

IN THE MATTER between **James Douglas**, Applicant, and **Armando Berton**,  
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:

**JAMES DOUGLAS**

Applicant/Tenant

- and -

**ARMANDO BERTON**

Respondent/Landlord

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to sections 34(2)(a) and 34(2)(b) of the *Residential Tenancies Act*, the landlord must comply with his obligation not to disturb the tenant's possession or enjoyment of the rental premises and must not breach that obligation again.

DATED at the City of Yellowknife in the Northwest Territories this 11th day of January  
2015.

---

Adelle Guigon  
Deputy Rental Officer

IN THE MATTER between **James Douglas**, Applicant, and **Armando Berton**,  
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,

BETWEEN:

**JAMES DOUGLAS**

Applicant/Tenant

-and-

**ARMANDO BERTON**

Respondent/Landlord

**REASONS FOR DECISION**

<b><u>Date of the Hearing:</u></b>	<b>December 2, 2015</b>
<b><u>Place of the Hearing:</u></b>	<b>Yellowknife, Northwest Territories, by teleconference</b>
<b><u>Appearances at Hearing:</u></b>	<b>James Douglas, applicant Armando Berton, respondent</b>
<b><u>Date of Decision:</u></b>	<b>December 2, 2015</b>

### **REASONS FOR DECISION**

An application to a rental officer made by James Douglas as the applicant/tenant against Armando Berton as the respondent/landlord was filed by the Rental Office September 30, 2015. The application was made regarding a residential tenancy agreement for the rental premises known as #1A, 292 McDougal Road, in Fort Smith, Northwest Territories. The applicant personally served a copy of the filed application on the respondent October 29, 2015.

The applicant alleged the respondent had interrupted the provision of electricity to the rental premises, improperly removed his property from the rental premises, stored the property outdoors, and prevented him from occupying the rental premises. An order was sought for compensation for losses suffered. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for December 2, 2015, by teleconference. Mr. James Douglas appeared as applicant. Mr. Armando Berton appeared as respondent.

#### *Tenancy agreement*

The parties agreed that a tenancy agreement was in place between them for the rental premises known as #1A, 292 McDougal Road, in Fort Smith, Northwest Territories. The tenancy at this unit commenced in May 2013. Two income security programs rent report was entered into evidence identifying the applicant, the rental premises, the monthly rent, that utilities are included in the rent, and signed by Mr. Berton on December 1, 2013, and May 18, 2015; these reports are not signed by Mr. Douglas. There was no dispute between the parties regarding the terms of the agreement as indicated in the reports.

Mr. Berton submitted that the agreements between the parties were leases as opposed to rental agreements and as such did not fall within the jurisdiction of the *Residential Tenancies Act* (the Act). No written document signed by both parties was entered into evidence to substantiate Mr. Berton's claim that the tenancy was a 'lease' outside the jurisdiction of the Act.

Section 9(1) of the Act identifies jurisdiction over tenancy agreements that are oral, written, or implied. Section 9(3) requires that a written tenancy agreement be signed by both parties. I am not satisfied the rent report constitutes a written tenancy agreement under the Act. I am satisfied that the parties agreed to a monthly rent including utilities for a rental premises and occupancy of that rental premises was granted to the tenant. I find that an oral tenancy agreement is in place between the parties in accordance with and under the jurisdiction of the Act.

#### *Electricity*

Although the applicant raised the issue of interference with the provision of electricity during the tenancy in his application, that issue was not ultimately pursued at hearing by either party.

#### *Agreed Facts*

The parties agree on the following:

- That there had been some discussion between them in June 2015 of transferring Mr. Douglas to a different rental premises in the same complex, Unit #3B.
- That at the time of these discussions Unit #3B was not in fact suitable for occupancy as it had been empty since 1974 and was being used for miscellaneous storage.
- That as of the date of this hearing Unit #3B remained unsuitable for occupancy.
- That Mr. Douglas had notified Mr. Berton on July 9, 2015, that he would be away at a medical treatment program from July 14<sup>th</sup> to September 10<sup>th</sup> or 11<sup>th</sup>, and that Mr. Douglas's friend would be checking the apartment on a daily basis to ensure its security and to feed and care for Mr. Douglas's cat.
- That on August 19, 2015, Mr. Berton had removed all of Mr. Douglas's personal property from Unit #1A, storing it in bags and cardboard boxes on pallets in front of the unit, with a tarp secured over it; the cat was transported to the local animal shelter.

#### *Disputed Facts*

The parties disagree as follows:

- That there was an actual agreement between them to transfer Mr. Douglas to Unit #3B.

- That Mr. Douglas had agreed to permit Mr. Berton to move his property to Unit #3B while he was away.
- That Mr. Douglas's personal property was removed and stored in a safe place and manner in accordance with the Act.
- That Mr. Douglas had abandoned the rental premises.

*Permission to transfer*

Mr. Douglas maintains that he did not at any time agree to transfer from Unit #1A to Unit #3B. He acknowledges talking about the possibility, but knew the condition of Unit #3B and that it would require significant repairs and cleaning before it could be ready to move into. Mr. Berton argued that they did verbally agree to the transfer and that Mr. Douglas gave him permission to relocate him while he was away.

