

IN THE MATTER between **DONNAJEAN DE MARTIN**, Applicant, and **VIOLET TUDU**, Respondent;

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act") as amended;

AND IN THE MATTER of a Hearing before, **HAL LOGSDON**, Rental Officer, regarding the rental premises at **YELLOWKNIFE, NT**.

BETWEEN:

**DONNAJEAN DE MARTIN**

Applicant/Tenant

- and -

**VIOLET TUDU**

Respondent/Landlord

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 34(2)(c) of the *Residential Tenancies Act*, the respondent shall pay the applicant compensation for disturbance of the applicant's lawful possession of the rental premises in the amount of one thousand four hundred twenty two dollars and seventy eight cents (\$1422.78).

DATED at the City of Yellowknife, in the Northwest Territories this 20th day of March, 2014.

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Hal Logsdon  
Rental Officer

IN THE MATTER between **DONNAJEAN DE MARTIN**, Applicant, and **VIOLET TUDU**, 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:

**DONNAJEAN DE MARTIN**

Applicant/Tenant

-and-

**VIOLET TUDU**

Respondent/Landlord

**REASONS FOR DECISION**

**Date of the Hearing:** January 29, 2014

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

**Appearances at Hearing:** Donnajeane De Martin, applicant  
Violet Tudu, respondent

**Date of Decision:** March 19, 2014

### **REASONS FOR DECISION**

The application was filed on September 18, 2013 and the matter initially scheduled for hearing on October 17, 2013. The matter was adjourned several times and was finally heard on January 29, 2014. The applicant alleged that the respondent interfered with her lawful possession of the rental premises by changing the locks to the premises preventing her from entering. The applicant sought a order providing compensation for costs directly related to the alleged loss of possession and for loss of personal possessions.

The parties entered into a written one year tenancy agreement commencing on March 8, 2013. The premises consist of a room in the respondent's home with shared kitchen and bathroom facilities. The rent for the premises was \$900/month and included heat, electricity, water and internet.

The applicant alleged that the respondent changed the locks to the house on July 20, 2013 preventing her entry to the house or to her room. The applicant stated that she returned the next day to find her possessions outside on the ground. The applicant testified that she lived in her car until July 26 when she moved to a hotel, staying there until July 29, when she resumed living in her car until "late August" when she started to house-sit for another person. The applicant stated that she did not find permanent accommodation until November 1, 2013 when she entered into a tenancy agreement for premises costing her \$900 and including all utilities.

The respondent stated that she returned to her house on July 20, 2013 to find the house in disarray and an argument ensued. She stated that the applicant left the house, later returned to get a bag with her medications, and left again. The respondent acknowledged changing the locks to the house, preventing the applicant's entry. She stated that having the respondent as a tenant had become unbearable and that she had attempted to have the tenancy agreement terminated by order with no success. I should note here that the respondent did file an application to a rental officer on July 9, 2013 (file #10-13572) seeking termination of the tenancy agreement pursuant to section 58 of the *Residential Tenancies Act*. When the matter was heard on July 24, 2013 the landlord had already locked the tenant out. The application was dismissed because a termination order pursuant to section 58 could have only been issued at the end of the term. It was noted in the reasons for decision that,

".....the demeanor of both parties at this hearing and a previous one suggest that termination pursuant to section 57(c) might not be unreasonable. Given the acknowledged action of the applicant I am certainly not prepared to issue such an order. Doing so would appear to legitimize the changing of the locks which is prohibited pursuant to section 25 of the Act."

The respondent testified that on July 21, 2013 the applicant confronted her at church and was told that she could pick up all of her possessions the next day. The respondent stated that all of the applicant's possessions were put outside except foodstuffs and that she observed the items being picked up that day.

The applicant sought compensation of \$5425.68 composed of the following components:

Replacement of prescription drugs	\$1195.95
Replacement of splint and adjustment	1832.55
Hotel	465.00
Showers	40.00
Vehicle fuel	130.06
Food and Misc.	500.00
Laundry cost	600.00
Moving cost	200.00
Storage cost	235.00
Meals	<u>227.12</u>
Total	\$5425.68

The respondent disputed the compensation sought. She stated that the applicant began house sitting immediately after she was locked out, although no evidence of this was provided by the respondent. She stated that she did not owe the applicant anything and that the applicant should pay her for several items that were damaged. There was no security deposit required or held by the respondent.

Section 34 of the *Residential Tenancies Act* prohibits a landlord from disturbing a tenant's possession of the rental premises and section 25 prohibits either party from changing locks except by mutual consent.

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

**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.**

By her own admission, the respondent breached both of these sections of the Act. Both section 34 and 25 permit orders for compensation for loss suffered as a direct result of the breach.

I accept the testimony of the applicant in part concerning her accommodation after she was locked out. I accept that she lived in her car until July 26 and that she stayed in a hotel July 26-28. I do not accept that she resumed living in her car until late August. Her testimony concerning accommodation after July 28 was vague. All of the expenses she has claimed end in early August, indicating that she no longer required to eat out, use more fuel than usual or pay for showers. The receipts for showers covered every day from July 24 to August 2, except the three days the applicant was stating at the hotel. I must assume that the applicant had no need to shower daily after August 2 because she had other accommodation. I assume she was house sitting from August 3 to November 1, when she entered into another tenancy agreement.

