Yeadon v. NWT Housing Corp. et al, 2008 NWTSC 39 Date: 2008 06 09
Docket: S-1-CV2007000222

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

JACK D.R.O. YEADON

Applicant

-and-

NORTHWEST TERRITORIES HOUSING CORPORATION

Respondent

-and-

KOTANELLEE HOUSING ASSOCIATION

Second Respondent

Appeal by applicant under s.87 of the *Residential Tenancies Act.*

Heard at Yellowknife, NT on April 21, 24, 2008

Reasons filed: June 09, 2008

REASONS FOR JUDGMENT OF THE HONOURABLE JUSTICE L.F. GOWER

Applicant was self-represented
Counsel for Northwest Territories Housing Corporation: Darren Pickup

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REASONS FOR JUDGMENT

[1] This is an appeal by Mr. Yeadon under s. 87 of the *Residential Tenancies Act*, R.S.N.W.T., 1988, c. R-5 (the "*Act*") from a decision of Rental Officer Hal Logsdon (the "Rental Officer"), dated October 11, 2007.

[2] The matter before the Rental Officer was, in part, the result of an application by the landlords, the Northwest Territories Housing Corporation and the Kotanellee Housing Association (the "Landlords"), seeking an order requiring Mr. Yeadon to

vacate the premises he was then residing in, specifically a seniors complex which I will refer to here as "Unit C", and return to the premises Mr. Yeadon had previously been renting, described as "Unit 812". In the event that Mr. Yeadon failed to comply with such an order, the Landlords sought an outright termination of his tenancy agreement.

[3] Mr. Yeadon also applied to the Rental Officer seeking an order that certain repairs be done to both Unit C and Unit 812 and that he be compensated for the loss of items of personal property which were last known to be located in Unit 812. Further, Mr. Yeadon sought compensation for some damage done to his motor vehicle, which was parked adjacent to Unit 812.

[4] These matters were set for a hearing before the Rental Officer, pursuant to s. 74 of the *Act*, on October 2, 2007. Immediately prior to the hearing, the Rental Officer performed an inspection of Unit C and Unit 812, in the presence of Mr. Yeadon and a representative of the Landlords.

[5] At the hearing, the Rental Officer received submissions and evidence from a representative of the Landlords, as well as from Mr. Yeadon, acting on his own behalf.

ISSUES

[6] The issues on this appeal are, firstly, what is the standard of review applicable to the Rental Officer's decision and, secondly, does the decision meet that standard of review?

PRELIMINARY ISSUE

[7] There was a preliminary issue on this appeal relating to the admissibility of some documents which Mr. Yeadon filed on April 18, 2008, just prior to the appeal hearing. These materials consisted of a two paragraph affidavit, and two attached exhibits. The first exhibit consisted of a series of photographs and notations by Mr. Yeadon, with respect to certain aspects of each of the two premises at issue. The second exhibit was a letter sent by Mr. Yeadon to "A.F.N. – Ottawa, Housing & Infrastructure Secretariat", dated November 7, 2007, which also detailed certain deficiencies with respect to the two premises.

[8] Counsel for the Landlords objected to the admissibility of this material on the basis that it came too late in the day and also because it was not relevant to the issues on this appeal, as stated above.

[9] Section 87(5) of the *Act* authorizes me to receive evidence if it is relevant to support or contradict any allegation contained in the appeal:

> "A judge of the Supreme Court hearing an appeal may receive any evidence, oral or written, that is relevant to support or repudiate any allegation contained in the appeal."

[10] This section was considered by deWeerdt J. in *Galtee Mountain Holdings Ltd.* v. *Wilson*, [1991] N.W.T.R. 230 (S.C.), where he made the point that, while the legislation gives this Court the authority to receive evidence on an appeal, the Court should only do so in exceptional circumstances. deWeerdt J. said, at page 236-237, that to do so would "only encourage parties to withhold evidence from the Rental Officer, relying on a further opportunity to adduce it on appeal" and would be "contrary to the plain intention of the Legislative Assembly in providing for the speedy and informal disposition of residential tenancies disputes before a rental officer".

