

IN THE MATTER between **Judith Gale**, Applicant, and **AAG Landscaping**,
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 Fort Smith in the Northwest
Territories.**

BETWEEN:

JUDITH GALE

Applicant/Tenant

- and -

AAG LANDSCAPING

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

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

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Judith Gale**, Applicant, and **AAG Landscaping**,
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BETWEEN:

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REASONS FOR DECISION

<u>Date of the Hearing:</u>	January 8 and March 9, 2015
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories, by teleconference
<u>Appearances at Hearing:</u>	Judith Gale, applicant Andrew Grenier, representing the respondent
<u>Date of Decision:</u>	March 9, 2015

REASONS FOR DECISION

An application to a rental officer made by Judith Gale as the applicant/tenant against AAG Landscaping as the respondent/landlord was filed by the Rental Office November 17, 2014. The application was made regarding a residential tenancy agreement for the rental premises known as 60 Field Street in Fort Smith, Northwest Territories. The applicant served a copy of the filed application on the respondent by registered mail signed for November 27, 2014.

The applicant alleged the respondent had wrongfully dealt with her personal property and requested an order for its return. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for January 8, 2015, by teleconference. Ms. Judith Gale appeared as applicant. Mr. Andrew Grenier appeared as respondent.

The applicant testified that she was evicted from the rental premises and was not permitted by the Sheriff to take her property with her. She claimed the respondent would not return her property to her unless she paid what she described as exorbitant moving and storage fees. To Ms. Gale's mind the landlord had essentially stolen her property and was holding it for ransom. She has been and continues to seek assistance from Social Services. Ms. Gale claims that communication with the landlord has been unsuccessful and aggravated by a refusal on the landlord's part to cooperate with either herself or her representatives from Social Services or the women's shelter.

Ms. Gale stated she learned from witnesses to the landlord's removal of her property from the premises that the property was not properly packed or moved with care. Ms. Gale also alleged that the inventory of property provided to her by the landlord appeared to be missing several items.

Mr. Grenier confirmed that Ms. Gale was evicted from the rental premises on October 28, 2015, in accordance with an eviction order issued by a rental officer under file number 10-14243; a writ of possession was obtained from the Supreme Court of the Northwest Territories and the Sheriff's Office conducted the eviction. On October 29th the landlord inventoried and moved the personal property that was left behind, providing the Rental Office and Ms. Gale with a copy of the inventory in accordance with section 64 of the *Residential Tenancies Act* (the Act).

Mr. Grenier provided the Rental Officer with photographs of the rental premises taken October 29th. Mr. Grenier confirmed he had been unsuccessful in providing Ms. Gale with a copy of those photographs.

Mr. Grenier also provided the Rental Officer with two moving invoices: Invoice number 017 dated June 1, 2014, is the invoice the landlord issued to Aurora College for moving Ms. Gale's property from the Aurora College residence to AAG Landscaping's rental premises; Invoice number 045 dated October 29, 2014, is the invoice issued to Ms. Gale for the moving and storage of her property from AAG Landscaping's rental premises. The two invoices were provided to assist with substantiating the charges applied for moving and storage. Mr. Grenier testified that the property that was moved from Aurora College's residence was largely packed and ready to go; the property that was left behind at AAG Landscaping's rental premises was minimally packed and was not ready to go.

In order to ensure both parties were privy to the same documentary information and in a position to give full answer and defence to the allegations brought forward, the hearing was adjourned to March 9, 2015, at 10:30 a.m., by teleconference. Mr. Grenier was tasked with providing Ms. Gale with a CD of the photographs which were already provided to the Rental Officer. Ms. Gale was tasked with obtaining and providing the video allegedly taken by the witnesses to the property removal and a written inventory of the items allegedly missing from the inventory of property. Both parties were ordered to submit any additional evidence to support their respective cases no later than March 6, 2015. Neither party submitted any additional evidence.

On March 9th, Mr. Grenier confirmed providing Ms. Gale with a CD of the photographs taken October 29th. Mr. Grenier confirmed that the CD was working perfectly fine when he created it and forwarded it to Ms. Gale. Ms. Gale claims she was not able to read the CD on either a government or her own computer.

The moving and storage fees had been paid and Ms. Gale was granted access to her property. Mr. Grenier testified that he was unable to secure any indoor storage facility for Ms. Gale's property and, in consultation with a rental officer, stored it on a raised wooden foundation securely covered with tarps. After paying the moving and storage fees, Ms. Gale arranged for movers to transport her property; she submitted hearsay evidence that the movers claimed the property was

not adequately protected and had suffered weather damage, and that they believed there was no reason why it should take as much as was claimed by the landlord to remove the amount of property Ms. Gale's movers observed. Ms. Gale and Mr. Grenier went on to make further unsubstantiated aspersions against each other regarding their respective conduct.

Decision

The hearsay evidence is inadmissible. No documentary evidence, affidavits, statutory declarations, or even witnesses were presented to substantiate the claims of harassment, damage to the property, or lack of successful communication between the parties. Both parties were given two months to produce necessary documents and/or arrange for witnesses and neither party did so.

The photographs are admissible. The landlord complied with his obligation to provide a digital copy of the photographs to the tenant. The tenant's attempts to access the photographs or request printed copies were insufficient and her alleged reasons for being unsuccessful in this regard are unsubstantiated.

