

IN THE MATTER between **TANYA TOURANGEAU**, Applicant, and **MARINA DEVINE**, 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, **HAL LOGSDON**, Rental Officer, regarding the rental premises at **FORT SMITH, NT.**

BETWEEN:

TANYA TOURANGEAU

Applicant/Tenant

- and -

MARINA DEVINE

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 27th day of March, 2012.

Hal Logsdon
Rental Officer

IN THE MATTER between **TANYA TOURANGEAU**, Applicant, and **MARINA DEVINE**, 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:

TANYA TOURANGEAU

Applicant/Tenant

-and-

MARINA DEVINE

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: March 15, 2012

Place of the Hearing: Yellowknife, NT via teleconference

Appearances at Hearing: Tanya Tourangeau, applicant
Steven Cooper, representing the respondent
Marina Devine, respondent

Date of Decision: March 27, 2012

REASONS FOR DECISION

The applicant sought additional compensation for the respondent's disturbance of her right of possession of premises located at 31 McDougal Road in Fort Smith, NT. The applicant has already been granted an order for compensation covering the period September 1- October 4, 2011. She now seeks additional compensation for the same breach of the same tenancy agreement for the period October 5 to December 5, 2011.

The applicant provided three invoices for room, office and internet, storage and moving costs totalling \$3570. The applicant sought compensation in that amount.

The respondent's counsel submitted that the matter of compensation had already been decided and an order issued (file# 10-12405, filed on October 27, 2011). He argued that no leave had been requested by the applicant at the previous hearing to consider any future compensation and no leave had been granted by the rental officer. He argued that the doctrine of *res judicata* applied and that the application should be dismissed.

During his questioning of the applicant, the respondent's counsel asked if the applicant had been convicted of a crime of dishonesty some years ago. The respondent refused to answer the question. The respondent's counsel argued that the refusal to answer cast suspicion on the credibility of the respondent and suggested that the clean hands doctrine be considered and the application dismissed.

On questioning, the applicant stated that the owner of DHT Contracting, to whom the room and board, storage and moving costs were paid, was her cousin, Don Tourangeau. This testimony contradicts her testimony at the previous hearing where she stated that she did not know who owned the company.

The applicant also contradicted herself when questioned about the dates she received the invoices. Initially she testified that she received the invoice #004041 dated October 5, 2011 in October, 2011 and the invoice #004043 dated December 1, 2011 on December 1, 2011. She stated that she was not sure when she received invoice # 004042 dated November 1, 2011. Later during the hearing she stated that she received all three invoices on December 1, 2011 when she moved. She stated that she did not know why the invoices were consecutively numbered.

In The Law of Evidence in Canada by Sopinka, Lederman and Bryant the concept of *res judicata* is outlined and at p. 997 the authors state:

. . . a plaintiff asserting a cause of action must claim all possible relief in respect thereto and prevents any second attempt to evoke the aid of the courts in the same cause. It is sometimes called "merger" because the plaintiff's cause of action becomes "merged" in the judgment. The judgment actually operates as a comprehensive declaration of the rights of all parties in respect of the matters in issue. As a result the rule applies equally to a defendant who must put forward all defenses which will defeat the plaintiff's action and the defendant who does not will be debarred from raising them subsequently. This principle prevents the fragmentation of litigation by prohibiting the litigation of matters that were never actually addressed in the previous litigation but which properly belonged to it.

In *Scott Robertson and Richard Anthony v. William Goertzen* (file 10-10916, filed on July 13, 2009), the rental officer adjourned the determination of additional compensation due to utility costs until those costs could be known, essentially granting leave to the applicants to pursue additional compensation for the same breach at a later date.

If the applicant anticipated that further damages might accrue after the October 2011 hearing which could not be determined at that time, leave should have been sought to have that issue adjourned as in *Robertson and Anthony*. There was no request made by the applicant for leave to pursue additional compensation at a later date nor was there any leave granted by the rental officer.

I have also considered the credibility of the applicant as well as the evidence she has produced in support of the application. The applicant's refusal to answer questions related to any previous crimes of dishonesty does cast some doubt on her credibility. More so, the consecutively numbered invoices, the applicant's contradictory testimony concerning the dates she received those documents and her relationship with DHT Contracting and Don Tourangeau give rise to significant doubts that these transactions represent a bona fide, arms length business transaction.

For these reasons, in my opinion, the application has no merit. The application is therefore dismissed.

Hal Logsdon
Rental Officer