[11] *Galtee* was considered and applied by Vertes J. in *Inuvik Housing Authority* v. *Kendi*, 2005 NWTSC 46. There, Vertes J. held that this type of appeal, while it allows for the reception of new evidence, does not involve a completely fresh hearing. Rather, the Court should proceed on the basis of the record and any fresh evidence that might exceptionally be admitted. At paragraph 21, he stated:

> "Also, this right of appeal must be considered in light of the jurisprudence previously developed by this court. In *Galtee Mountain Holdings Ltd. v. Wilson*, [1991] N.W.T.R. 230 (S.C.), deWeerdt J. made the point that, while the legislation gives the judge the authority to receive evidence, that is not to say that the judge is either obliged to do so nor that it is something that should be routinely done. …"

[12] I questioned why Mr. Yeadon had not made an attempt to put this new evidence before the Rental Officer and I did not receive a satisfactory answer.

[13] This dispute has been going on since about December 2003, when Mr. Yeadon was moved from Unit 812 to Unit C, because extensive repairs had to be undertaken to Unit 812.

[14] At the appeal hearing, I ruled that the new material would not be admitted for the following general reasons. First, Mr. Yeadon had more than sufficient time to prepare his case before the Rental Officer and his attempt to introduce further information at this late stage would not be fair to the Landlords. Second, Mr. Yeadon had not met the relatively strict requirements for the admission of fresh evidence on such an appeal. Third, the various and several photographs attached to Mr. Yeadon's affidavit, which had been faxed to the Court Registry, were of such poor quality that they were largely of no probative value.

[15] Having now completed my decision on the appeal, I can also offer a fourth reason - the new material would not have been relevant to the issues on the appeal.

BACKGROUND

[16] As I understand it, both Unit 812 and Unit C were initially owned by the N.W.T. Dene Metis Development Fund, but were operated by the Kotanellee Housing Association. At some point during Mr. Yeadon's occupancy of these units, the Northwest Territories Housing Corporation ("N.W.T.H.C.") purchased the units owned and operated by Kotanellee. Thus, both are referred to in this application as the Landlords.

[17] Mr. Yeadon and his wife entered into a tenancy agreement for Unit 812 with Kotanellee Housing Association on September 3, 2002. Because of humidity and mould problems, extensive repairs had to be undertaken to that unit. That necessitated moving Mr. Yeadon and his family temporarily into Unit C in December 2003.

[18] In a fax from the Rental Officer to Mr. Yeadon dated March 19, 2004, the Rental Officer confirmed that he had spoken to one Kevin Brooks, whom I infer was a representative of the Landlords. Mr. Brooks indicated to the Rental Officer that he had been formulating a plan of remediation for Unit 812 and that, in the meantime, the Landlords "would continue to provide [Mr. Yeadon and his family with their] current accommodation rent-free".

[19] The Landlords' representative at the hearing before the Rental Officer indicated that it was initially estimated that the repairs to Unit 812 would be completed within a couple of months. However, those repairs were not completed until much later. The Landlords' own evidence is that Unit 812 was not deemed to be ready for occupancy until April 16, 2007. Even at that point, Mr. Yeadon refused to occupy Unit 812 because of several serious outstanding deficiencies.

[20] Ultimately, Mr. Yeadon's principal reasons for refusing to move back into Unit 812 were borne out by the Rental Officer's Reasons for Decision.

[21] Parenthetically, to add to this unfortunate saga, Mr. Yeadon informed me at the appeal hearing that he moved back into Unit 812 in November 2007, but there continued to be significant problems with mould and humidity, such that he was once again removed from the unit during the months of January and February 2008, so that further extensive repairs could be carried out. Even though he moved back in to Unit 812 in March 2008, he continues to allege that the conditions there are deplorable.

[22] Mr. Yeadon further informed me that he is unable to obtain alternate accommodation because there is a "housing crisis" in the community of Fort Liard, which I understood to mean that there is a nil vacancy rate.

[23] Notwithstanding Mr. Yeadon's poignant submissions to me on this most recent state of affairs, I indicated that my jurisdiction on this appeal was limited, and that any new information coming to light after the hearing before the Rental Officer in October 2007 could form the basis of a fresh application to the Rental Officer. I further suggested that Mr. Yeadon might consider applying to the Legal Aid Office in Yellowknife to see whether he could obtain the assistance of a lawyer to make his case in that regard.

ANALYSIS

1. What is the standard of review?

[24] The case of *Dunsmuir* v. *New Brunswick*, 2008 SCC 9, is the latest word from the Supreme Court of Canada on the standards to be applied in judicial review of administrative decision makers. Notably, that case has departed from

the "pragmatic and functional approach" described in *Pushpanathan* v. *Canada*, [1998] 1 S.C.R. 982; *Dr. Q.* v. *College of Physicians and Surgeons of British Columbia*, 2003 SCC 19; and *Law Society of New Brunswick* v. *Ryan*, 2003 SCC 20, preferring to apply what is now described simply as a "standard of review analysis" in the future.

