

IN THE MATTER between **VALERIE MAREMBO**, Tenant, and **LENA ADJUN AND KYLE AVIAK**, Landlords;

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:

**VALERIE MAREMBO**

Tenant

- and -

**LENA ADJUN AND KYLE AVIAK**

Landlord

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 18.1(b) of the *Residential Tenancies Act*, the landlords shall return a portion of the retained security deposit to the tenant in the amount of five hundred forty eight dollars and sixty cents (\$548.60).
2. Pursuant to section 30(4)(d) of the *Residential Tenancies Act*, the landlords shall pay the tenant compensation for the reduction of cable internet service in the amount of thirteen dollars and four cents (\$13.04).
3. Pursuant to sections 66(a) and 66(b) of the *Residential Tenancies Act*, the landlords shall deliver the tenant's personal property to a location of her choice within the City of

Yellowknife without the application of any fees for removal, storage or delivery.

4. Pursuant to section 57(c) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Apartment 35, 15 Ptarmigan Road, Yellowknife, NT, shall be terminated on August 21, 2012.

DATED at the City of Yellowknife, in the Northwest Territories this 21st day of August, 2012.

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Hal Logsdon  
Rental Officer

IN THE MATTER between **VALERIE MAREMBO**, Tenant, and **LENA ADJUN AND KYLE AVIAK**, Landlords.

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:

**VALERIE MAREMBO**

Tenant

-and-

**LENA ADJUN AND KYLE AVIAK**

Landlords

**REASONS FOR DECISION**

**Date of the Hearing:** August 17, 2012

**Place of the Hearing:** Yellowknife, NT

**Appearances at Hearing:** Valerie Marembo, Tenant  
Lena Adjun, Landlord

**Date of Decision:** August 21, 2012

### **REASONS FOR DECISION**

Both applications were filed on August 13, 2012. Both applications deal with the same rental premises and the same tenancy agreement and were heard at a common hearing.

The rental premises consist of a room in a townhouse that the landlord rents from another party. The landlords and tenant share a kitchen facility and some common areas.

The tenant alleged that the landlords interfered with her possession on August 11, 2012 by physically taking her key to the premises and prohibiting her from entry. She also alleged that the landlords had removed the cable box from her room on August 10, 2012 resulting in her inability to access the internet and cable TV which was a service provided by the landlords. The tenant stated that she had removed some items from the room with the assistance of the police but the landlords were holding other possessions belonging to her. The tenant stated that the landlords objected to a guest that she had invited to the premises and demanded that the guest leave. The tenant stated that she and guest were forced to spend the night in a hotel. The tenant stated that the landlords held a security deposit of \$850 and had not provided her with an inspection report at the commencement of the tenancy. The monthly rent for the room is \$850.

Initially the tenant stated that she did not wish to continue the tenancy agreement and sought only compensation for the internet/TV disruption, the hotel costs, the return of her security deposit and her personal possessions. However, during the hearing she stated that she had arranged to

take possession of other premises on September 1, 2012 but wanted an order requiring the landlords to give her access to the room until August 31, 2012 provided her safety could be assured.

The tenant provided a copy of the tenancy agreement, a hotel bill and a notice of early termination in evidence.

The landlord did not dispute that she had seized the tenant's key or removed the cable box. She stated that the tenancy agreement prohibited more than one occupant in the room and that overnight guests had to be approved. She did not deny that she had ejected the guest. She stated that she did not wish to continue the tenancy agreement. The landlord stated that she had done an inspection at the commencement of the tenancy but had not given a copy of the inspection to the tenant. She was unable to produce a copy of the inspection report at the hearing.

The landlord stated that all of the tenant's possessions had been stored in the garage. She has not filed an inventory with a rental officer.

The landlord alleged that the tenant had breached the tenancy agreement by failing to pay the August, 2012 rent and by paying the July, 2012 rent on July 2, 2012. She also alleged that the tenant had damaged the common areas of the complex when moving in and had failed to pay the repair costs which were charged to the landlords by the head landlord. The landlord alleged that the tenant had permitted persons to stay overnight in the room on several occasions without their

permission and that they felt threatened by persons other than the tenant occupying the room overnight. The landlord also alleged that the tenant's room, particularly the carpet was not clean and that the tenant failed to clean up after herself in the kitchen and laundry room. The landlord served a notice of early termination on the tenant on August 2, 2011 seeking vacant possession of the premises on August 11, 2012 for repeated late or non-payment of rent.

