

IN THE MATTER between **HARVEY WERNER**, Applicant, and **HAY RIVER MOBILE HOME PARK LTD.**, 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 **HAY RIVER, NT.**

BETWEEN:

HARVEY WERNER

Applicant/Tenant

- and -

HAY RIVER MOBILE HOME PARK LTD.

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 7th day of October, 2003.

Hal Logsdon
Rental Officer

IN THE MATTER between **HARVEY WERNER**, Applicant, and **HAY RIVER MOBILE HOME PARK LTD.**, Respondent.

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BETWEEN:

HARVEY WERNER

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-and-

HAY RIVER MOBILE HOME PARK LTD.

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: September 29, 2003

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: John Rhynes, representing the applicant
Graham Watt, representing the respondent

Date of Decision: September 29, 2003

REASONS FOR DECISION

The applicant claims to be the owner of a mobile home, contents and motor vehicle which are situated on land in a mobile home park belonging to the respondent. The tenancy agreement for the right to occupy the land was made between the respondent and Diane Robinson. An order was filed on December 21, 1999 which terminated the tenancy agreement on March 1, 2000 unless rent for the months of December, January and February were paid. The applicant's appeal of that order was dismissed on February 8, 2000. An order of eviction was issued and the respondent was put in possession of the land on August 16, 2002.

In a previous application, the applicant sought the return of the mobile home, contents and vehicle. An order was filed on January 29, 2003 requiring the respondent to return the property to the applicant upon payment of storage costs. The applicant appealed the order to the Supreme Court and the appeal was dismissed.

To date, the personal property remains on the premises. The applicant alleges that the respondent has breached section 66 of the *Residential Tenancies Act* by failing to adequately protect the property from damage and seeks unspecified compensation.

The applicant's counsel requested an adjournment of the hearing to a later date in Hay River to provide the applicant an opportunity to appear and to provide the rental officer with an opportunity to view the property. The respondent's counsel objected to any adjournment.

Section 64(1) permits the landlord to remove and store items which have been left on the premises after a tenant has vacated.

- 64.(1) 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 and, on removal, shall store and dispose of the personal property in accordance with this section. (Italics mine)
- (2) Where a landlord has good reason to believe that an item of personal property removed under subsection (1)
 - (a) would be unsanitary or unsafe to store
 - or
 - (b) is worthlessthe landlord may dispose of the item.
- (3) 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.
- (4) Where after receiving the inventory, a rental officer determines that an item of personal property in the inventory could not be sold for an amount greater than the reasonable cost of removing, storing and selling it in accordance with this section or section 65, the rental officer may permit the landlord to sell or dispose of the item in the manner and subject to the terms and conditions the rental officer may set.
- (5) Property that has not been disposed of or sold under section (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.

Section 65 permits a rental officer to permit a landlord to dispose of goods which have been stored pursuant to section 64(5).

65. (1) Where no person has taken possession of an item of 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.

Section 66 provides remedies for persons claiming to be the owner of goods.

66. Where, on the application of a person claiming to be the owner of an item of personal property, the 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
- (a) requiring the landlord to compensate the owner for the wrongful sale, disposition or dealing; or
 - (b) requiring the landlord to give the property to the owner.

In my opinion, this matter can not be determined until the personal property is removed from the land by the applicant or disposed of by the respondent. The inspection of the property or the participation of the applicant will not enable a determination of this matter at this time. The application is premature.

The remedy pursuant to 66(b) has already been applied. The only remaining remedies lie within section 66(a). The landlord has not sold the property or disposed of it. The landlord has not removed the property from the premises and is not required by the Act to do so. Whether the term "dealing" can relate to the safe storage of the goods or whether the Act requires safe storage if the goods have not been removed are both questions to be considered but no compensation can be *finally* determined until either the landlord disposes of the goods or the owner takes possession. Until such time the determination of any damages would be interim.

I am not prepared to consider authorizing the disposal of the goods until the respondent has removed the goods from the premises in accordance with section 64.

The applicant is concerned that his property is being damaged due to vandalism and the respondent is frustrated that the mobile home continues to be situated on their land yet neither party has apparently made any significant progress to mitigate their losses.

I have considered the request to adjourn this matter to a later date. However, if such an adjournment must await further action by one of the parties, that wait could be considerable. For that reason and also to allow the parties to appeal this order, I shall dismiss the application but permit a future application when a *final* determination of damages may be considered.

Hal Logsdon
Rental Officer