[25] *Dunsmuir* also collapsed the previous standards of "reasonableness" and "reasonableness simpliciter" into a single form of reasonableness review. The result is a system of judicial review comprised of two standards, correctness and reasonableness. Reasonableness is referred to as a "deferential standard", which acknowledges that questions coming before administrative tribunals do not invariably lead to one specific particular result, but may give rise to a number of possible reasonable conclusions.

[26] At para. 47 of *Dunsmuir*, Bastarache and LeBel JJ. stated:

> "… Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law."

[27] And later, at para. 49, the same Justices elaborated on the concept of deference:

> "… deference requires respect for the legislative choices to leave some matters in the hands of administrative decision makers, for the processes and determinations that draw on particular expertise and experiences and for the different roles of the courts and administrative bodies within the Canadian constitutional system."

[28] In determining which of the two standards of review is the appropriate one, Bastarache and LeBel summarized the two step process, at paras. 62 and 64:

> "In summary, the process of judicial review involves two steps. First, courts ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of [deference] to be accorded with regard to a particular category of question. Second, where the first inquiry proves unfruitful, courts must proceed to an analysis of the factors making it possible to identify the proper standard of review.
> ...
>
> The analysis must be contextual. As mentioned above, it is dependent on the application of a number of relevant factors, including: (1) the presence or absence of a privative clause; (2) the purpose of the tribunal as determined by interpretation of enabling legislation; (3) the nature of the question at issue, and; (4) the expertise of the tribunal. In many cases, it will not be necessary to consider all of the factors, as some of them may be determinative in the application of the reasonableness standard in a specific case."

[29] In this instance, I have the benefit of a previous analysis of the standard of review to be applied on appeals under s. 87 of the *Residential Tenancies Act* by Vertes J. in *Inuvik Housing Authority* v. *Kendi*, cited above. There, he went through the pragmatic and functional approach then dictated by *Pushpanathan, Dr. Q.*, and *Ryan* and concluded that the appropriate standard was reasonableness. At para. 28, he stated:

> "…Some factors militate in favour of correctness, in particular the broad right of appeal, but the reasonableness standard is appropriate because of the nature of the question, a fact-based one that itself empowers the Rental Officer to exercise a judgment as to what is reasonable."

[30] At para. 30, Vertes J. also quoted from Iacobucci J., in *Ryan*, on the type of analysis to be employed when applying the reasonableness standard:

> " A decision will be unreasonable only if there is no line of analysis within the given reasons that would reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived. If any of the reasons that are sufficient to support the conclusion are tenable in the sense that they can stand up to a somewhat probing examination, then the decision will not be unreasonable and a reviewing court must not interfere. [...] This means that a decision may satisfy the reasonableness standard if it

> is supported by a tenable explanation even if this explanation is not one that the reviewing court finds compelling."

[31] I conclude that reasonableness is the standard of review applicable to the Rental Officer's decision.

2. Was the Rental Officer's Decision Reasonable?

[32] The Rental Officer's decision essentially dealt with five points:

1. A shed which Mr. Yeadon had constructed on the premises adjacent to Unit C;
2. Deficiencies in Unit C;
3. Deficiencies in Unit 812;
4. Damage to Mr. Yeadon's motor vehicle; and
5. Compensation for Mr. Yeadon's lost personal property.

[33] On the first point, there was evidence that the shed was heated by a wood stove and constituted a fire hazard. Accordingly, the Rental Officer ordered that it be removed. Mr. Yeadon has complied with that Order and confirmed on this appeal hearing that there is no further issue with respect to the shed.

