

IN THE MATTER between **AGNES DUMAS AND MARY JANE DUMAS**,
Landlords, and **SHERRY GRAHAM**, Tenant;

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:

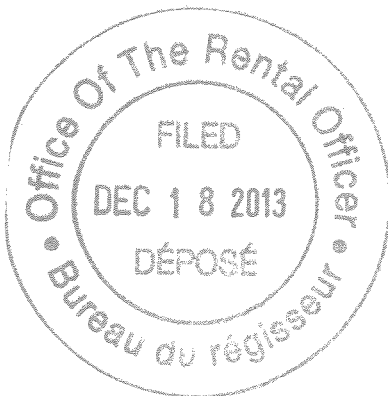
AGNES DUMAS AND MARY JANE DUMAS

Landlords

- and -

SHERRY GRAHAM

Tenant



ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 34(2)(d) of the *Residential Tenancies Act*, Agnes Dumas shall pay the tenant compensation for the disturbance of her possession of the rental premises in the amount of nine hundred dollars (\$900.00).
2. Pursuant to section 18.1(b) of the *Residential Tenancies Act*, Agnes Dumas shall return a portion of the retained security deposit and accrued interest to the tenant in the amount of forty seven cents (\$0.47).
3. Pursuant to section 30(4)(d) of the *Residential Tenancies Act*, Agnes Dumas shall pay the tenant compensation for the loss of cable television services in the amount of one hundred

fifty nine dollars and eighty cents (\$159.80).

4. Pursuant to section 57(c) of the *Residential Tenancies Act*, the tenancy agreement between the tenant and Agnes Dumas for the premises known as 457 Norseman Drive, Yellowknife, NT shall be terminated on November 6, 2013.
5. Pursuant to section 34(2)(d) of the *Residential Tenancies Act* Agnes Dumas shall deliver all possessions of the tenant in her possession to a location in Yellowknife selected by the tenant. The tenant is granted leave to file another application seeking compensation for loss of personal property should any of the goods be lost or damaged.

DATED at the City of Yellowknife, in the Northwest Territories this 18th day of December, 2013.



Hal Logsdon
Rental Officer

IN THE MATTER between **AGNES DUMAS AND MARY JANE DUMAS**,
Landlords, and **SHERRY GRAHAM**, Tenant.

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:

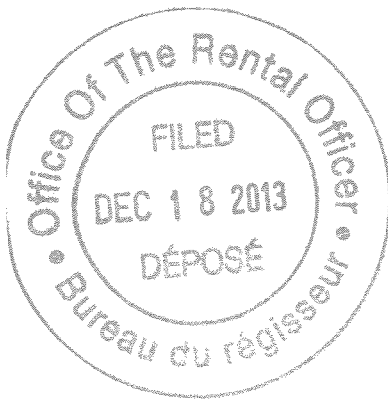
AGNES DUMAS AND MARY JANE DUMAS

Landlords

-and-

SHERRY GRAHAM

Tenant



REASONS FOR DECISION

Date of the Hearing: November 6, 2013

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Agnes Dumas, Landlord
Mary Jane Dumas, witness for the landlord
Sherry Graham, Tenant
Sarah Graham, witness for the tenant

Date of Decision: December 18, 2013

REASONS FOR DECISION

As both of these applications refer to the same rental premises and the same tenancy agreement, they were heard at a common hearing.

There was no written tenancy agreement between the parties. Agnes Dumas considers herself the landlord. Her application, filed on September 4, 2013 does not name Mary Jane Dumas as landlord. Ms Graham's application filed on October 2, 2013 names both Agnes Dumas and Mary Jane Dumas as landlords. Ms. Graham considered both to be her landlords. The testimony of all of the parties suggests that Ms Graham, who needed a place to stay, was a friend of Mary Jane Dumas and that Mary Jane urged Agnes to rent a room to Ms Graham. Agnes Dumas testified that she offered the room to Ms Graham. It appears that it was Agnes Dumas who set out the terms of the agreement and collected the rent. In my opinion, the evidence suggests that Agnes Dumas is the landlord.

