**File #10-12761**

IN THE MATTER between **MICHELE LETOURNEAU**, Applicant, and **UNION OF NORTHERN WORKERS**, 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 **YELLOWKNIFE, NT.**

BETWEEN:

**MICHELE LETOURNEAU**

Applicant/Tenant

- and -

**UNION OF NORTHERN WORKERS**

Respondent/Landlord

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to sections 30(4)(a) and 83(2) of the *Residential Tenancies Act* the respondent shall restore access to the rental premises from 52nd Street either by
    a) providing the applicant twenty-four hour access through the main entrance to the building or,
    b) by providing access to the walkway on the west corner of the building, with or without a locking gate,

    until the walkway on the east side of the building is deemed safe. The respondent shall comply with this order within twenty one days after the receipt of the order.

2. Pursuant to sections 30(4)(c) and 83(2) of the *Residential Tenancies Act*, the applicant

shall be authorized, after twenty one days from the service of this order on the respondent, unless this order is stayed or the respondent complies with the order, to have installed by a competent contractor, a locking gate to be the same height as the existing fence giving access to the west walkway and the respondent is ordered to pay the cost of supply and installation of the gate. The total cost of the gate, including installation shall not exceed five hundred dollars ($500.00) without the permission of the rental officer.

3. Pursuant to sections 32(1) and 32(2.1) of the *Residential Tenancies Act*, the applicant shall pay the monthly rent to the rental officer which shall be held until this order is satisfied and applied to the cost of the gate as required.

DATED at the City of Yellowknife, in the Northwest Territories this 3rd day of May, 2012.

Hal Logsdon
Rental Officer

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## REASONS FOR DECISION

| | |
|---|---|
| **Date of the Hearing:** | **April 27, 2012** |
| **Place of the Hearing:** | **Yellowknife, NT** |
| **Appearances at Hearing:** | **Michele Letourneau, applicant**<br>**Austin Marshall, representing the respondent**<br>**Frank Walsh, witness for the respondent**<br>**Ken Woodley, witness for the respondent**<br>**Roxanna Baisi, witness for the respondent**<br>**Catlin Lacey, witness for the respondent**<br>**Gayla Thumstrom, witness for the respondent** |
| **Date of Decision:** | **May 3, 2012** |

## REASONS FOR DECISION

The rental premises consist of an apartment in a building containing residential premises as well as office space. The residential premises are normally accessed through two entrances at the rear of the building which face a private parking area and an adjoining laneway. Although it is possible to access the residential premises via the main entrance, the tenants do not have keys to that entrance and are only able to use that access during office hours.

There were originally two usable walkways, one on the east side of the property and one on the west side of the property, which would allow tenants to enter the property from 52nd Street and walk outside along either side of the building to the back of the property where they could enter the rear doors leading to the residential premises. Some years ago, the landlord erected a fence on the west side of the building blocking off the west access but the walkway on the east side of the building remained.

In March, 2011 there was a fuel spill on the adjoining property to the east. The fuel clean-up has necessitated excavation of the contaminated soil using large machinery and has resulted in the blockage of the remaining walkway on the east side of the building by a temporary safety fence. To date the work is incomplete and the walkway remains blocked. Tenants must now access the entrance doors leading to their premises via the laneway.

The application was made pursuant to sections 30 and 32 of the *Residential Tenancies Act* which

deal with the landlord's obligation to provide and maintain the rental premises and the residential complex in a good state of repair.

**30. (1) A landlord shall**

**(a) provide and maintain the rental premises, the residential complex and all services and facilities provided by the landlord, whether or not included in a written tenancy agreement, in a good state of repair and fit for habitation during the tenancy; and**

**(b) ensure that the rental premises, the residential complex and all services and facilities provided by the landlord comply with all health, safety and maintenance and occupancy standards required by law.**

**(2) Any substantial reduction in the provision of services and facilities is deemed to be a breach of subsection (1).**

**(3) Subsection (1) applies even where a tenant had knowledge of any state of non-repair before the tenant entered into the tenancy agreement.**

**(4) Where, on the application of a tenant, a rental officer determines that the landlord has breached an obligation imposed by this section, 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) authorizing any repair or other action to be taken by the tenant to remedy the effects of the landlord's breach and requiring the landlord to pay any reasonable expenses associated with the repair or action;**

