

IN THE MATTER between **Satdeo Inc.**, Applicant, and **Richard Winter**, 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, **Adelle Guigon**, Deputy Rental Officer, regarding a rental premises located within the **town of Hay River in the Northwest Territories**.

BETWEEN:

SATDEO INC.

Applicant/Landlord

- and -

RICHARD WINTER

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 28(b) of the *Residential Tenancies Act*, Satdeo Inc. must compensate Richard Winter for losses suffered as a direct result of the landlord entering the rental premises without notice or cause in the amount of \$3,843.00 (three thousand eight hundred forty-three dollars).

DATED at the City of Yellowknife in the Northwest Territories this 9th day of March 2015.

Adelle Guigon
Deputy Rental Officer

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-and-

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REASONS FOR DECISION

<u>Date of the Hearing:</u>	February 26, 2015
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories, by teleconference
<u>Appearances at Hearing:</u>	Blaine Maillet, representing the landlord Richard Winter, tenant
<u>Date of Decision:</u>	March 9, 2015

REASONS FOR DECISION

This application originally was made by Satdeo Inc. against Richard Winter. A hearing was held on January 21, 2015, from which an order was issued for payment of rental arrears and termination of the tenancy agreement. During that hearing Mr. Winter made submissions regarding actions taken by Mr. Harry Satdeo, owner/operator of Satdeo Inc., on September 2, 2014, which resulted in losses to Mr. Winter. He also expressed concerns that the rental premises and residential complex were not habitable and were not being maintained in accordance with health and safety standards.

Section 68(2) of the *Residential Tenancies Act* (the Act) permits a tenant to raise any issue at the hearing of an application to terminate a tenancy that could be the subject of an application under the Act. Termination of the tenancy was a requested and granted remedy to the original application and as such Mr. Winter was permitted to raise those issues. The hearing was adjourned to February 26, 2015, to permit the landlord to prepare a defence to the allegations brought forward by the tenant. Mr. Winter was also tasked with providing written submissions detailing the incident from September 2, 2014, and the specific losses he suffered, and to provide written submissions and/or documents supporting his allegations regarding the habitability of the rental premises and residential complex.

The hearing was reconvened on February 26, 2015, by teleconference. Mr. Blaine Maillet appeared representing the landlord and Mr. Richard Winter appeared as tenant.

Mr. Maillet indicated that although he did have time to speak to Mr. Satdeo prior to Mr. Satdeo's departure from the community on the matter, Mr. Satdeo was not forthcoming with information with which Mr. Maillet could offer arguments. Mr. Maillet had informed me shortly after the January hearing that when he brought Mr. Winter's concerns to Mr. Satdeo in the hopes that Mr. Satdeo and Mr. Winter could come to an agreement, Mr. Satdeo refused any negotiation on the matter. Mr. Maillet advised at this hearing that Mr. Satdeo was expected to return to the community next week. A further adjournment of the matter was refused citing sufficient time had been given the landlord to prepare a defence.

Improper entry and damages

Mr. Winter testified that an order had been issued by a rental officer terminating his tenancy on September 30, 2014, unless rental arrears were paid in full by then. In August 2014, Mr. Satdeo verbally told Mr. Winter he had to move out of the rental premises on August 29, 2014, but he did not provide any legal documents supporting the demand. Mr. Satdeo verbally reiterated to Mr. Winter on August 29th that he must move out; he still could not provide legal documents supporting the demand. On September 2nd Mr. Winter returned to his apartment from work for lunch to find Mr. Satdeo had entered the rental premises and begun moving Mr. Winter's personal property from the premises. Mr. Winter contacted local law enforcement, who did attend, and through discussions with them Mr. Satdeo admitted he misread the date on the rental officer order. He was told to put all Mr. Winter's property back where it was found while Mr. Winter returned to work.

