleged that the respondent had cut off the supply of fuel causing the premises to freeze and resulting in damage to some of his personal property. The applicant sought an order requiring the respondent to return his personal property.

The premises consist of a dwelling at Sandy Lake, near the municipality of Hay River. There is no evidence to suggest that the premises were provided to the applicant as a seasonal vacation home which would make it exempt from the provisions of the *Residential Tenancies Act*.

The respondent stated that there was no landlord/tenant relationship because he did not require the applicant to pay any rent. The respondent stated that he permitted the applicant to stay in the house as a caretaker only and did not require the applicant to pay any compensation for the use and occupation of the property.

The respondent also testified that he had shut off the supply of propane at the tank when he noticed that the applicant had left the premises without extinguishing the propane lights. He stated that he considered this a fire hazard and since the tenant had changed the locks without

providing him with a key, he had to shut off the fuel at the tank to extinguish the lights and protect his property.

The applicant provided Financial Case Reports obtained from the Department of Education, Culture and Employment which indicated that the respondent had received five rent payments of $750 through the Income Security Program between November, 2007 and February, 2008. The reports indicate that the money was deposited directly to the bank account of the respondent. The Rental Officer confirmed this information with the Customer Service Officer during a recess and advised both parties of the finding but the respondent continued to state that he didn't believe he had received any money for rent.

In order to receive rent from the Income Security Program a landlord must complete a declaration stating the rent charged for the unit, security deposit required and other particulars of the premises and landlord. While it is conceivable that the original arrangement between the parties was that of a caretaker, it became a landlord/tenant relationship in November, 2007 when the respondent began demanding and receiving rent.

The applicant stated that the Income Security Program ceased to pay his rent after February, 2008 when they discovered that certain covenants in the respondent's lease were in conflict with the program's policy. There was no evidence to indicate that at that point in time, the parties agreed to terminate the tenancy agreement or what covenants in the respondent's lease caused the rent assistance to be cancelled.

The applicant stated that he was in the process of moving out on November 26, 2008 when the RCMP arrived, took him into custody and transported him to his new premises in Hay River. Apparently the parties had become quite confrontational and the police removed the applicant for reasons of safety due to the presence of an unregistered firearm. No charges were laid.

The applicant verbally listed the items he allegedly left on the premises. The respondent testified that there was no personal property of the applicant left on the premises.

In my opinion, there was a tenancy agreement between the parties. I can not accept the testimony of the respondent that he did not receive any rent when there is such unequivocal evidence to the contrary. There is no evidence to suggest that the tenancy agreement formed in November, 2007 was terminated at a later date in favour of some other relationship other than that of landlord and tenant.

When a tenant leaves personal property in rental premises a landlord is obligated to treat the possessions in accordance with section 64 of the *Residential Tenancies Act* which includes making and filing an inventory of the goods, storage of the possessions in a safe place for at least 60 days and obtaining the permission of a rental officer prior to the disposal of any property. Given the respondent's testimony concerning rent I am more inclined to accept the applicant's testimony that personal property was left in the premises than the denial of the respondent.

As I have no details concerning the value of the property allegedly left on the premises, I can

only make an order requiring that all personal property belonging to the applicant be returned to him without charge. Should all of the property not be returned or if it has been damaged or destroyed, the applicant is given leave to make another application seeking compensation for the value of goods lost. If such an application is made, the applicant shall provide with the application an itemised description if each item, it's replacement cost, age, condition and any proof of ownership that may be available. Such an application shall only be made after May 15, 2009 which is the date I shall require the respondent to return all personal property held.

I shall not consider the value of any goods lost or damaged when the respondent turned off the propane supply. Neither landlord nor tenant is permitted to change the locks without the other's permission. The applicant acknowledges that he breached this obligation. I agree with the respondent that an unattended propane light presents a possible fire hazard. A landlord has an obligation to protect his property from loss. He was unable to enter the premises and turn off the lights and his only method of eliminating the risk to his property was to turn off the fuel supply at the source. While he did interfere with the supply of a vital service he did not do so with any malicious intent but only to protect his property from possible damage. The damage was a result of the tenant's unreasonable action more than that of the landlord.

An order shall issue requiring the respondent to return, at no cost, all personal property of the applicant left on the rental premises after he gave up possession on or about November 26, 2008. All possessions shall be returned no later than May 15, 2009.

Hal Logsdon
Rental Officer