**(d) requiring the landlord to compensate the tenant for loss that has been or will be suffered as a direct result of the breach; or**

**(e) terminating the tenancy on a date specified in the order and ordering the tenant to vacate the rental premises on that date.**

**(5) A tenant shall give reasonable notice to the landlord of any substantial breach of the obligation imposed by subsection (1) that comes to the attention of the tenant.**

**(6) A landlord shall, within 10 days, remedy any breach referred to in subsection (5).**

**32. (1) Where the landlord does not remedy a substantial breach within 10 days of the notice referred to in subsection 30(5), the tenant may apply to a rental officer to pay to a rental officer all or part of the rent lawfully required on the subsequent dates specified by the tenancy agreement and a rental officer may order the tenant to pay the rent to the rental officer.**

**(2) The payment of rent to the rental officer referred to in subsection (1) must be accompanied by an application to the rental officer under subsection 30(4).**
**(2.1) A rental officer may order that any amount of rent paid to the rental officer under subsection (1) be used to satisfy an order made under paragraph 30(4)(c) or (d).**
**(2.2) A landlord may recover from a rental officer any amount of rent paid by the tenant under subsection (1) that is not required to satisfy an order under paragraph 30(4)(c) or (d).**

The applicant submitted that the closure of the east walkway has created a greater risk to her safety as she now has to access her premises via the laneway which is frequented by persons who pose a threat to her safety. The applicant sought an order requiring the creation of a temporary access through the property to the premises from 52nd Street until the east walkway was opened. She suggested that the access could be created via the main entrance to the building by providing keys to the tenants or by re-establishing the access to the walkway on the west side of the building. This could be accomplished by opening a section of the existing fence or installing a gate. The applicant also sought an order requiring her to pay rent to the rental officer and authorizing her to arrange for the west access to be completed and for the respondent to pay for any associated costs. The applicant also sought monetary compensation of $9522.

The respondent submitted that the application should have been made pursuant to section 34 of the Act which deals with the landlord's obligation to not disturb the tenant's possession or quiet enjoyment of the rental premises or residential complex.

**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.**

In my opinion, an application pursuant to section 30 and 32 is appropriate. The east walkway is part of the residential complex as defined by the Act.

> **"residential complex" means a building, related group of buildings or mobile home park, in which one or more rental premises are located and includes all common areas, services and facilities available for the use of tenants of the building, buildings or park.**

The walkway was a common area available for the use of tenants of the building. A sign, posted at the north entrance to the walkway states,

> No Trespassing
> Private Property
> Tenant's Use Only

Although the respondent argued that the sign was very old, was placed there when the mailboxes for the apartments were located in that area and that it did not reflect the current position of the landlord, in my opinion, it is clear that the walkway is the landlord's property and that tenants may use it. As a part of the residential complex, the landlord is obligated to provide and maintain it in a good state of repair. While I accept that the closure of the walkway and any damage that may have been done to it are not the fault of the respondent, that does not extinguish the obligation.

The respondent has, albeit only recently, obtained a commitment from the adjoining land owner to the east to permit tenants to access the laneway through their property, ensure there is adequate lighting from their building and to refrain from parking their tour busses in the area. The respondent submitted that this was a reasonably safe alternate route.

The respondent's witnesses made it clear that the landlord had experienced some serious vandalism to vehicles in their parking lot and to the building caused by people who were cutting through the property. The respondent objected to re-establishment of the west walkway as a temporary measure because the installation of the fence and the elimination of the walkway had curtailed the vandalism to some degree.

The respondent’s witnesses which included employees, former employees and former tenants, all acknowledged that the neighbourhood presented risks to persons who failed to exercise some degree of caution. They held varying opinions about the relative safety of the walkways as compared to the laneway and the parking lot. The respondent's counsel questioned both witnesses and the applicant concerning the risks associated with various routes to access the premises. In my opinion, there was no consensus among witnesses as to the relative safety of the walkways compared to the laneway. The applicant certainly perceived that the walkway was a preferable route as compared to the alternate route through the neighbouring property and laneway.