The landlord sought compensation for the repair costs and termination of the tenancy agreement. The landlord provided the tenancy agreement, an invoice for wall repairs and the notice of early termination in evidence.

The tenant did not dispute that she had failed to pay the August, 2012 rent or that the July, 2012 rent was not paid on time. She disputed the alleged damage, stating that if there were any scuff marks due to the moving, they were easily removed by washing. She denied that any significant damage was done to the walls. The tenant acknowledged that she had not sought permission to have her guest stay overnight but disputed that it was her obligation to do so.

Section 25 of the *Residential Tenancies Act* prohibits the alteration of locks by either 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.**

Section 34 of the Act prohibits a landlord from disturbing a tenant's possession.

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

Seizing the tenant's key and refusing entry is tantamount to changing the locks. Clearly, the landlord intentionally disturbed the tenant's possession. I find the landlords in breach of both section 25 and 34.

Section 30 obligates a landlord to provide and maintain the premises and services in a good state of repair and sets out that any substantial reduction of services is deemed to be a breach.

**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).**

The provision of internet and cable is clearly set out as a service provided by the landlord. I find the landlords in breach of section 30(2).

The tenancy agreement between the parties sets out that only one person may occupy the premises on an ongoing basis. It also states "guests to be discussed" implying that before guests are permitted there should be some discussion with the landlord. From the testimony given, I understand that the landlord's objection lies with overnight guests. While I would consider any

such obligation to be unreasonable in other types of premises, it does not seem unreasonable where the landlord and tenant share common facilities. Although poorly worded, I find the intention of this obligation to be reasonable in the circumstances. The tenant's request for relief for her hotel expenses is denied.

In my opinion, there is insufficient evidence to conclude that the damage to the common areas was done by the tenant or that the repair costs were reasonable. The invoice from the head landlord does not specify what work was done. The landlord's request for relief is denied.

There is no convincing evidence concerning the condition of the tenant's room. In any case, if there was cleaning to be done or repairs to be made, the tenant was prevented from doing so when the landlords put her out of possession.

I find the tenant in breach of her obligation to pay rent. The August, 2012 rent was due on the first and it has not been paid. While non-payment of rent is grounds for termination, in my opinion, termination pursuant to section 57(c) is more reasonable.

- 57. Where, on the application of a landlord, a rental officer determines that**
- (a) a tenant who, as a student or a staff member was provided with living accommodation that is not exempt from this Act by an educational institution, has ceased to meet the requirement for occupancy of the living accommodation,**
  - (b) a tenant of subsidized public housing has ceased to meet the requirement for occupancy of the rental premises, or**
  - (c) a landlord and a tenant who share a bathroom or kitchen facility have had personal differences that make the continuation of the tenancy unfair to either of them,**
- the rental officer may make an order terminating the tenancy on a date specified in**



**the order and ordering the tenant to vacate the rental premises on that date.**

The tenant has already made arrangements to rent other premises commencing September 1, 2012. Both parties are extremely apprehensive about continuing this relationship. In my opinion, terminating this tenancy agreement is in the best interest of both parties.

An order shall issue terminating this tenancy agreement on August 21, 2012. Calculating the rent due only to August 11, 2012 I find rent owing of \$301.61. Landlords may not deduct repairs from a security deposit if they have not provided the tenant with an inspection report. Finding no evidence of an inspection report and taking into consideration the accrued interest on the security deposit, the landlords are ordered to return \$548.60, calculated as follows:

Rent arrears to August 11, 2012	\$301.61
Less security deposit	850.00
Less Interest	<u>0.21</u>
Amount to be returned	\$548.60

The order shall also require the landlord to pay compensation of \$13.04 for the removal of the cable box. Calculated as follows:

$$\text{August 11 to August 21} - (11 \text{ days}/31 \text{ days}) \times \$36.75/\text{month} = \$13.04$$

The Act requires the landlords to safely store the tenant's personal possessions. They are obligated to do so for 60 days and must file an inventory with the rental officer. The landlords are ordered to return these goods to the tenant at her request to a location designated by her within the City of Yellowknife. The landlord shall not demand any removal, storage or delivery costs.

Should the tenant fail to claim the possessions after 60 days, the landlords may seek approval from the rental office to dispose of them.

The tenant is granted leave to file an application for loss or damage to her personal property after it has been returned, provided it is done within six months of the filing date of this order.

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Hal Logsdon  
Rental Officer