The parties agreed that the premises consisted of a room in a mobile home and that the monthly rent was \$900. The tenancy agreement commenced on August 1, 2012. The parties shared both kitchen and bathroom facilities. A security deposit of \$900 was required and receipts provided in evidence by the landlord indicate that it was paid in full.

The landlord alleged that the September, 2013 rent was not paid. The tenant did not dispute the allegation. The landlord sought an order requiring the tenant to pay the rent arrears of \$900 and

terminating the tenancy agreement for non-payment of rent and due to personal differences that made the continuation of the tenancy agreement unfair to either of them.

The parties also agreed that they had an argument on October 1, 2013 concerning the October rent and the responsibility for other costs. Ms Graham paid the October rent of \$900 and Agnes Dumas left the premises to go to the bank to make a mortgage payment. Although the exact words of the conversation are disputed, Ms Graham implied that she intended to resolve the dispute on Agnes Dumas' return. Agnes Dumas did not return that day, spending the night elsewhere, and Ms Graham found herself locked out of the premises later that day. Agnes Dumas and Mary Ann Dumas acknowledge locking the tenant out, stating that Agnes Dumas felt threatened and that they locked the tenant out on the advice of a lawyer and the RCMP. There is no evidence of any arrest, undertaking or emergency protection order.

Ms Graham stated that she no longer had any interest in regaining possession of the premises but alleged that the landlord had disturbed her lawful possession and sought the following compensation:

Return of the October, 2013 rent	\$900.00
Meals	214.54
Storage of personal goods (October/13)	130.00

The tenant also alleged that during the term of the tenancy, the cable television service had been discontinued for four months, depriving her of full enjoyment of the premises. She also alleged that the landlord had failed to return the security deposit. The tenant stated that during the term of

the tenancy agreement she had made personal loans to the landlord in order to prevent the power and telephone from being disconnected or the storage contract from being cancelled. The tenant sought the following amounts in addition to the compensation outlined above:

Loss of cable television (4 months @ \$88.80/month)	\$355.20
Loan for electricity	230.00
Loan for telephone	180.00
Loan for storage	120.00
Security deposit	900.00

The tenant stated that she had removed some of her personal belongings from the premises. The landlord stated that she had no objection to releasing any of the property that was still on the premises and would not impede the tenant's efforts to remove the remaining articles.

The tenant also alleged that the landlord "rented" her room to her daughter for three months (May - July, 2013). She stated that her daughter paid \$100. The landlord acknowledged that the daughter occupied the room with her mother and was asked to pay \$250/month but paid a total of only \$100. The landlord stated that the charge was intended to cover the cost of food.

There are considerable differences of opinion between the parties concerning what services and facilities were included in the monthly rent of \$900. The tenant submitted that she had furniture and other personal belongings from her previous apartment that would not fit in the single room. She stated that the landlord had provided her with the use of a commercial storage facility rented by the landlord to enable her to rent the room. She stated that the landlord kept the key to the facility. There was no indication that the tenant's access to the facility was restricted. The

landlord disputed that the arrangement was part of the tenancy agreement submitting that the arrangement for storage was not part of the tenancy agreement and was provided strictly out of kindness. Mary Jane Dumas testified that the storage facility was in her name and that she permitted Ms Graham to use it. She stated that she had experienced some financial difficulties and was asked to vacate the storage facility. She asked Ms Graham to remove her property and helped her move the property to another facility on September 30, 2013. Ms Graham stated that she paid for storage in October and produced an invoice for \$130 in evidence.

The landlord often referred to the provision of room and board, implying that there was some arrangement for the provision of meals. However, the tenant referred to her special diet and loss of her food items, implying that she provided her own food. The testimony suggests that the parties often prepared and ate meals together and perhaps shared in the cost of food but the provision of meals was not included in the \$900/month rent.

Section 34(1) of the *Residential Tenancies Act* prohibits a landlord from disturbing the tenant's possession of the rental premises and sets out remedies which may be considered 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.