The landlord cannot be expected to provide a safe neighbourhood or even safe passage to the entry to the residential complex. The landlord's obligation to security is limited to ensuring that

the doors giving entry to the building and the rental premises are secure against unauthorized entry.

In my opinion, the central issue is that the applicant has always been provided with access from 52nd Street, through the landlord's property which is part of the residential complex, in order to access the entrance to the residential complex at the rear of the building. The landlord always maintained that access, including snow removal, and ensured that it was lighted. Now that access is no longer available to the applicant. It has not simply been closed, it has been rendered unsafe due to the fuel spill and the resultant excavation work. The walkway was a part of the residential complex available to the applicant and other tenants. It is no longer being provided. While I realize that the fuel spill was not caused by the respondent nor can the respondent undertake any work that would restore the walkway to a safe condition, they are able to take action that would provide an equivalent to the walkway that has been lost. The current "alternate" route, through the adjoining landowners property is not an equivalent. It requires the applicant to travel a greater distance in the laneway, an area she considers less safe.

While I appreciate that vehicles and the building have been damaged by persons who have been able to cut through the property and recognize that the installation of the fence on the west side has reduced the incidents of vandalism, I am unable to understand why the installation of a locking gate on the west side of the building is not a reasonable approach to the resolution of this dispute. I heard that the initial height of the fence had to be increased to prevent persons from climbing over it and that the fence had been damaged on occasion. It was suggested that a gate

would not be secure enough to prohibit unauthorized entry. I disagree. A locking gate would permit entry by the tenants, prohibit entry by unauthorized persons and could be erected at minimal cost. It would provide an equivalent walkway to the one closed by the fuel spill and maintain the security of the building and the vehicles in the parking lots.

I arrived at a similar conclusion in *Kathryn Carriere and Union of Northern Workers* [file 10-12561, filed on January 17, 2012] and ordered the respondent to provide access to the premises via a temporary walkway on the west side of the building. That decision has been appealed although the order has not been stayed. The order remains unsatisfied.

I find the respondent in breach of their obligation to provide and maintain a walkway giving access to the rental premises in a good state of repair. An order shall issue requiring the respondent to restore access to the rental premises from 52nd Street either by providing the respondent 24 hour access through the main entrance to the building or by providing a temporary walkway on the west side of the building until the walkway on the east side of the building is deemed safe. The respondent shall comply with this order within 21 days of receipt of the order. After 21 days, unless this order is stayed, the applicant shall be authorized to make arrangements with a competent contractor to install a locking gate the same height as the existing fence giving access to the west walkway and the respondent ordered to pay the cost of supply and installation of the gate. The total cost of the gate, including installation shall not exceed $500 without the permission of the rental officer. The applicant shall be ordered to pay future rent to the rental officer which shall be applied to the satisfaction of this order.

COMPENSATION

The applicant sought compensation for work missed to prepare her case and attend hearings. When an application is filed, the applicant is expected to bear the costs of preparing their case. I do not consider this expense to be directly related to the breach.

The applicant sought compensation for the extra time it has taken her to walk to work, due to the extra distance created by the closure of the walkway. Apparently she has calculated the compensation based on what she earns through employment, concluding that addition of each three minutes it take to get to work creates a loss of $2.15. There is clearly no loss here only a value the applicant has assigned to her time.

The applicant sought compensation for having to take taxis at night instead of walking. While I accept that this could be a loss that is directly related to the landlord's breach, I do not accept the claim. It is based solely on an assumed average number of taxi trips per month at an assumed average cost. There is no evidence, such as receipts, to lend any credence to either assumption.

The applicant sought damages for "inconvenience, risk, fear, insult, injury and harassment". In my opinion, these types of damages are not monetary losses directly related to the breach. The remedies available pursuant to the Act are intended to be remedial rather than punitive. The compensation provided by the Act is intended to address any financial loss directly related to the breach and put the injured party back to the financial position before the breach occurred.

The applicant stated that she sustained an injury that was directly related to the breach. There was no evidence to support her claim that any medical or therapeutic treatment was required or paid.

For the above reasons, I do not feel that any compensation is warranted.

Hal Logsdon
Rental Officer