

IN THE MATTER between **RV**, Applicant, and **YKDPM**, 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 **Janice Laycock**, Rental Officer,

BETWEEN:

**RV**

Applicant/Tenant

-and-

**YKDPM**

Respondent/Landlord

**REASONS FOR DECISION**

<b><u>Date of the Hearing:</u></b>	<b>November 17, 2021</b>
<b><u>Place of the Hearing:</u></b>	<b>Yellowknife, Northwest Territories</b>
<b><u>Appearances at Hearing:</u></b>	<b>RV, Applicant SS, representing the Respondent</b>
<b><u>Date of Decision:</u></b>	<b>November 17, 2021</b>

### **REASONS FOR DECISION**

An application to a rental officer made by RV as the Applicant/Tenant against YKDPM as the Respondent/Landlord was filed by the Rental Office October 5, 2021. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was personally served on the Respondent on October 8, 2021.

The Applicant claimed that the Respondent had not completed a proper inventory of their property and sought an order for compensation for the Applicant's time to inventory the property and to check for losses and damages.

A hearing was scheduled for November 3, 2021, by three-way teleconference. Due to technical difficulties with the teleconference service the hearing was cancelled by the Rental Office and rescheduled for November 17, 2021. Notice of the rescheduled hearing was provided to both parties and the hearing proceeded by three-way teleconference. The Applicant RV appeared, as did SS representing the Respondent.

#### *Previous order*

Previous Rental Officer Order #17069 issued on November 12, 2020, ordered :

1. Under paragraph 41(4)(a) of the *Residential Tenancies Act* (the Act), payment of rental arrears in the amount of \$8,273.25.
2. Under paragraph 41(4)(c) and paragraph 43(3)(d) of the Act, termination of the tenancy agreement on December 15, 2020, and the tenant to vacate the rental premises on that date.
3. Under paragraph 63(4)(a) of the Act, the eviction of the tenant on or after December 16, 2020.

#### *Tenancy agreement*

The Applicant did not provide a copy of the tenancy agreement with the application, however, a copy was provided by the Respondent. According to this agreement the tenancy commenced on November 1, 2013, and continued month to month. The tenancy agreement was terminated under Rental Officer Order #17069 on December 15, 2020.

#### *Eviction*

The Respondent testified at the hearing that they held off on proceeding with the eviction pending an appeal of the order filed by the Applicant. The Applicant did not appear at the appeal hearing but the Sheriff's Office advised the Respondent to provide the Applicant with additional time to deal with their appeal before proceeding with the documents for the eviction.

The Respondent provided as evidence a copy of the "Return of Sheriff to Writ of Possession" showing a writ of possession was received by the Sheriff's Office on August 12, 2021, and the writ was executed by the Sheriff's Office on August 25, 2021, at 9:00 a.m.

The Respondent testified and provide additional documents prior to the hearing to the Rental Office and the Applicant relating to the eviction. This included an inventory of the items that the movers packed and which are presently in storage, as well as the mover's invoice for \$4,237.90, and a statement from DC Moving and Office Relocations Ltd. about the move.

The Respondent also testified that on the morning of the eviction the Applicant appeared at the rental premises. He was offered a chance to go into the unit and remove any items that he wanted and that the movers would be there to start packing at 1:00 p.m. The Applicant removed some items and left, then returned around 5:00 p.m. The Applicant was later asked to leave by the Landlord after complaints from the movers that the Applicant was carrying a baseball bat around the apartment and intimidating the workers.

#### *Abandoned personal property*

In their statement provided with the application and in testimony at the hearing, the Applicant complained that they were not advised of the eviction date and if they had been they could have removed their property from the rental premises. Further, they stated that the Respondent had breached the Act by not conducting the inventory themselves and that the staff working for the movers had not taken proper care with the items they were packing and could have damaged or taken items. The Applicant also claimed at the hearing that the amount charged for the move was too high, and at any rate they were not advised that there would be a cost to move and store the items.

In their application, the Applicant claimed compensation of \$14,000 for the time it would take them to "unpack all my belongings, check for damages, repack and/or remove from their storage facility". In support of their position the Applicant also provided the Rental Office and the Respondent with a series of photographs that they described as "pics on possessions that were packed and handled without anyone overseeing the handling or packing methods". These photos show possessions in the rental premises at some date prior to the eviction, and in my opinion do not have relevance to these proceedings.