Upon his return home, Mr. Winter did an inventory of his property and discovered the following items were missing:

Cash in a Royal Bank Envelope	\$1,000.00
Birdog USB Plus satellite finder - purchased in 2007 - approximate purchase price	\$1,800.00
Benchmark socket set - approximate replacement value	\$85.00
Lotto 6/49 tickets purchased over several months - approximate replacement value (purchase price)	\$200.00
Personal documents	
Keurig coffee maker and K-packs	Christmas gift
Miscellaneous plumbing supplies - approximate retail value	\$275.00 - \$300.00
One loaded pizza (lunch) - approximate replacement value	\$32.00
Three packs of unopened cigarettes - approximate replacement value	\$60.00
One Sony PS3 controller - approximate replacement value	\$40.00
20 DVD movies - approximate replacement value	\$600.00
Lexar jumpdrive containing documents accumulated between 2007-2011	
Special soap and lotion (for skin condition) - replacement value	\$45.00
Six rolls of toilet paper and two rolls of paper towel	
Mach 3 Fusion replacement cartridges (blades) - 10-pack - approximate replacement value	\$48.00

Mr. Winter explained that the \$1,000 cash had been obtained on September 1, 2014, from a friend; \$500 was in exchange for a camera kit and the remaining \$500 was borrowed. The money was intended to be given to Mr. Satdeo towards Mr. Winter's rent account. During the discussion with Mr. Satdeo and the law enforcement officer on September 2nd, Mr. Satdeo and Mr. Winter had agreed to discuss the \$1,000 when Mr. Winter returned from work. When Mr. Winter approached Mr. Satdeo later that evening, Mr. Satdeo refused any knowledge of the \$1,000 and refused to discuss it.

Mr. Winter explained that the Lotto 6/49 tickets had been purchased over several months, were not signed on the back, and had yet to be checked by him at the lottery booth to determine if he had any winnings. He was certain he had not won any substantial amounts from the tickets as he had been listening for any advertisements of locally purchased tickets being big winners, but he could not be certain whether or not the tickets were winners of smaller prizes. Mr. Winter acknowledged he had no reasonable expectation of compensation for the lottery tickets greater than the approximate amount he paid to purchase the tickets – that being \$200.

Mr. Winter explained that the miscellaneous plumbing supplies were left over supplies from helping friends with plumbing related issues; in exchange for the help, the friends permitted him to retain the remaining supplies. The dollar amount claimed for the plumbing supplies is an educated estimate of their retail value.

The pizza being claimed was Mr. Winter's leftovers, which he intended on having for lunch on September 2nd. The cigarettes were part of a bulk purchase he had made which he expected would have lasted him a few weeks.

The Lexar jumpdrive contained four years' worth of accumulated work related journals, personal documents, various manuals, etcetera, and Mr. Winter was unable to put a monetary price to either these contents or the personal documents which also went missing. The personal documents included income tax returns, court orders, and his criminal pardon. He described them as priceless.

Mr. Winter suffers from a skin condition requiring the use of a special type of soap and lotion; these were missing from the bathroom, along with the toilet paper rolls, paper towel rolls, and razor blades. The razor blades had recently been purchased in a 10-pack; two blades had been used, eight had not been used yet.

Mr. Winter also identified the following items which had been returned to him damaged:

32" LED TV	4" scratch from top centre to bottom left corner
Acer laptop	hard drive had been wiped
Bed mattress	sewer stains from dirty gloves
72oz goose down duvet	sewer stains from dirty gloves
Electric toothbrush	found on the floor; unsanitary
External hard drive	no longer works; movies saved on it were all lost
Bell receiver box	access door panel broken
Teflon fry pan	packed with steel utensils causing scratches to Teflon
Laundry	clean clothes and laundry had been packed with sewage stained work clothes

Mr. Winter explained the TV was relatively new and the box for it was still in the living room. When he got it back from Mr. Satdeo it had been put back in its box with several pieces of clothing with buttons on them as padding. He speculates the scratch occurred when the clothing was stuffed into the box, as the scratch was not there before it was removed. He did not provide either the value of or actual age of the TV.

Mr. Winter explained that the Acer laptop was set up with a security software which would wipe the hard drive after three unsuccessful attempts to log in to the computer. When he got the Acer laptop back and tried to turn it on he discovered the hard drive had been wiped, indicating someone tried to access it. All the software and data that was on the computer is now gone; otherwise the laptop itself is still functional.