[34] The second and third points dealt with by the Rental Officer in his decision were with respect to certain identified deficiencies in each of Unit C and Unit 812. Those deficiencies were largely the result of the Rental Officer's inspection of the two units immediately prior to the hearing and were specified in appendices attached to his Reasons for Decision. They also formed the basis for his specific Order of October 11, 2007, which directed the Landlords to comply with their obligation to maintain the premises pursuant to s. 30(4)(a) of the *Residential Tenancies Act.*

[35] Mr. Yeadon's Originating Notice, which is effectively the Notice of Appeal in this matter, states that he feels the wording of para. 1(i) of the Rental Officer's Order was insufficient and should have included further detail. In addition, Mr. Yeadon has submitted that para. 1 of the Order should have contained three

additional specific repairs. I reject this aspect of Mr. Yeadon's appeal on the basis that I am unable to find that the Rental Officer's decision on these points, respecting the specific deficiencies in Unit C and Unit 812, was unreasonable. Mr. Yeadon was present during the Rental Officer's inspection of each of the units. He was aware of the deficiencies specifically identified by the Rental Officer in each of the units, and these deficiencies were discussed at the hearing. Indeed, in the discussion of those deficiencies, Mr. Yeadon himself stated at the hearing, "I couldn't see any major deficiencies this morning that wasn't addressed" (Transcript, page 10, line 24).

[36] In his Originating Notice, Mr. Yeadon also takes issue with the fact that the Rental Officer had stated in his decision that there was "no noticeable odour" in Unit C and that "there was no evidence of mould" around the window frames and sills detected during his inspection (Reasons, page 6). Mr. Yeadon's point here is that he gave oral evidence at the hearing of both the odour and the mould and that this evidence should not have been summarily dismissed by the Rental Officer. Again, I cannot give effect to this aspect of Mr. Yeadon's appeal. The question is simply one of fact on both the odour and the mould. The Rental Officer inspected the premises and made a finding of fact. While Mr. Yeadon may not agree with that finding, his disagreement does not make it unreasonable. That is simply what the Rental Officer observed on the day of his inspection and it was reasonable for him to base his finding on first-hand observations.

[37] In any event, counsel for the Landlords informed me at the appeal hearing that Mr. Yeadon is no longer residing in Unit C and has since moved back into Unit 812. Unit C has been closed down and is no longer operable. Therefore, any of Mr. Yeadon's arguments with respect to Unit C are now moot.

[38] The fourth aspect of the Rental Officer's Reasons had to do with Mr. Yeadon's motor vehicle, which was parked adjacent to Unit 812. Mr. Yeadon alleged that his 1983 Thunderbird automobile had been damaged on two occasions, once in 2005 and again in the spring of 2007. The damage in 2005 allegedly occurred when a backhoe operator was digging a trench around Unit 812. Mr. Yeadon infers that the operator must have been an employee of, or a contractor with, the Landlords. He similarly believed the damage in 2007 had been done by a snowplow operated by someone who was either employed by the Landlords, or who had contracted with them, to clear snow from the driveway.

He provided photographic evidence of the damage and, after the hearing before the Rental Officer, submitted a repair estimate from an auto body company totalling $2,747.03. However, at that hearing, Mr. Yeadon effectively conceded that he did not witness either incident and did not know who the operators actually were on either occasion.

[39] In his decision, the Rental Officer found there was insufficient evidence to conclude that the damage to the vehicle was the direct result of the Landlords' failure to repair the premises. Rather, he found that "it was damaged by a negligent or wilful act of an unknown person, presumably operating another vehicle or piece of equipment" (Reasons, page 9). Accordingly, he denied Mr. Yeadon's claim for compensation for that damage.

[40] Once again, I am unable to conclude that the Rental Officer's decision on this point was unreasonable. In fact, in order for him to conclude that the Landlords *were* liable, he would have had to have made a dangerous inferential leap from Mr. Yeadon's description of the circumstances.

[41] I also noted during the appeal hearing that clause 20 of the tenancy agreement between Mr. Yeadon and the Kotanellee Housing Association would seem to protect the Landlords from liability in any event. That clause reads in part as follows:

> "The Landlord shall not be liable for any damage, however caused, to any property located in or about the Premises … all risks of such damage … shall be assumed by the Tenant … ".

[42] The Rental Officer suggested to Mr. Yeadon at the hearing below that he pursue an insurance claim for this damage. Unfortunately, as Mr. Yeadon disclosed at the appeal hearing, he did not have the vehicle insured at the relevant time. While that is indeed unfortunate, it is a matter for which Mr. Yeadon must bear responsibility and not the Landlords.

[43] The fifth and final point in the Rental Officer's decision dealt with certain items of personal property which went missing from Unit 812 shortly after Mr. Yeadon and his family had been relocated to Unit C.

