

IN THE MATTER between **LINDA FAY LAWRENCE**, Tenant, and **TYLER BAYDAK**, Landlord;

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 **YELLOWKNIFE, NT.**

BETWEEN:

LINDA FAY LAWRENCE

Tenant

- and -

TYLER BAYDAK

Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 34(2)(c) of the *Residential Tenancies Act*, the landlord shall pay the tenant compensation for disturbing the tenant's right of possession of the rental premises in the amount of three hundred fifty dollars (\$350.00).

DATED at the City of Yellowknife, in the Northwest Territories this 17th day of December, 2012.

Hal Logsdon
Rental Officer

IN THE MATTER between **LINDA FAY LAWRENCE**, Tenant, and **TYLER BAYDAK**, Landlord.

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:

LINDA FAY LAWRENCE

Tenant

-and-

TYLER BAYDAK

Landlord

REASONS FOR DECISION

Date of the Hearing: November 29, 2012

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Linda Fay Lawrence, tenant (by telephone)
Tyler Baydak, landlord

Date of Decision: December 17, 2012

REASONS FOR DECISION

The tenant's application was filed on November 2, 2012 and sought an order requiring the landlord to return her security deposit. The landlord's application was filed on November 27, 2012 and sought an order for compensation for lost rent. Both applications relate to the same rental premises and the same tenancy agreement. With the agreement of the parties both matters were heard at a common hearing.

The parties executed a written monthly tenancy agreement on October 26, 2012 that was to commence on November 1, 2012. The tenant provided the landlord with \$350 of the required \$725 security deposit on October 26, 2012. The monthly rent for the premises was \$725.

The tenancy agreement between the parties is in the approved form as set out in the regulations to the *Residential Tenancies Act*. Section 9 of the tenancy agreement does not set out any additional obligations of either the landlord or the tenant. There are no house rules attached to the tenancy agreement.

On October 30, 2012 the landlord contacted the tenant by text message informing her that his roommates had moved out early and that she could move in any time. The tenant responded and mentioned that she had a cat, to which the landlord responded, "Sorry, no pets!" The tenant stated at the hearing that she had seen a cat in the apartment when she viewed the premises. She sent a text message in reply, "Hmm shall I get my damage deposit back??" The parties agreed to

meet later that day to discuss the issue further.

When the parties met it became apparent that the tenant did not have the first month's rent and later that day the tenant sent a text message to the landlord, "How bout I take it and pay when I get the cash together." The landlord replied, "Sorry Linda, I need that money before anyone moves in."

On November 1, 2012 the tenant informed the landlord that she still didn't have the first month's rent. On November 2 she asked for the return of her security deposit and was told "Not until I get a new renter in here and I work out the difference."

The landlord retained the security deposit and issued a statement of the security deposit and deductions dated November 27, 2012. The landlord deducted rent arrears of \$362.50 from the deposit leaving a balance owing to the landlord of \$12.50. The statement indicates that the tenant vacated or abandoned the premises on November 2, 2012.

Notwithstanding that the landlord's application was made pursuant to section 62 and claims compensation for lost rent, the landlord stated that he considered the deduction of \$362.50 to be rent arrears. He stated that he re-rented the premises on November 16, 2012 and charged the tenant only 50% of the November rent.

The relevant sections of the *Residential Tenancies Act* are as follows:

- 2. (4) A tenancy agreement takes effect on the date the tenant is entitled to occupy the rental premises.**
- 41. (1) A tenant shall pay to the landlord the rent lawfully required by the tenancy agreement on the dates specified by the tenancy agreement.**
- 34. (1) No landlord shall disturb a tenant's possession or enjoyment of the rental premises or residential complex.**
 - (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.**

The tenancy agreement took effect on the commencement date of November 1, 2012 which is the date the tenant was entitled to occupy the premises. In accordance with article 4 of the tenancy agreement, the rent for November, 2012 was due on that date. The tenant did not pay the November, 2012 rent on this date. Therefore, the tenant was in breach of the tenancy agreement on November 2, 2012 for failure to pay rent. The amount of rent that was due was \$725. The landlord was entitled to deduct the arrears of rent, or \$725, from the security deposit. He chose to deduct only half of that amount, having re-rented the premises.

Whether it was because the tenant failed to provide the first month's rent or whether she had a cat, or both, the landlord did not permit the tenant to occupy the premises on November 1, 2012. The tenancy agreement entitled her to occupy the premises on that date. Therefore the landlord

was in breach of section 34 of the Act for disturbing the tenant's right of possession of the premises.

The landlord is not entitled to any loss of future rent. Compensation for loss of future rent is only available to landlords on the abandonment of rental premises by the tenant. The premises were not abandoned. The landlord prevented the tenant from taking possession.

The tenant is entitled to compensation for loss that was a direct result of that breach. The tenant sought only the amount of her security deposit. That is a loss that she would not have suffered if the landlord had provided her with possession as promised.

I find no merit in the landlord's application. The premises were not abandoned. The landlord has deducted the rent arrears from the security deposit and is not entitled to any further relief. I shall not consider the \$12.50 shown as owing to the landlord on the landlord's security deposit statement. This amount, while due to the landlord, would also be due to the tenant as compensation and is therefore a nullity. I find the landlord in breach of his obligation to not disturb the tenant's right of possession of the rental premises and find the tenant's request for compensation of \$350 to be reasonable.

An order shall issue requiring the landlord to pay the tenant compensation for disturbance of possession in the amount of \$350.

Hal Logsdon
Rental Officer