

IN THE MATTER between **Hay River Mobile Home Park Ltd.**, Applicant, and **Barney Norn**, 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, **Adelle Guigon**, Deputy Rental Officer, regarding a rental premises within **the town of Hay River in the Northwest Territories.**

BETWEEN:

HAY RIVER MOBILE HOME PARK LTD.

Applicant/Landlord

- and -

BARNEY NORN

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 41(4)(a) and 62(2) of the *Residential Tenancies Act*, the respondent must pay to the applicant rental arrears in the amount of \$4,681.75 (four thousand six hundred eighty one dollars seventy-five cents).
2. Pursuant to sections 64(4) and 65(1) of the *Residential Tenancies Act*, the applicant/landlord is hereby granted permission to dispose of the mobile home located on Lot 22 at 61 Woodland Drive in Hay River, Northwest Territories, as they see fit with the following condition: Should the applicant/landlord choose to sell the mobile home, any monies collected from the sale of any portion or the whole of the mobile home must be applied

- (a) to the costs associated with the removal of the mobile home from the lot; and then
- (b) to satisfy the payment of rental arrears identified in part 1 of this order.

Any remaining monies are to be returned to the respondent/tenant. Further, the applicant/landlord must submit in writing to the Rental Officer an accounting of the disposition of any monies received from the sale of any portion or the whole of the mobile home.

DATED at the City of Yellowknife in the Northwest Territories this 3rd day of February 2014.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Hay River Mobile Home Park Ltd.**, Applicant, and **Barney Norn**, Respondent.

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:

HAY RIVER MOBILE HOME PARK LTD.

Applicant/Landlord

-and-

BARNEY NORN

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: December 6, 2013
Place of the Hearing: Hay River, Northwest Territories, via Teleconference
Appearances at Hearing: Michelle Schaub, representing the Applicant
Date of Decision: January 31, 2014

REASONS FOR DECISION

An application to a rental officer made by Hay River Mobile Home Park Ltd. as the applicant/landlord against Barney Norn as the respondent/tenant was filed by the Rental Office October 9, 2013. The application was made regarding the rental premises known as 22-61 Woodland Drive in Hay River, Northwest Territories. The applicant served a copy of the filed application package on the respondent by registered mail signed for October 29, 2013.

The applicant alleges that the respondent has accumulated rental arrears and has abandoned his mobile home on the rental premises. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for December 6, 2013. Both parties were served with notices of attendance sent by registered mail November 18, 2013. Ms. Michelle Schaub appeared representing the applicant. Mr. Barney Norn was deemed served the notice of attendance November 25, 2013, pursuant to section 71(5) of the *Residential Tenancies Act* (the Act). He failed to appear at hearing and no one appeared to represent him. The hearing proceeded in his absence pursuant to section 80(2) of the Act.

Ms. Schaub testified that Mr. Norn had entered into a tenancy agreement in May 2004 for a mobile home lot located at Lot 22, 61 Woodland Drive, in Hay River, Northwest Territories. In December 2010 Mr. Norn moved out of the mobile home, leaving his ex-girlfriend living there. By mid- to late-January 2011 Mr. Norn's ex-girlfriend had gutted the mobile home and left the premises. No one returned to the premises and it was left abandoned. By spring of 2011 the roof had caved in and the mobile home was in an unsafe and dangerous condition, requiring the landlord to board it up to keep children and pets/animals from entering the premises. Over the years Mr. Norn has been contacted repeatedly to arrange for the removal of the mobile home from the lot, and Mr. Norn had indicated time and again he intended to do so and acknowledged his responsibility for the mobile home; he has not removed it and the mobile home remains on the lot as of this hearing. Ms. Schaub requested an order confirming termination of the tenancy and evicting Mr. Norn from the rental premises in order to have the mobile home removed from the lot, permitting the landlord to re-rent it.