[44] Mr. Yeadon provided a letter to the Rental Officer indicating that he and his wife met with one Devon Braun, whom I understood to be a representative of the Landlords, shortly after taking occupancy of Unit C. Mr. Yeadon was informed that the family's possessions remaining in Unit 812 "would be placed in storage while the unit undergoes repairs". At the hearing before the Rental Officer, Mr. Yeadon testified that he had been told by the Landlords that he could not take any of his family's belongings with him to Unit C for fear of contaminating the senior's complex in which Unit C was located.

[45] At the hearing before the Rental Officer, Mr. Yeadon testified that a contractor hired by the Landlords to repair Unit C, Andy Shannon, carrying on business as Dragon Construction, without notice to Mr. Yeadon, broke open the door to Unit C and removed his family's belongings from within. Mr. Yeadon further alleged that Mr. Shannon put the personal property into a truck and drove them to another house Mr. Shannon owned in Fort Liard. Mr. Yeadon has not seen either his belongings or Mr. Shannon since. He said that when he brought this to the attention of the Landlords, he was advised that it was his problem, because, in the Landlords' view, Mr. Yeadon had abandoned the personal property. He then went to the R.C.M.P. to report what he regarded as the theft of his personal property, but they apparently took no action.

[46] Mr. Yeadon's version of the events is corroborated by two letters from the then Minister responsible for the Northwest Territories Housing Corporation, David Krutko. In his letter of November 22, 2005, which was some time after the loss of the property, Minister Krutko indicated that the N.W.T.H.C. had earlier purchased some items of new furniture and belongings for Mr. Yeadon and his family because there was no need to move "furniture and belongings...infested with mould or mildew" into their temporary premises. However, the Minister further stated that it was Mr. Yeadon's responsibility to ensure that his remaining belongings were removed from Unit 812 and that he had "two years to gather and remove the belongings". Accordingly, the Landlords considered that the remaining belongings had been "abandoned" by Mr. Yeadon. Interestingly, Minister Krutko also confirmed that Dragon Construction had been awarded the contract for the repair of unit 812 and that "There were no keys to the unit available to the contractor so he did use a pry bar to open the door." Further, the Minister wrote that "the contractor removed what was left behind and placed them outside."

[47] In his letter of February 20, 2006, Minister Krutko again confirmed his understanding of the conflict:

> "After you moved out of your unit, you had sufficient time and opportunity to remove the remaining items. The contractor moved them outside so he could complete the repairs to the unit…"

[48] As for the replaced items, the Minister wrote that, on December 15, 2003, the Landlords purchased:

> "…a sofa and loveseat, three double bed mattress sets, three sets of double bed sheets, three double bed comforter sets, and three packages of pillows to replace the soft furnishings that could potentially have been contaminated with mould."

[49] Finally, the Minister confirmed that the other items left behind in Unit 812 "were considered to have been abandoned and will not be replaced."

[50] Section 40(1) of the *Residential Tenancies Act* states:

> "A landlord shall cause to be installed in the rental premises, including the door giving entry to a residential complex, devices necessary to make rental premises reasonably secure from unauthorized entry."

[51] I interpret this as including an obligation to install locks on entry ways. I also assume that Unit 812 would have had such a lock. Yet, there is no explanation from the Landlords why Dragon Construction was not provided with a key to Unit 812, so that the contractor could come and go from the premises while keeping them "reasonably secure from unauthorized entry." Therefore, the Landlords would appear to have breached s. 40(1) through the actions of their agent and contractor, Dragon Construction.

[52] Further, clause 23 of the *Tenancy Agreement* states:

> "The Landlord may remove and, at its option, sell or destroy any personal property left in and around the Premises upon termination of the tenancy agreement…"

[53] Since there was no termination of the tenancy agreement in this case, this clause cannot be relied upon by the Landlords to justify the removal of Mr. Yeadon's personal property from Unit 812 by their agent, Dragon Construction.

[54] Section 30(1) of the *Residential Tenancies Act* requires the Landlords to maintain the rental premises in a good state of repair and fit for habitation in compliance with all health and safety standards required by law. It appears the Landlords were attempting to honour their obligations in that regard by removing Mr. Yeadon and his family temporarily from Unit 812, so that repairs to the unit could be effected in order to address the mould and mildew problem, amongst other things. However, in performing those repairs, the record reflects that the Landlords had undertaken, through their representative Devon Braun, to place the belongings of Mr. Yeadon's family into storage while the work was done. The Landlords failed to fulfil that undertaking.