Mr. Winter explained that the weekend of August 30th he assisted a friend with repairing a sewer leak under his friend's home. His work clothes, as a consequence, were covered in sewage detritus. Upon his return to his apartment, Mr. Winter placed the work clothes in a rubber tote to keep them separate until he could have them cleaned. When Mr. Winter inspected his rental premises after his property was returned on September 2nd, he discovered the sewage-covered work gloves had been thrown on his bed, resulting in stains to the duvet and the mattress. He also discovered the majority of his clothes and laundry – originally clean or otherwise – had been thrown together in the tote with the sewage-covered work clothes. Mr. Winter was able to clean

the mattress and duvet with a special cleaning solution so he could still use them. He was not able to provide the cost of the cleaning solution. He was forced to wash all of his clothes and laundry as a result of their exposure to the sewage-coated work clothes. His rental premises does not come with laundry facilities, so he has to use a local coin-op laundromat. He claims to wash and dry approximately half of his clothes usually costs him around \$35.

Mr. Winter found his electric toothbrush on the floor. As a result, it was no longer sanitary and he was forced to purchase a new electric toothbrush. He did not submit the cost of replacement.

Mr. Winter identified that the external hard drive appeared to have been dropped. He used the external hard drive to record movies from his satellite TV. It no longer works and all the movies he had recorded on it were lost. He did not provide either the purchase price of the hard drive or a value for the movies.

Mr. Winter confirmed that the Bell receiver does still work as it's supposed to. The access door panel was broken off, which exposes the internal components to dust accumulation, increasing risk of damage. Mr. Winter indicated he paid \$499 for the receiver in 2007 or 2008.

Mr. Winter confirmed he was in the habit, after numerous reprimands from his sister, of taking care of his Teflon coated cookware. When he found the Teflon frying pan it had been packed in a box with metal utensils on top of it, scratching the surface as they slid around the box. Mr. Winter did not provide either the cost of or the age of the frying pan.

Mr. Winter requested compensation for his losses, acknowledging the rental officer's discretion on the matter.

Rental officer order number 10-14149 does conditionally terminate Mr. Winter's tenancy on September 30, 2014. Sections 26 and 27 of the Act specify the conditions upon which a landlord may enter a rental premises; the specifications include the requirement to give written notice 24 hours prior to entering the premises, except in cases of emergency, where the tenant has given consent at the time of entry, or the landlord has reasonable grounds to believe the tenant has vacated or abandoned the rental premises. In this case, none of the exceptions existed. Mr. Winter had clearly not vacated or abandoned the rental premises and clearly had no intention to vacate or abandon the rental premises at the point that Mr. Satdeo entered.

The tenancy had not been terminated in accordance with the Act as of August 31, 2014, and even if it had been terminated on that date rather than September 30th, there was no eviction order in effect. And even if there had been an eviction order in effect, the landlord does not have the authority to forcibly remove a tenant from the rental premises; only the Sheriff's Office can do that with a writ of possession issued by the Supreme Court of the Northwest Territories after an eviction order has been filed.

There being no grounds for the landlord to have entered the tenant's rental premises on September 2, 2014, I find Satdeo Inc. in breach of sections 26 and 27 of the Act. The landlord's actions on that day directly resulted in several losses to the tenant. With respect to the lost documents – both paper and electronic – the tenant was unable to provide a monetary value to them and I do not have the means with which to determine the value of such intellectual property. As such, I will only be considering compensation for damaged or missing real property as follows:

1. Mr. Winter was able to give plausible and rational explanation of how he obtained \$1,000 cash, where he obtained it, why he obtained it, and how and where it was kept. I am satisfied that \$1,000 cash was lost as a result of the landlord's actions.
2. Mr. Winter testified that he purchased the satellite finder in 2007 for \$1,800. I have made inquiries and learned that a satellite finder has a useful life expectancy of at least 25 years. Calculating for seven years' depreciation, I am satisfied the remaining value of the satellite finder is \$1,296.
3. The Benchmark socket set would have an estimated useful life expectancy of 30 years. However, without knowing the age of the set I am unable to ascertain a depreciated value. I have made inquiries and learned that the average price for an 80-piece set is \$85. I am satisfied \$85 is a reasonable replacement cost value for the Benchmark socket set.
4. The replacement cost claimed for the Lotto 6/49 tickets is not unreasonable at \$200.
5. The Keurig coffee maker was claimed as a Christmas gift to Mr. Winter. Investigation led me to the average cost for a Keurig coffee maker as \$130, which will be granted to Mr. Winter.
6. The claim for the replacement cost of the plumbing supplies of \$275 is not unreasonable.