Rental officer order number 10-14243 dated September 26, 2014, orders termination of the tenancy agreement between the parties on September 30, 2014, and eviction on October 15, 2014. The hearing from which that decision was made was held September 25, 2014. Mr. Andrew Grenier and Ms. Amanda Grenier were both present at that hearing representing the landlord and Ms. Judith Gale was present at that hearing as tenant. The decision was made at that hearing. As such, Ms. Gale was fully aware that her tenancy was ending September 30, 2014, and that she was being given an additional 15 days to vacate the rental premises on her own volition. She did not do so and the landlord proceeded to enforce the eviction order. The Sheriff's Office did not enforce the eviction until October 28, 2014, which gave Ms. Gale an additional 13 days to vacate the rental premises on her own volition. She did not, nor did she adequately prepare her property for such a move.

Section 64(1) of the Act says:

“Unless a landlord and tenant have made a specific agreement providing for the storage of personal property, where a tenant leaves personal property in a rental premises or residential complex that the tenant has vacated or abandoned, the landlord may remove the personal property and, on removal, shall store and dispose of the personal property in accordance with this section.”

Section 64(3) of the Act says:

“Where a landlord removes personal property, other than property described in subsection (2), the landlord shall, at the earliest reasonable opportunity, give the rental officer an inventory of the property in an approved form and, where the address of the tenant is known to the landlord, the landlord shall give the tenant a copy of the inventory.”

Section 64(5) of the Act says:

“Property that has not been disposed of or sold under subsection (2) or (4) must, subject to the direction of a rental officer, be stored in a safe place and manner for a period of not less than 60 days.”

Section 64(6) of the Act says:

“Where the tenant or owner of an item of personal property stored by the landlord pays the landlord the cost of removing and storing the item, the landlord shall give the item to the tenant or owner and notify the rental officer.”

Section 65(7) of the Act says:

“A landlord who substantially complies with this section or section 64 is not liable to the tenant or any other person for loss suffered by the tenant or other person as a result of the storage, sale or other disposition by the landlord of the abandoned personal property.”

Section 66 of the Act says:

“Where, on the application of a person claiming to be the owner of an item of personal property, the rental officer determines that the landlord has wrongfully sold, disposed of or otherwise dealt with an item of personal property, the rental officer may make an order

- (a) requiring the landlord to compensate the owner for the wrongful sale, disposition or dealing; or
- (b) requiring the landlord to give the property to the owner.”

The tenant believes that her property was wrongfully dealt with by the landlord, stating that she in no way abandoned her property when she was forced to vacate the rental premises. She also claimed she did not have the means to pay the amount being claimed by the landlord for moving and storage fees, citing the fees as unreasonable. Further, the tenant claimed the property was not stored in a safe place and manner, however, she did not provide admissible evidence that the manner in which the property was stored was unsafe. The landlord, on the other hand, gave direct evidence that the property was stored on his own land on a raised platform and secured with tarps to protect it from the elements, and that no indoor storage facility was available.

The tenant had substantial time within which she could make arrangements to pack and move her property prior to being evicted from the rental premises. She did not do so. The landlord complied with his obligations under sections 64 and 65 by: inventorying the property that was left behind after the tenant’s eviction and providing both the rental officer and the tenant with a copy of that inventory, moving the property to storage, and holding it for significantly longer than the minimum 60 days required by the Act. Upon payment of the moving and storage fees, the landlord permitted the tenant to retrieve her property. I am satisfied the landlord has substantially complied with sections 64 and 65 of the Act.

The landlord's invoice number 017 reflects the amount charged to Aurora College for moving the tenant's property from her previous rental premises at the college's residence to the landlord's property. The property at that time was already packed and ready to move; it took three movers eight hours to move the property charged out at a rate of \$170 per hour; the total amount invoiced to the college was \$1,360 (no GST was applied as the college is exempt). The landlord's invoice number 045 reflects the amount charged to the tenant for moving and storage fees for the property left behind after the tenant was evicted from the landlord's rental premises. The same amount of property was moved, however, it was not all packed and ready to go. The photographs submitted into evidence substantiate the disarray of the property that remained in the premises. The invoice substantiates the landlord's testimony that moving the tenant's property from the rental premises to the storage site took five hours with six movers. The rates charged are consistent with those previously charged: \$170 per hour for the first two workers and the moving truck plus \$50 per hour for each additional worker. Storage fees were also charged in the amount of \$250 for 60 days, and GST was applied. I am satisfied that the amount charged for moving is consistent with previously charged amounts for the same service and that the condition of the property to be moved substantiates the hours and number of movers claimed to complete the work. I find the moving and storage fees charged were reasonable.

In finding that the landlord has complied with his obligations under sections 64 and 65 and that the amount charged for moving and storage fees is reasonable, I am not satisfied that the landlord has wrongfully dealt with the tenant's property. As such, the tenant's application to a rental officer is dismissed.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

Exhibit 1: Applicant's correspondence to respondents dated November 4, 2014

Exhibit 2: Email conversation between Applicant, Paul Stryde, RCMP Fort Smith Detachment, and Hal Logsdon dated November 5, 2014

Exhibit 3: Respondent's correspondence to applicant dated November 5, 2014

Exhibit 4: Respondent's inventory of abandoned personal property removed from rental premises October 29, 2014

Exhibit 5: CD containing digital photographs of rental premises

Exhibit 6: Respondent's invoice number 017 dated June 1, 2014, to Aurora College

Exhibit 7: Respondent's invoice number 045 dated October 29, 2014, to the applicant