File #10-11508

IN THE MATTER between **JEANIE MARIE MANTLA**, Applicant, and **YELLOWKNIFE HOUSING AUTHORITY**, 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 **YELLOWKNIFE, NT.**

BETWEEN:

JEANIE MARIE MANTLA

Applicant/Tenant

- and -

YELLOWKNIFE HOUSING AUTHORITY

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 34(2)(c) and 83(2) of the *Residential Tenancies Act*, the respondent shall compensate the applicant for interfering with her possession of the rental premises by entering into a tenancy agreement with the applicant for a two bedroom unit for a term of no less than twenty six (26) days to commence no later than May 31, 2010. There shall be no rent charged during the term. If the respondent is unable to comply with the formation of a tenancy agreement, the respondent shall pay the applicant compensation of one thousand two hundred fifty nine dollars ($1259.00) which shall be paid to the applicant no later than May 31, 2010.

2. Pursuant to section 34(2)(c) and 83(2) of the *Residential Tenancies Act*, the respondent shall compensate the applicant by safely storing her personal possessions and completing

an inventory of the possessions. The inventory shall be given to the applicant and filed with the rental officer. The respondent shall return some or all of the items stored to the applicant at her request and deliver the item(s) to a location of her choice within the City of Yellowknife on a date of her choice. The respondent shall not dispose of any of the personal property except items which would be unsafe or unsanitary to store and shall store the property for a minimum of ninety (90) days, after which the respondent may seek the approval of the rental officer to dispose of any remaining items.

DATED at the City of Yellowknife, in the Northwest Territories this 27th day of May, 2010.

Hal Logsdon
Rental Officer

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BETWEEN:

JEANIE MARIE MANTLA

Applicant/Tenant

-and-

YELLOWKNIFE HOUSING AUTHORITY

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing:	**May 26, 2010**
Place of the Hearing:	**Yellowknife, NT**
Appearances at Hearing:	**Jeanie Marie Mantla, applicant** **Celine Mantla, witness for the applicant** **Arlene Hache, representing the applicant** **Jim White, representing the respondent**
Date of Decision:	**May 27, 2010**

REASONS FOR DECISION

The respondent rents this apartment and others from a market landlord for use as subsidized public housing. The respondent then enters into tenancy agreements with households in need and charges a rent based on the household income.

The applicant alleged that on the evening of May 6, 2010 employees of the market landlord physically evicted her from the premises and changed the locks. The applicant sought an order requiring the respondent to give her access to the rental premises.

The respondent outlined numerous complaints that had been received from other tenants and the market landlord concerning disturbances and damage to the residential complex. The respondent sought an order terminating the tenancy agreement on April 29, 2010 although no application has been filed by the respondent.

E-mail correspondence from the market landlord acknowledged they “secured” the unit and that the respondent concurred with their action. The respondent acknowledged that they currently had possession of the premises and some of the applicant’s possessions were securely stored there.

Section 34 of the *Residential Tenancies Act* prohibits a landlord from disturbing a tenant’s possession and sets out remedies that may be ordered on the application of a tenant.

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.

Section 25 prohibits a landlord or tenant from changing locks without mutual consent and sets out remedies that may be ordered on the application of a landlord or tenant.

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.

(2) A landlord or tenant shall not change the locks on any entrance to the residential complex so as to unreasonably interfere with the other's access to the complex.

(3) Where, on the application of a landlord or a tenant, a rental officer determines that an obligation imposed by this section has been breached, the rental officer may make an order

(a) requiring the person who breached the obligation to give access to the rental premises or to the residential complex;

(b) requiring the person who breached the obligation not to breach the obligation again; or

(c) requiring the person who breached the obligation to compensate the party affected for loss suffered as a direct result of the breach.

Evidence provided by the respondent indicates that the market landlord notified them on April 12, 2010 that the applicant had caused considerable damage to the residential complex and asked the respondent to “evict” the applicant. The respondent served the applicant with a Notice of Early Termination on April 19, 2010 pursuant to section 54 of the *Residential Tenancies Act* with an effective date of April 30, 2010. That date appears to have been subsequently amended by the respondent to May 31, 2010 which is also the expiry date of the term tenancy agreement between the parties. No *Application to a Rental Officer* was filed by the respondent although section 54(4) requires such an application be made when a Notice of Early Termination is served on a tenant.

> **54.(4) A landlord who has given a notice of termination under subsection (1) shall make an application to a rental officer for an order to terminate the tenancy agreement and a rental officer may issue an order terminating the tenancy on the date specified in the order and ordering the tenant to vacate the premises on that date.**

Section 54(3) also permits a rental officer to reduce the period of notice.