At the hearing I reviewed the related sections of the Act and their relevance on the claims made by the Applicant:

Under subsection 64(1) of the Act: "Unless a landlord and tenant have made a specific agreement providing for the storage of personal property, where a tenant leaves personal property in a rental premises or residential complex that the tenant has vacated or abandoned, the landlord may remove the personal property in accordance with this section."

Under the Act the Respondent had the authority to remove the Applicant's property. The Applicant had over six months to make arrangements to pack and move their property prior to being evicted from the rental premises, but did not do so, nor did they make any arrangements with the Landlord to store their personal property. Further, the Landlord and the Sheriff's office are not required to provide notice to the Tenant of the date that the writ of possession is being executed. As I stated at the hearing, the Applicant could have made arrangements for the packing and removal of their possessions from the rental premises at an earlier date, sparing themselves from any concerns about the handling of the property and the costs of removal as well as putting the possessions in their own care.

Under subsection 64(3) of the Act: "Where a landlord removes personal property, other than property described in subsection (2), the landlord shall, at the earliest reasonable opportunity, give the rental officer an inventory of the property in an approved form and, where the address of the tenant is known to the landlord, the landlord shall give the tenant a copy of the inventory."

The Respondent testified they provided a copy of the inventory completed by the movers to the Applicant by email after the move. However, the Applicant denied receiving the inventory and the Rental Office did not receive a copy as required under the Act. The Rental Office received a copy of the inventory on November 2, 2021, and the Applicant confirmed that they had also received a copy.

The Applicant claimed that the inventory received was not acceptable as it was not carried out by the Landlord and it included a number of references to "cubes" with no description of the contents. Further, they were concerned that their property might be damaged because the movers did not properly pack their property and, without close supervision by the Landlord, valuable items could have been stolen by the mover's staff.

The Respondent testified they were at the rental premises much of the day and have used this mover before. The mover is reputable and the Respondent has confidence in their work and the inventory. When asked about the contents of the cube boxes, the Respondent reported that the cube boxes were packed with clothing and other household items but could not testify to the exact contents of each box.

I agree with the Applicant that at the time the application was filed the Respondent was in breach of this section of the Act by not providing the inventory to the Rental Office and the Applicant. However, an inventory was provided prior to this hearing and I am unable to find any requirement in the Act for the Landlord to personally complete the inventory themselves. It makes sense to me that a Landlord would rely on movers who are actually packing the items to complete the inventory on their behalf.

As to the amount of detail in the inventory, I agree that more detail would have been helpful and would most likely be required if the Landlord returns to the Rental Officer for permission to sell or dispose of any of the items under subsection 65(1) of the Act. It may be difficult for the Rental Officer to make a determination about the sale or disposal of a cube box without first knowing or at least having some general description of the contents.

On the Applicants concerns about the movers, the moving company hired by the Landlord is an established company in Yellowknife. According to their website, DC Moving & Office Relocations has 26 years of experience. In a statement from the owner provided as evidence, Darcy Blampied reported: "We packed his goods that were left all over to the best of our ability and treated his goods with care." At this point the Applicant has no evidence that there are damages or losses.

Under subsection 64(5) of the Act: "Property that has not been disposed of or sold under subsection (2) or (4) must, subject to the direction of a rental officer, be stored in a safe place and manner for a period of not less than 60 days."

It is my opinion the 60-day period should not start until November 2, 2021, when the inventory was provided to the Rental Office, and this date should also apply to charges for storage. The Respondent testified that in addition to packing and moving costs, storage fees were \$130 per month. The Respondent agreed that they would hold the Applicant's property until January 3, 2022.

Under subsection 64(6) of the Act: "Where a tenant or owner of an item of property stored by the landlord pays the landlord the cost of removing and storing the item, the landlord shall give the item to the tenant or owner and notify the rental officer."

At the hearing I asked the Applicant what their plans were regarding their possessions. The Applicant claimed that the fees were too high, they didn't know they would have to pay for moving and storage (no one told them) and if they could only get at their possessions they could sell some of them to pay off the costs.

