

IN THE MATTER between **SCOTT ROBERTSON AND RICHARD ANTHONY**,
Applicant, and **WILLIAM GOERTZEN**, 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 **YELLOWKNIFE, NT**.

BETWEEN:

SCOTT ROBERTSON AND RICHARD ANTHONY

Applicants/Tenants

- and -

WILLIAM GOERTZEN

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 34(2)(c) of the *Residential Tenancies Act*, the respondent shall pay the applicants compensation for disturbance of their lawful right of possession in the amount of four thousand two hundred sixteen dollars and forty five cents (\$4216.45).
2. Pursuant to section 78(2) of the *Residential Tenancies Act*, the matter of compensation related to utility costs and parking is adjourned sine die. These matters will be scheduled for hearing following the applicants' notice to the rental officer and the respondent to be served no later than January 31, 2010.

DATED at the City of Yellowknife, in the Northwest Territories this 10th day of July,
2009.

Hal Logsdon
Rental Officer

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-and-

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REASONS FOR DECISION

Date of the Hearing: July 7, 2009

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Scott Robertson, applicant
Richard Anthony, applicant
Amanda Anthony, witness for the applicants
Terrence Derksen, representing the respondent

Date of Decision: July 10, 2009

REASONS FOR DECISION

The applicants alleged that the respondent had refused to permit them to take possession of the rental premises on the date the tenancy agreement commenced. The applicants stated that they then had to rent other premises at a higher cost to them. The applicants sought compensation related to the higher costs they will be now be required to pay in their current premises and compensation for certain items that were supplied in the former tenancy agreement but are not provided in their current agreement.

The applicants stated that they entered into a written tenancy agreement with the respondent to rent the upper level of a house for a term of one year to commence on June 15, 2009. The monthly rent for the premises was set out as \$2250. The rent included water, electricity, heat and 2 parking spaces as well as a television, microwave, toaster, blender and outdoor patio furniture. The applicants provided a cheque for \$1125 to the respondent, a copy of which was presented in evidence. The evidence indicates that the cheque was cashed.

The applicants' witness testified that she witnessed the execution of the tenancy agreement by all parties and that the agreement contained the provisions outlined by the applicants. The applicants have not been provided with a copy of the tenancy agreement.

The applicants stated that after they signed the tenancy agreement, they noticed that the premises were advertised for rent again and approached the respondent on May 24, 2009 inquiring why the

property was advertised for rent. At that time the respondent indicated that he did not intend to rent the premises to them due to their sexual orientation but had not rented the premises to anyone else. The applicants requested that the respondent honour the tenancy agreement.

The parties had previously agreed that the applicants could take possession on June 13, 2009.

The applicants stated that when they attended the premises on that date, they found the premises rented to another party.

The respondent's representative did not dispute any of the allegations and stated that the respondent was willing to return the \$1125 to the applicants and pay compensation of \$1125. The applicants rejected the offer.

The applicants stated that they stayed with friends between June 15, 2009 and July 1, 2009. They entered into a new tenancy agreement for a one year term that commenced on July 1, 2009. The monthly rent for those premises is \$2500. All utilities are the responsibility of the tenants and there is one parking space included in the rent. There are no furnishings or other amenities included. A copy of the tenancy agreement was provided in evidence.

I am satisfied from the evidence that a written tenancy agreement was duly executed by the parties containing the provisions outlined by the applicants. Section 2(4) of the *Residential Tenancies Act* sets out when a tenancy agreement commences.

2.(4) A tenancy agreement takes effect on the date the tenant is entitled to occupy the rental premises.

The applicants were entitled by the tenancy agreement to take possession on June 15, 2009 but were prevented from doing so by the respondent. Section 34 of the *Residential Tenancies Act* prohibits a landlord from disturbing a tenant's lawful possession.

34.(1) No landlord shall disturb a tenant's possession or enjoyment of the rental premises or residential complex.

Even though the tenants did not take possession of the premises, they were entitled to do so. By disturbing the applicants' right of possession the respondent, in my opinion, is in breach of the Act. Because the premises are now occupied by new tenants, it would not be reasonable to order the respondent to comply with his obligation by allowing the applicants to take possession.

Therefore compensation is the only reasonable remedy available.

I have also considered whether the applicants took reasonable steps to mitigate their losses.

Although I note that the respondent informed the applicants that he did not intend to permit them to take possession of the premises, it would have been foolhardy, in my opinion, for the applicants to have entered into another tenancy agreement before the respondent actually prevented them from taking possession. It is also the case that having two dogs would have limited the number of properties available to them as many landlords do not permit dogs. I am satisfied that following the respondent's breach the applicants took reasonable steps to find another place of comparable quality and price.

Compensation is intended to place the offended party back in a position as if the breach had not

occurred. It is not intended to punish or penalize the offender or enrich the offended party. The applicants stated that they required premises that permitted pets as they had two dogs. The applicants stated that their current premises are approximately the same size and quality as the premises they were denied. Their current tenancy agreement is also made for a one-year term. Had the respondent not interfered with the applicants' possession, the applicants would have paid rent over the next year in the amount of \$27,000. Under their current tenancy agreement they will be required to pay rent of \$30,000, a difference of \$3000. In my opinion, compensation of \$3000 for the difference in rent is reasonable.

The applicants also requested compensation for the additional money they would have to pay for utilities over the term of the tenancy agreement. The applicants were unable to suggest what quantum of compensation would be reasonable. I do not think compensation for utilities can be determined at this point in time. For that reason I shall adjourn the matter of compensation related to the utilities. This matter may be brought forward for hearing on the applicants' notice to a rental officer and the respondent provided such notice is made on or before January 31, 2010.

The applicants also requested compensation for items which were supplied by the respondent under the tenancy agreement but are not provided under their current agreement. The applicants provided receipts and a cost quotation for the items in evidence. These items and their costs are as follows:

Toaster	\$55.11
Blender	\$110.24

Patio furniture	\$157.49
Television	\$367.49
Microwave	\$132.29

In my opinion, providing the full cost of these items as compensation would not be reasonable as the tenancy agreement between the applicants and the respondent did not entitle the applicants to ownership of these items, only to their use for a year. Applying a useful life to each item and calculating a depreciated one-year value is, in my opinion, a reasonable methodology. Applying this method I find a total one year depreciated cost for these items to be \$91.45 calculated as follows:

<u>Item</u>	<u>Useful Life</u>	<u>One year Depreciated Cost</u>
Toaster	10 yrs	\$5.51
Blender	10 yrs	11.02
Patio Furniture	10 yrs	15.75
Television	8 yrs	45.94
Microwave	10 yrs	<u>13.23</u>
Total		\$91.45

The applicants also sought compensation for the loss of one parking space but it appears that there are no parking spaces available in the immediate vicinity of their new premises. This matter shall also be adjourned. The applicants may address this issue along with the utilities on notice to a rental officer and the respondent.

I find the respondent in breach of his obligation to not disturb the lawful right of possession of the applicants. An order shall issue requiring the respondent to pay compensation to the applicants in the amount of \$4216.45 which includes the monies provided to the respondent

previously by the applicants. I calculate this amount as follows:

Compensation for increased rent (12 months@\$25)	\$3000.00
Compensation for loss of use of household items	91.45
Return of monies previous paid	<u>1125.00</u>
Total	\$4216.45

Hal Logsdon
Rental Officer