While the tenancy agreement itself can be oral, implied, or written pursuant to section 9(1) of the Act, any agreements to change the terms of a tenancy agreement or to end the tenancy must be made in writing and signed by both parties to be enforceable. Mr. Berton was unable to prove any agreement between himself and Mr. Douglas regarding either a transfer to another unit or permission to relocate Mr. Douglas during his absence. In considering the condition of Unit #3B and the arrangements that Mr. Douglas made for the care and security of the rental premises and his cat while he was away, I find it unlikely that Mr. Douglas gave Mr. Berton permission to relocate his property during his absence. I find there was no agreement to transfer Mr. Douglas from Unit #1A to Unit #3B, and there was no agreement to remove Mr. Douglas's property from Unit #1A.

*Removal and storage of personal property*

Mr. Douglas and Mr. Berton agree that Mr. Douglas's property was removed from Unit #1A on August 19, 2015. They also agree that the property was stored in bags and cardboard boxes, on a pallet, with a tarp covering it, outdoors in front of Unit #1A.

Mr. Douglas submits that not only was the removal of his property from the premises inappropriate, but the manner in which the property was stored was neither safe nor secure. He further indicated that there appeared to be some property missing, although he admitted he does not have a written inventory of his property to substantiate this claim and as such did not seek compensation for lost property.

Mr. Berton argued that he did take care of the removal of Mr. Douglas's property. He indicated that by storing everything in bags and cardboard boxes he was protecting the individual items, and by storing those bags and boxes on a pallet he was keeping them off the ground, and by covering them with a tarp he was protecting them from the elements. He maintains that the property was secure because it was in plain sight of any of the other tenants in the residential complex.

Section 64 of the Act speaks to dealing with a tenant's personal property left in a rental premises that the tenant has vacated or abandoned. Mr. Douglas had neither vacated nor abandoned the rental premises and as such Mr. Berton had no authority to do anything with Mr. Douglas's property.

Even if Mr. Berton had reason to deal with Mr. Douglas's personal property under this section, he would have been required under section 64(3) to prepare an inventory of the property and provide a copy of that inventory to both Mr. Douglas and the rental officer. Mr. Berton did neither of these things.

Section 64(5) of the Act specifically requires a landlord to store abandoned personal property in a safe place and manner for a period of not less than 60 days. The intent of this section is two-fold: first, to ensure the property does not come to harm or 'disappear' before the tenant can re-claim it, and, second, to afford the tenant enough time to re-claim the property if they so wish. Putting the property in bags and cardboard boxes is a good start; however, photographs of the property provided into evidence reveal not all the bags were adequately tied and most of the boxes were not taped or folded shut. Leaving those bags and boxes on a pallet could remove them to some extent from weather-related damage, as would securing a tarp over top of them. Leaving the property on an unsecured lot in front of the rental premises does not, to my mind, appropriately keep the property safe from theft or mischief.

I am not satisfied Mr. Berton has substantially complied with his obligations respecting the treatment of abandoned personal property pursuant to section 65(7) of the Act. The property was not abandoned, no inventory was taken of the property and provided to the tenant and rental officer, and the property was not stored in a safe manner. I find Mr. Berton has wrongfully dealt with Mr. Douglas's personal property.

*Disturbing enjoyment and possession*

Section 34(1) of the Act requires a landlord not to disturb the tenant's possession or enjoyment of the rental premises or residential complex. By removing Mr. Douglas's property from the rental premises without his permission and in his absence, and refusing to permit Mr. Douglas to re-occupy the rental premises upon his return, Mr. Berton has disturbed Mr. Douglas's possession and enjoyment of the rental premises.

*Compensation and order*

Mr. Douglas acknowledged having retrieved his property and has it stored in a friend's garage. His cat remains at the animal shelter, where Mr. Douglas will have to pay a per diem to secure the cat's return to him. Mr. Douglas has not been permitted re-occupancy of the rental premises and has been temporarily residing with a friend. He did not provide receipts or invoices respecting the costs associated with housing his cat at the shelter. In his application he did refer to monetary losses suffered, but at hearing withdrew his request for monetary compensation believing that any such compensation would not be retrievable from Mr. Berton whether enforceable through the courts or not. Mr. Douglas indicated he would be satisfied with an order recognizing Mr. Berton's failure to comply with his obligations and requiring him not to breach them again. Under the circumstances, I granted Mr. Douglas's request and an order will issue requiring Mr. Berton to comply with his obligations not to disturb the tenant's enjoyment or possession of the rental premises and not to breach that obligation again.

---

Adelle Guigon  
Deputy Rental Officer

APPENDIX A

Exhibits

Exhibit 1: Applicant's additional statement of reasons

Exhibit 2: Applicant's written note to Todd

Exhibit 3: Set of four photographs

Exhibit 4: Rent report dated May 18, 2015, signed by Armando Berton

Exhibit 5: Email from James Douglas dated November 16, 2015

Exhibit 6: 39-page written submission from Armando Berton received by fax December 1, 2015