The invoice from the movers was provided by the Respondent as evidence and includes the time the movers started and finished (5 hours), the staff that worked to pack and move the items (8 staff), as well as the hourly rate (\$80) and the materials required, including packing boxes, paper, and tape. The labour costs come to \$3,200, the materials cost \$836, and GST amounted to \$201.80, for a total of \$4,237.80. I cannot find any error in the charges and I find the costs to be reasonable for the work required to pack up the entire rental premises in a relatively short period of time.

As to the Applicant's claim that they didn't know there would be a cost, this does not excuse them from paying the charges as required under the Act. As I repeatedly told the Applicant, under the Act they are required to pay the costs of removing and storing their property and when they do so they can check the condition and contents of the boxes, and sell some items if that is their wish.

Under subsection 65(1) of the Act: "Where no person has taken possession of an item or personal property stored under subsection 64(5) during the 60 days referred to in that subsection, the rental officer may permit the landlord to sell or dispose of the item in the manner and subject to the terms and conditions set by the rental officer."

The Applicant was informed that they had just over 60 days from November 2, 2021, until January 3, 2022, to pay the cost of removing and storing the items and after that date under the Act the Respondent could request permission from the Rental Officer to sell or dispose of the items. In response to this information the Applicant stated that "there is going to be detrimental side effects if they start to sell my shit". I asked the Applicant if this was a threat and they said it was not. I reminded the Applicant that they were on the record.

Under paragraph 66(a) of the Act: "Where, on the application of a person claiming to be the owner of an item of personal property, a rental officer determines that the landlord has wrongfully sold, disposed of or otherwise dealt with an item of personal property, the rental officer may make an order requiring the landlord to compensate the owner for the wrongful sale, disposition, or dealing".

In their application, the Applicant claimed \$14,000 to "unpack their belongings, check for damages, and repack and/or remove from the storage facility". I did not ask for a breakdown of these costs.

In my opinion the Respondent was within their authority under the Act to remove the Applicant's personal property and, although delayed, they did complete and provide the inventory to the Rental Office and to the Applicant. Further, under the Act the Applicant could regain their possessions after paying the costs of removing and storing the items. At this time, although they had concerns about the condition of their property, they had provided no evidence to support a claim for compensation.

### *Conclusion*

During the hearing despite warnings and reminders to the Applicant, the Applicant repeatedly spoke over myself and the Respondent, used profanities, and generally showed contempt for the Rental Office and attempted to bully myself and the Respondent. At one point, as mentioned above, the Applicant in my opinion threatened the Respondent, although they denied doing so.

I offered repeatedly to adjourn the hearing to allow the Applicant time to pay the costs, secure their possessions, and inventory and examine them, to resume the hearing in January or a later date to address any claims for damages or loss. I repeated that the allegations made by the Applicant were at this point only speculation and they would need to provide evidence to support a claim for compensation. However, the Applicant continued to repeat their complaints about the costs, their inability to pay or to take steps to address the situation, and various aspects of the hearing and my interpretation of the Act.

The Applicant did not express any willingness to proceed with a future hearing as offered, nor did they accept any responsibility for the situation. The Applicant continued to repeat their claims and complain about the process, decisions, etcetera. I gave both the Applicant and the Respondent a chance to make any additional points and when it was clear that no new information was forthcoming I concluded the hearing. I informed the Applicant that I was denying their application and would provide them with written reasons. I also encouraged them to come back to the Rental Office at a future date if they found that they had actual losses or damages to their property.

In making my decision I found the Applicant had from December 2020 to August 2021 to make arrangements to pack and move their property prior to being evicted from the rental premises. They did not do so. The Respondent was within their rights under the Act to remove the property from the rental premises and place it in storage.

Although the Respondent did not share the inventory with the Rental Office and the Applicant as required under subsection 64(3), they did subsequently comply by providing the inventory on November 2, 2021. In recognition that the inventory was not provided sooner, they also agreed to store the property until January 3, 2021, and not charge the Applicant for the storage fees prior to November 2, 2021. Under the Act the Applicant can regain their possessions when they pay the removal and storage fees.

And finally, although the Applicant is obviously concerned, I found no evidence that the Respondent has wrongfully sold, disposed of, or otherwise dealt with the Applicant's personal property in violation of the Act. The Applicant's application for compensation is denied.

Dated at the city of Yellowknife in the Northwest Territories this 22<sup>nd</sup> day of November 2021.

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Janice Laycock  
Rental Officer