> **54.(3) A landlord may apply to a rental officer for an order to reduce the period of notice to terminate referred to in subsection (1) and a rental officer, where the rental officer considers it necessary, may issue such an order.**

A note to file provided by the respondent in evidence indicates that the respondent met with the applicant and her mother on April 29, 2010 to discuss the Notice of Early Termination and to notify the applicant that if she did not vacate voluntarily, they would seek an eviction order following May 31, 2010 when her tenancy agreement would expire. The file note indicates that the applicant was told the tenancy agreement would not be renewed.

On April 29, 2010 the respondent also advised the market landlord of the Notice of Early Termination. The market landlord replied, asking for the respondent's diligence in pursuing the eviction, and again expressed their concern about damages to the property.

The respondent stated that they did not think that filing an application would result in a hearing date much earlier than the end of the tenancy agreement on May 31, 2010. They therefore elected to simply wait for the tenancy agreement to expire and seek eviction if the applicant failed to vacate the premises. The respondent's request, made at the hearing, to terminate the tenancy agreement effective April 29, 2010 can not be considered as there has not been an application made by the respondent.

It is clear that it was not the respondent who physically evicted the tenant, but the respondent's landlord. However it is also clear from the evidence that the respondent did not object to the action or take any measures that might have avoided the illegal action of the head landlord such as the filing of an application seeking an expedited hearing and reduction of the ten day provision, or even transferring the tenant to premises not owned by the market landlord. In fact it appears they supported the action. In my opinion the action taken by the market landlord must be considered as the respondent's breach of sections 34 and 25 of the Act. There is no opportunity for the applicant to file an application against the market landlord as they are not the applicant's landlord.

The respondent can not defend the illegal eviction with allegations of disturbance or damage. The Act sets out a process for terminating a tenancy agreement and evicting a tenant. There are provisions to accelerate this process but in this case, the process was simply ignored. The market landlord took matters into their own hands and the respondent has made no objection.

Therefore, I find the respondent in breach of section 34 by disturbing the lawful possession of the applicant. The applicant seeks an order which would require the respondent to put her back in possession of the apartment. In my opinion, this would likely be an ineffective remedy. The market landlord has already demonstrated their willingness to evict without an order and the respondent does not appear willing to enforce their tenant's right of possession. However, the respondent has a significant inventory of other units which could possibly be made available to the applicant, provided a unit of similar size is currently vacant and available. Because the term of the tenancy agreement was to expire on May 31, 2010 and the respondent has given reasonable notice to the applicant that they will not renew the tenancy agreement, the applicant has been deprived only the remainder of the term, or 26 days. In my opinion, providing the applicant with a term agreement of at least 26 days would adequately compensate the applicant for the loss of the remainder of the term. Since the respondent acknowledged that the May, 2010 rent had been paid, no additional rent should be charged for the 26 day term.

The applicant also requested monetary compensation for any late charges she may incur on bills she has not been able to pay because they are in the apartment. In my opinion, this is not reasonable compensation as it is easy enough to obtain duplicates from the suppliers.

It may be the case that the respondent is unable to quickly provide a unit of similar size. If that should be the case, I believe monetary compensation representing the average market rent for a two bedroom apartment would allow the applicant to rent an apartment for the remainder of the term she has been deprived of. The applicant's representative argued that since the market landlord owns most of the apartments in Yellowknife the applicant would not be able to obtain an apartment at any cost. She argued that the compensation should represent hotel costs and should extend longer than the remainder of the term. I respectfully disagree. The landlord only promised a term to May 31, 2010. That is the extent of their obligation. I also disagree that the applicant would not be able to find an apartment not owned by the market landlord.

Canada Mortgage and Housing Corporation reported the average market rent for a two bedroom apartment as $1473 in October, 2009. Prorated on an annual basis, $1259 would represent the average 26 day rental cost.

In addition to the compensation for rent I believe the applicant should be compensated for moving costs. Since the respondent has stated that they have the applicant's possessions in safe keeping, they should continue to do so and should deliver the possessions to a location designated by the applicant and on a date or dates designated by the applicant at no cost.

An order shall issue requiring the respondent to put the applicant in possession of a two bedroom apartment on or before May 31, 2010 and enter into a tenancy agreement with a term of no less than 26 days. If the respondent is unable to provide the premises, compensation of $1259 shall

be paid to the applicant no later than May 31, 2010. The applicant's personal possessions shall be safely stored and delivered to her at no cost at a time and location of her choice.

Hal Logsdon
Rental Officer