Ms. Schaub testified Mr. Norn had acknowledged his responsibility for the lot by continuing to make payments towards the rent for the lot after he left the premises. However, the payments made as of December 6, 2013, have not been sufficient to compensate the landlord for the rent

since abandoning the rental premises and he has accumulated rental arrears of \$4,681.75 representing approximately 18 months of rent. Ms. Schaub has requested an order for payment of rental arrears in the amount of \$4,681.75.

Abandonment of rental premises and personal property

The tenancy agreement is for the lot upon which the mobile home is sitting. Section 1(1) of the Act defines “rental premises” as a living accommodation or **land for a mobile home** used or intended for use as rental premises [emphasis mine]. Section 1(3) of the Act states:

- “1. (3) For the purposes 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.”

Ms. Schaub was personally informed by Mr. Norn that he had left the premises in December 2010, did not intend to return, and had left his ex-girlfriend living there. Ms. Schaub confirmed the departure of Mr. Norn’s ex-girlfriend from the rental premises by the end of January 2011, at which time Ms. Schaub satisfied the requirements of section 17.1 (2) of the Act by inspecting the condition and contents of the mobile home and determining their gutted condition, although no written exit inspection report was provided into evidence.

In my opinion, the landlord has effectively and appropriately deemed the rental premises abandoned by the tenant during the latter half of January 2011. The landlord regained possession of the rental premises pursuant to section 48(2) of the Act at that time. I am satisfied this is so and find the tenancy agreement terminated effective January 31, 2011, pursuant to section 62(1) of the Act.

The mobile home remaining on the land is personal property abandoned by the tenant. Its continued presence on the land prevents the landlord from re-renting it. As previously stated, numerous attempts over the years to arrange for Mr. Norn to remove the property have been unsuccessful. Pursuant to section 62(1) of the Act, Mr. Norn remains liable for loss of future rent for the rental premises since the termination date of January 31, 2011. .../4

Mr. Norn has accepted his responsibility for the payment of rent as long as the mobile home remains on the property and has made payments towards the lost rent over the years, however, the amounts paid have not been enough to cover the total amount of rent owed. Ms. Schaub has claimed rental arrears composed of lost future rent in the amount of \$4,681.75 and has provided statements of account in support of this claim. The statements of account are the landlord's accounting of monthly rent and payments made, and I am satisfied these statements accurately reflect the payments made by Mr. Norn against his account. I find Mr. Norn has accumulated rental arrears of \$4,681.75.

Disposal of abandoned personal property

Ms. Schaub has requested an order for eviction intending to apply it to the removal of the mobile home from the land. I do not believe this avenue of satisfaction is necessary as the mobile home itself is the abandoned personal property and sections 64 and 65 of the Act speak to the management and disposal of abandoned personal property.

Ms. Schaub has testified to the unsafe and unusable condition of the mobile home, having been required to secure it against unwanted entry by others to ensure their safety. The mobile home has been left in this condition to continue to deteriorate by the tenant for nearly two years. As the sale of the mobile home is unlikely to produce sufficient funds to cover the cost of removal from the land, and it is unsafe and essentially worthless, I am granting permission under section 64(4) and 65(1) of the Act for the landlord to dispose of the mobile home with the condition that should the landlord be able to sell any or all parts of the mobile home the monies made must, first, go towards the cost of removing the mobile home from the land and, second, towards the rental arrears identified in this order. Any remaining monies after this disposition must be returned to Mr. Norn. As well, the landlord must provide a written accounting to the Rental Office of the disposition of any monies made from the sale of any portion or whole of the mobile home.

An order will issue for Mr. Norn to pay of rental arrears of \$4,681.75 and granting the landlord permission to dispose of the mobile home with conditions.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

Exhibit 1: Lease Agreement dated May 6, 2004

Exhibit 2: Tenant Statement for December 31, 2012, to October 1, 2013

Exhibit 3: Statement of Account for January 1, 2012, to December 31, 2012