The tenant was clearly in possession of the rental premises on October 1, 2013 when the landlord prevented her from entering. There is no evidence to support abandonment of the premises or that an undertaking or protection order was issued. I find the landlord in breach of section 34(1) of the Act and find the following compensation to be reasonable:

Return of October, 2013 rent

The tenant paid the October, 2013 rent of \$900 in advance and was deprived of possession for the entire month. Her request for compensation of \$900 representing the October rent is reasonable.

Meals

The tenant provided receipts for meals from October 1-14 totalling \$214.54. She stated that after she was prevented from returning to the premises, she stayed with her daughter but was unable to prepare meals there because her daughter had very few kitchen utensils, making it impossible to prepare food. The tenant indicated that she had been permitted to remove some of her personal possession from the premises and the landlord stated that she would not interfere with the removal of any other items. In my opinion, the tenant was able to retrieve sufficient household goods and to enable her to eat at her

daughter's home. In my opinion, compensation for food is not reasonable. It is a cost that she would have incurred whether or not she was deprived of possession of the premises.

Storage

The storage was provided by Mary Jane Dumas. The evidence suggest that Mary Jane is not the landlord and therefore the arrangement for storage was not part of the tenancy agreement but a separate agreement between Ms. Graham and Mary Jane Dumas. I find compensation for the storage to be unreasonable.

The other compensation sought by the tenant is unrelated to the disturbance of her possession. I find the following:

Loss of Cable Television

The provision of cable television is clearly a service that is part of the tenancy agreement. It was provided from the commencement of the tenancy agreement at no extra charge. The tenant submits that it was disconnected for 4 months. The landlord did not deny the allegation but stated that it was disconnected while she was in the hospital and was later re-connected. No specific dates were provided by either party. I accept that the tenant was without cable television for four months.

The tenant sought compensation of \$355.20 which represents \$88.80 for 4 months.

There was no evidence to support the monthly cost of the service. NorthwestTel, the local cable provider advises that a new subscriber may have the basic cable package

installed without charge and will pay \$39.95/month. I find that the landlord failed to provide cable television for four months and find compensation of \$159.80 to be reasonable.

Personal Loans

The tenant stated that she loaned the landlord money on several occasions when the landlord faced the disconnection of telephone and electricity. She testified that she had provided loans to the landlord for this purpose totalling \$410. She also stated that she loaned the landlord \$120 when the payments for the storage facility went into arrears. These were not charges levied by the landlord but loans. They were the subject of the argument in October, 2013 which led to the lock-out incident. None of the services were discontinued nor were the amounts paid on behalf of the landlord to the supplier. In my opinion, they are personal loans and outside my jurisdiction as rental officer.

Security Deposit

The parties acknowledge that a security deposit of \$900 is held by the landlord and that the rent for September, 2013 was not paid. The landlord is entitled to apply the security deposit and interest against the rent arrears which results in a balance owing to the tenant of \$0.47.

Security deposit	\$900.00
Interest	0.47
Less rent arrears	<u>(900.00)</u>
Balance owing tenant	\$0.47

The tenant did not seek any relief for the \$100 paid by her daughter and I am not going to consider it.

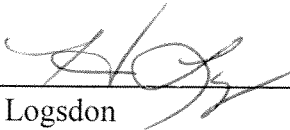
Summary

I find an amount owing to the tenant of \$1060.27 composed of the following elements:

Compensation for disturbance of possession	\$900.00
Return of interest - security deposit	0.47
Compensation for cable TV	<u>159.80</u>
Total	\$1060.27

Clearly, neither party wishes to resume this tenancy agreement but it has not been terminated in accordance with the Act. Although perhaps only a formality, I shall consider it terminated on the date of the hearing and issue an order in that regard.

The landlord shall be ordered to deliver all possessions of the tenant in her possession to a location in Yellowknife selected by the tenant. The tenant is granted leave to file another application seeking compensation for loss of personal property should any of the goods be lost or damaged.



Hal Logsdon
Rental Officer