

IN THE MATTER between **TANYA TOURANGEAU AND JOHN TOURANGEAU**, Applicants, and **MARINA DEVINE**, Respondent;

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act") and amendments thereto;

AND IN THE MATTER of a Hearing before, **HAL LOGSDON**, Rental Officer, regarding the rental premises at **FORT SMITH, NT**.

BETWEEN:

TANYA TOURANGEAU AND JOHN TOURANGEAU

Applicants/Tenants

- and -

MARINA DEVINE

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 34(2)(c) of the *Residential Tenancies Act*, the respondent shall pay the applicant Tanya Tourangeau compensation for disturbance of her right of possession of the rental premises in the amount of one thousand nine hundred ninety five dollars (\$1995.00).

DATED at the City of Yellowknife, in the Northwest Territories this 25th day of October, 2011.

Hal Logsdon
Rental Officer

IN THE MATTER between **TANYA TOURANGEAU AND JOHN TOURANGEAU**, Applicants, and **MARINA DEVINE**, 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:

TANYA TOURANGEAU AND JOHN TOURANGEAU

Applicants/Tenants

-and-

MARINA DEVINE

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: October 4, 2011

Place of the Hearing: Yellowknife, NT via teleconference

Appearances at Hearing: Tanya Tourangeau, applicant
Patricia Tiffen, representing the respondent
Marina Devine, respondent

Date of Decision: October 26, 2011

REASONS FOR DECISION

The applicants alleged that the respondent entered into a tenancy agreement for premises located at 31 McDougal Road in Fort Smith, NT which was to commence on September 1, 2011. The applicants alleged that the respondent prevented them from taking possession of the premises, thereby disturbing their lawful possession of the premises. The applicants sought an order requiring the respondent to give them possession of the premises or to pay compensation directly related to the alleged disturbance of possession.

On August 2, 2011 the respondent provided the applicant, Tanya Tourangeau with a written draft tenancy agreement for her review and asked for references from two former landlords. The email and the draft tenancy agreement were provided by the applicants in evidence.

Ms Tourangeau provided the respondent with references and a security deposit payment of \$475.

On August 13, 2011 the respondent sent Ms Tourangeau the following email:

Hi Tanya– Jeannie gave you a good reference and I have your deposit, so you are now confirmed as the tenant for 31 McDougal Road, as of September 1. As I mentioned, I do hope to be in Smith before the end of the month. If you're also there, we can meet to sign the lease and I can pick up your post dated rent cheques. Otherwise, we can finish up by mail.

Let me know if there is anything else you need to know about the house or rental arrangements.

On August 29, 2011 Ms Tourangeau sent an email to the respondent stating that she and Mr.

Tourangeau were in Edmonton for medical reasons and would be returning on Friday. She asked to schedule a meeting on Saturday [September 3] to do a move-in inspection. The respondent replied, "Saturday should work for me." They later confirmed they would meet at 1:30 PM.

On September 3, 2011 the respondent sent an email Ms Tourangeau advising her that she had decided not to rent the premises to her and stated that she would return the security deposit.

The applicant sought the following monetary relief:

Room and board for Ms Tourangeau	\$1000
Storage of personal goods for Ms Tourangeau	500
Moving costs for Ms Tourangeau	400
GST	95
Rent, Utilities and storage for Mr. Tourangeau	<u>1000</u>
Total	\$2995

The respondent's representative argued that Mr. Tourangeau should not be a party to this dispute as he was never intended to be a tenant. The draft tenancy agreement names only the applicant as tenant and there does not appear to be any evidence that he was being considered as a joint tenant with Ms Tourangeau. Therefore any compensation considered should be based only on Ms. Tourangeau's losses and paid to her.

The respondent's representative noted that the applicant failed to pay the first month's rent, establish a utility account in her name or return an executed copy of the draft tenancy agreement prior to the commencement date of September 1, 2011. The respondent stated that the premises had been rented to another party. The respondent stated that she had spoken to a person,

apparently on the day the parties had agreed to meet to inspect the premises and arrange for possession, who told her the applicant had created damage to another rental unit. The respondent then advised the applicant that she would not be renting the premises to her.

The respondent's representative acknowledged the applicant's initial intent to enter into a tenancy agreement but argued that a written tenancy agreement was not formed. She submitted that if there was a breach, the compensation requested was unreasonable. The respondent's representative noted that the expenses for board were not segregated from rent and should not be considered as the respondent did not agree to provide board at 31 McDougal Road. She also questioned the reasonableness of the \$500 claimed for storage costs.

In my opinion, there was a verbal tenancy agreement created on August 13, 2011. Neither the applicant's failure to pay the rent or establish the utility account in advance of the commencement date serve to terminate or invalidate the tenancy agreement. Had there been reasonable grounds to consider the tenancy agreement abandoned, the agreement would be terminated but the correspondence between the parties on August 29, 2011 clearly indicates the tenant's intention to take occupancy. There was a valid verbal tenancy agreement in force when the applicant was prevented from taking occupancy on September 3, 2011

In the matter of reasonable compensation, I note that the applicant is now renting a room with meals supplied. Had she been able to rent the premises on 31 McDougal Road she would have been able to cook her own meals and would not have had to incur any food expenses except for

groceries. Renting a room only requires that the tenant either arrange for board from the landlord or eat in restaurants. Therefore, the exposure to some food costs (the difference between purchasing groceries and buying prepared meals from a landlord or restaurant) is a direct result of being denied occupancy of 31 McDougal Road. Given that the daily allowance for private accommodation alone provided to employees of the Government of the NWT is \$50 day, I do not think the \$1000 room and board costs are unreasonable.

I also find the storage costs reasonable. Given that the applicant was already in the process of moving to the premises, she had little time to comparatively shop for storage. There was also no evidence that suggested that less expensive options were available to her.

Relief for expenses incurred by John Tourangeau is denied. He was not a party to the tenancy agreement and his losses did not cause any loss to the Ms Tourangeau.

An order shall issue requiring the respondent to pay the applicant Tanya Tourangeau compensation for disturbance of her lawful right to possession in the amount of \$1995.

I note that the parties intended to enter into a one-year term agreement. The compensation provided represents damages to the date of the hearing, October, 4, 2011.

Hal Logsdon
Rental Officer