

IN THE MATTER between **TERRY ASLING**, Applicant, and **RANGER APARTMENTS**, 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:

TERRY ASLING

Applicant/Tenant

- and -

RANGER APARTMENTS

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 34(2)(c) and 25(3)(c) of the *Residential Tenancies Act*, the respondent shall pay the applicant compensation for the disturbance of the applicant's lawful possession of the rental premises in the amount of four hundred twenty five dollars (\$425.00). The compensation shall be paid no later than March 31, 2009.

DATED at the City of Yellowknife, in the Northwest Territories this 27th day of February, 2009.

Hal Logsdon
Rental Officer

IN THE MATTER between **TERRY ASLING**, Applicant, and **RANGER APARTMENTS**, 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:

TERRY ASLING

Applicant/Tenant

-and-

RANGER APARTMENTS

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: February 25, 2009

Place of the Hearing: Hay River, NT via teleconference

Appearances at Hearing: Terry Asling, applicant
Sarah Gargan, witness for the applicant
Bernard Langille, representing the respondent

Date of Decision: February 27, 2009

REASONS FOR DECISION

The applicant alleged that the respondent had changed the locks to the rental premises preventing his lawful possession of the premises. The applicant sought compensation for loss suffered as a direct result of the alleged breach.

The applicant testified that the locks to the premises were changed by the landlord on December 1, 2008 forcing him to stay in a hotel for one night and causing his partner to lose one days salary. The applicant stated that the respondent let him back in the premises the next day after demanding that a late rent penalty of \$120 be paid and that he make an apology to the maintenance man. The applicant stated that he had paid a late rent penalty of \$120 to the respondent on two occasions. Two receipts were provided in evidence.

The applicant stated that his partner was unable to work the day after the locks were changed because she had no clean clothing. Ms Gargan was called as a witness and stated that she lost about \$275 in pay for the day she was unable to work.

The applicant stated that he paid \$178.50 to stay in a hotel for one night but was unable to provide any proof of payment for the hotel charges. He stated that he had a receipt but failed to bring it to the hearing.

The applicant has vacated the premises since the application was filed on January 20, 2009 and is

no longer a tenant of the respondent.

The respondent did not deny changing the locks to the premises or making demands of the tenant before permitting him to re-enter the premises. The respondent stated that one of the late charges was offset by the tenant paying only \$380 in October, 2008 instead of the full rent of \$500. The applicant acknowledged that he had compensated for one late charge by paying only \$380 in rent in October.

The respondent stated that he did not think the applicant should be granted relief for hotel costs or loss of wages without evidence supporting the amounts claimed.

The respondent stated that he had returned the full amount of the security deposit at the end of the tenancy agreement even though there were damages to the premises which he believed were caused by the applicant. He stated that he thought the parties had agreed that neither would file applications. I note that the respondent did file an application on December 9, 2008 seeking termination of the tenancy agreement but withdrew the application on January 15, 2009.

Sections 41(2) and 41(3) of the *Residential Tenancies Act* sets out the penalty for late rent a landlord is entitled to charge.

41.(2) A tenant who pays his or her rent later than the dates specified by the tenancy agreement is liable to a penalty.

(3) The penalty referred to in subsection (2) is calculated for each day that the rent is late by multiplying

- (a) the rent due,
- by
- (b) the bank deposit rate on deposit receipts for 30 days, as determined and published by the Bank of Canada in the periodic publication entitled the *Bank of Canada Review*, in effect on January 1 in the year that the late payment is calculated,
- and the total is divided by 365.

No other penalty for late rent is permitted.

Section 34 of the Act prohibits a landlord from disturbing a tenant's possession of the rental premises and section 25 prohibits either the landlord or the tenant from changing the locks to the premises without the permission of the other.

34.(1) No landlord shall disturb a tenant's possession or enjoyment of the rental premises or residential complex.

25.(1) No landlord or tenant shall, during occupancy of the rental premises by the tenant, alter or cause to be altered the locking system on any door giving entry to the rental premises except by mutual consent.

Clearly, the landlord's obligations to not disturb the tenant's possession and to not change the locks without the tenant's permission has been breached by the respondent. As well, the \$120 late rent penalty is clearly not in accordance with the provisions of section 41 of the Act. In my opinion, the following compensation is reasonable and directly related to the respondent's breach of sections 34(1) and 25(1) of the Act.

1. I find that the respondent demanded and received one payment of \$120 as a late rent penalty which is not in accordance with the late rent penalty permitted by the Act. The applicant is entitled to compensation for having to

make this payment.

2. The applicant and his partner are entitled to compensation for meal and incidental expenses which they would not have incurred if they had not been locked out of their apartment. Using the Government of the NWT duty travel allowances for government employees, I find that compensation of \$205, representing breakfast, lunch, dinner and incidental expenses for one day for two persons is reasonable.
3. I agree with the respondent that compensation for hotel expense should not be considered unless evidence documenting the expense is provided by the applicant. The Notice of Attendance served on both parties clearly indicated that evidence must be provided to the rental officer prior to the hearing. The applicant did provide a receipt after the hearing but it was not available to respondent for review or rebuttal. However, it is obvious that the applicant required someplace to spend the night as he was prevented from occupying his apartment. The Government of the NWT duty travel allowances permits a private accommodation allowance of \$100/night without documentation. In my opinion, this is reasonable compensation.
4. The request for compensation for lost wages is denied as there was no evidence of Ms. Gargan's salary provided.

In summary I find reasonable compensation to be \$425, calculated as follows:

Return of late fee	\$120
Meals and incidental expenses at GNWT rate	205
Accommodation allowance at GNWT rate	<u>100</u>
Total compensation due applicant	\$425

An order shall issue requiring the respondent to pay the applicant compensation for the disturbance of his lawful possession of the rental premises in the amount of \$425. The compensation shall be paid no later than March 31, 2009.

Hal Logsdon
Rental Officer