I have considered the following elements of compensation:

#### RENT PAID IN ADVANCE

The monthly rent for the premises was \$900 and the applicant paid the July rent in full. As the applicant was deprived of possession after July 20, 2013 she is entitled to compensation for the remaining days in July which were paid for. The respondent stated that she had offered the money to the applicant but she refused to accept it. I find the amount due to be \$319.35.

#### REPLACEMENT OF PRESCRIPTION DRUGS

The applicant provided a letter from a pharmacist quoting the cost of unidentified “items to be purchased” for the applicant as \$1195.95. This is not a receipt nor does it identify what items are to be purchased. The respondent testified that the applicant removed all of her prescriptions from the premises on July 20, 2013. I find no evidence that the applicant incurred any cost to replace prescription drugs. The relief is denied.

#### REPLACEMENT OF SPLINT AND ADJUSTMENT

The applicant provided a letter from a dentist stating that the cost of a splint and adjustment is \$1832.55. This is not a receipt and there is no indication that the applicant incurred these costs. There was no evidence provided that the appliance would not be paid for by the applicant’s insurance or other benefits if she is required to replace the item in the future. The respondent testified that all items except foodstuffs were returned to the applicant. On the balance of probabilities I cannot find that the applicant has or will suffer this loss. The request for relief is denied.

#### COST OF HOTEL

The applicant provided a receipt for hotel accommodation for the nights of July 26, 27 and 28 totalling \$465. The dates are constant with the applicant’s testimony. I find an amount due to the applicant of \$465.

#### COST OF SHOWERS

The applicant provided eight receipts for showers taken at the City of Yellowknife field house totalling \$40. All of the dates coincide with the time the applicant testified that she was living in her car. The respondent questioned the expenses, stating that the applicant took 2 showers on the same day. Accepting that the respondent was living in her car, I do not find this expense unreasonable. I find an amount due to the applicant of \$40.

#### COST OF VEHICLE FUEL

The applicant submitted receipts for automobile fuel purchased between July 20 and July 24 totalling \$130.06. Having no kitchen facilities after July 20, it is likely that the respondent had to utilize her car more frequently to travel to restaurants. She stated that she also had to start her car during the evening to keep warm. However, the applicant also obviously used fuel for routine travel that would have been done regardless of the fact that she had been put out of possession of her premises. As well she has claimed \$40.04 for fuel purchased on July 20, the day she was put out of possession. Clearly, this purchase represents fuel that was used prior to her being put out of the premises. Assuming that 50% of the fuel claimed would have been consumed regardless of the circumstances, I find reasonable compensation for fuel to be \$45.01 calculated as follows:

Compensation sought	\$130.06
Less fuel purchased on July 20	<u>(40.04)</u>
Total	\$90.02 x 50% = \$45.01



## MEALS

Having been deprived of her ability to cook her own meals, the applicant was forced to eat out. She provided receipts totalling \$227.12 for prepared food purchases between July 20 and August 5. I find the costs reasonable but shall disregard five receipts for food purchased after August 2 totalling \$23.70 as I find the applicant was able to cook her own meals after that date. I find an amount owing to the applicant to be \$203.42.

## FOOD AND MISC.

The applicant sought compensation for food left in the premises and for miscellaneous items such as personal care products and toiletries. There were no receipts provided. The respondent testified that all of the personal belongings except foodstuffs were returned to the respondent. The respondent did not record the items she removed from the premises nor did the applicant record what was picked up. There is no evidence as to the type or quantities of food belonging to the applicant which remained on the premises. Not having any evidence to assist with determining a reasonable quantum of relief for the applicant, I shall consider nominal relief of \$50 to be reasonable.

## LAUNDRY COST

The applicant claimed that she did approximately 60 loads of laundry after July 20. She provided a written statement from Arctic Laundromat, stating that it would cost \$600 to wash and dry 60 loads of laundry. While I realize that the applicant was deprived of her ability to do laundry, the amount claimed is clearly unrealistic. The respondent stated that

all of the applicant's clothing fit into 5 bags and everything was clean. The respondent also stated that the applicant did laundry every day at the premises. Even considering one load a day for the days between July 20 and August 2, the total cost would amount to less than \$150. I shall consider relief of \$100.

#### MOVING COST

The applicant provided an unsigned letter from a "Mr. Drew" seeking payment of \$200 for moving the applicant's possessions to an undisclosed location. The respondent stated that all of the applicant's possessions could have been moved by herself in her own vehicle but acknowledged that the applicant had a large filing cabinet. I find the moving costs of \$200 to be reasonable.

#### STORAGE COST

The applicant provided a quotation for storage for \$235. The storage company was contacted by the rental officer and stated that the applicant had never rented a storage container from them. At the hearing the applicant stated that she was permitted by a friend to use her storage container. There was no evidence to support the cost claimed. The relief of \$235 is denied.

In summary, I find that the respondent breached the Act by interfering with the applicant's lawful possession of the rental premises and find reasonable compensation directly related to that breach of \$1422.78 calculated as follows:

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Return of prepaid rent	\$319.35
Replacement of prescription drugs	0
Replacement of splint and adjustment	0
Hotel	465.00
Showers	40.00
Vehicle fuel	45.01
Food and Misc.	50.00
Laundry cost	100.00
Moving cost	200.00
Storage cost	0
Meals	<u>203.42</u>
Total	\$1422.78

An order shall issue requiring the respondent to pay the applicant compensation in the amount of \$1422.78.

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Hal Logsdon  
Rental Officer