7. The claim for Mr. Winter's lost lunch and unopened cigarette packages is not unreasonable. The amount of \$32 claimed for the pizza represents the cost for the whole pizza; Mr. Winter lost six pieces of the pizza, therefore he will only be granted \$16 in compensation. The cigarette packages will be granted compensation in the amount of \$60 as claimed.
8. Mr. Winter did not indicate how old the PS3 controller was. The replacement cost of the controller is not unreasonable at \$40.
9. The claim for 20 DVDs at \$30 each to my mind is more than is reasonable. I am not satisfied that all the DVDs represented new or newer movies, which would cost \$30 or more each to replace. Without knowing how old the respective movies were I cannot fairly apply the full price of a new movie as compensation. In consideration of likely depreciation value of the DVDs that were lost, I am prepared to grant compensation at a rate of \$10 per DVD, for a total amount of \$200.
10. Upon investigation I learned that the average replacement cost of a Lexar jumpdrive is \$13.00.
11. Mr. Winter's claim for the replacement cost of the special soap and lotion is not unreasonable at \$45.00.
12. The replacement value for six rolls of toilet paper and two rolls of paper towel that I will allow is \$5.00.
13. The claimed replacement cost for the razor blades is not unreasonable at \$48.00.
14. Mr. Winter's explanation of how the 32" LED TV was scratched is plausible and on a balance of probabilities it is likely it was scratched by the button of a piece of clothing used as padding when it was packed by the landlord's movers. I have investigated the cost differential between repairing the screen and replacing the TV and found that repairing the screen is actually much more expensive than simply purchasing a new TV. As such I am granting the replacement cost of a 32" LED TV in the amount of \$200, accounting for some depreciation without knowing the actual age of Mr. Winter's TV.
15. Mr. Winter's purchase of a new electronic toothbrush is not unreasonable considering he found his existing electronic toothbrush in an unsanitary condition on the floor. I have investigated and found the average price of an electronic toothbrush is \$80.

16. After investigating I have learned that the average price for an external hard drive is \$100 and will grant compensation for the replacement of Mr. Winter's external hard drive in this amount.
17. The average current sale price for Teflon coated frying pans is \$15 and that is what I will grant for replacement cost of Mr. Winter's frying pan.
18. With respect to the laundering requirements due to mixing clean clothes and other laundry with the sewage-coated work clothes, it stands to reason that upwards of half of the items would have already required cleaning, including the work clothes. Costs associated with laundering the previously clean half will be granted in the amount of \$35.

The total amount of compensation being granted to Mr. Winter for loss suffered as a result of the landlord's illegal entry into the rental premises is as follows:

Cash	\$1,000.00
BirDog USB Plus satellite finder	\$1,296.00
Benchmark socket set	\$85.00
Lotto 6/49 tickets	\$200.00
Keurig coffee maker	\$130.00
Plumbing supplies	\$275.00
Half a loaded pizza	\$16.00
Three packs of cigarettes	\$60.00
One Sony PS3 controller	\$40.00
20 DVDs	\$200.00
Lexar jumpdrive	\$13.00
Toiletries	\$178.00
32" LED TV	\$200.00
External hard drive	\$100.00
Frying pan	\$15.00
Laundry	\$35.00
Total	\$3,843.00

Health, safety, and habitability

Mr. Winter made submissions regarding the condition of the rental premises and residential complex, including complaints regarding a defective fire alarm system, heat escaping from drafty balcony doors requiring the use of an electric micro furnace, unsecured main entrance door, poor plumbing in the bathroom tub, and the presence of asbestos in the premises. Mr. Winter did provide a copy of a bulk material sample analysis results report prepared by Pinchin West dated September 26, 2014, reporting on the presence of asbestos in Mr. Winter's apartment, however, he was unable to provide any expert testimony or submissions explaining the contents and consequences of the report findings. Nor was Mr. Winter able to provide substantiation for the remaining allegations. Mr. Winter understood that a decision could not be made on these matters by the rental officer without substantive evidence of the breaches. Mr. Winter was encouraged to continue cooperating with environmental health officers and fire marshal inspectors in their ongoing investigations into the residential complex.

An order will issue requiring Satdeo Inc. to compensate Mr. Richard Winter for losses suffered as a direct result of the landlord entering the rental premises without notice or cause in the amount of \$3,843.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

Exhibit 1: Pinchin West correspondence dated September 26, 2014

Exhibit 2: Richard Winter's written submissions