[55] Mr. Yeadon also testified that he had been given no notice to move his property out of Unit 812 prior to the entry by Dragon Construction. He testified as follows:

> "…if there was a key available to the technical staff why the keys not have been given to the contractor and why we were not advised that the contractor's coming and get our things out of the house. If we were in fact going to be moving them we should have had an opportunity to save them..." (Transcript, p. 19, lines 14-17)

[56] And later:

> "I have not ever received a phone call from the housing corporation advising us to move the things out of Unit 812 and we were never given written notice that we were being asked to leave and whatever the agreement was. It was never reduced in writing." (Transcript, p. 24, lines 14-17)

[57] Although the Landlords' representative at the hearing before the Rental Officer testified that she believed there were notices sent to the Yeadon family to pick up their belongings from Unit 812, she was unable to find any such documents in the Landlords' files. In effect, there was nothing to contradict Mr. Yeadon's testimony that he received no prior notice of the removal of his property.

[58] As a result of these breaches by the Landlords, it was appropriate for the Rental Officer to consider a remedy for Mr. Yeadon under s. 30(4)(c) of the *Residential Tenancies Act*, which reads as follows:

> "30. Where, on the application of a tenant, a rental officer determines that the landlord has breached an obligation imposed by this section, the rental officer may make an order…
>
> (c) authorizing any repair or other action to be taken by the tenant to remedy to effects of the landlord's breach ***and requiring the landlord to pay any reasonable expenses associated with the repair*** or action…"(my emphasis)

[59] In his Reasons, the Rental Officer implicitly recognized the Landlord's liability for the missing items of property. However, he felt it necessary to consider "the abatement of rent" that the Landlords granted to Mr. Yeadon while he was relocated from Unit 812. The Rental Officer calculated that the adjusted value of the missing items, not including the damage to Mr. Yeadon's motor vehicle, and crediting the Landlords with the value of the replaced items of furniture and bedding, was $4190 (p.8). He then stated:

> "…the respondent has been provided with accommodation at no cost since December, 2003. Even at a nominal monthly rent of $90 and ignoring the depreciated value of the tenant's goods, the value of the foregone rent exceeds the value of the goods lost. In my opinion, the tenant has already received adequate compensation for the loss of his personal belongings and his claim for compensation must be denied." (p. 9)

[60] I find this conclusion to be unreasonable. I agree with Mr. Yeadon that it would be unfair to set off the abatement of rent for Unit C against the value of the remaining missing items. The Landlords had expressly undertaken to provide Mr. Yeadon and his family with Unit C "rent free" on an unconditional basis. Admittedly, the expectation of the parties at the time was that the repairs to Unit 812 would likely take no more than a couple of months, when in fact those repairs have been carried out over a significantly longer period of time. However, the

delay in completing the repairs is the responsibility of the Landlords and Mr. Yeadon cannot be held to account for that delay. Therefore, to set off the abatement of rent against the value of his lost goods would effectively *penalize* Mr. Yeadon without any justification.

[61] Incidentally, the Rental Officer made an apparent mathematical error in determining the value of the missing property. In his letter to Minister Krutko dated January 23, 2006, Mr. Yeadon detailed the specific missing items of property and attributed a value to each. After deducting the damage to his motor vehicle and the values for the love seat and couch set, a second love seat and three box spring and mattress sets, the total value of the remaining items, by my calculations, is $3790 and not $4190, as found by the Rental Officer.

[62] On the other hand, I agree with the Rental Officer's comments at the hearing before him that Mr. Yeadon should only be credited with the "depreciated value" of the missing goods (Transcript, p. 25, line 3). Mr. Yeadon testified that the values he attributed to each of the items of missing property in his letter to Minister Krutko were taken from a Sears catalogue and were therefore replacement values. However, he also conceded that several of the items were not in new condition at the time of the loss, such as: the television; the VCR; the stereo; the Columbia rug; and the three dressers.

[63] In my view, it would be appropriate to discount the value of the remaining items, $3790, by approximately one third. That would result in a depreciated value of approximately $2500.

CONCLUSION

[64] Pursuant to s. 89 of the *Residential Tenancies Act*, I allow the appeal in part and vary the Rental Officer's Order by adding a requirement that the Landlord pay $2500 to Mr. Yeadon, forthwith, pursuant to s. 30(4)(c) of the *Act*, as

compensation for his lost personal property. The remaining grounds of appeal are dismissed.

[65] As the success of the parties was mixed, I further order that each shall bear their own costs.

L.F. Gower,
J.S.C.

Applicant was self-represented
Counsel for Northwest Territories Housing Corporation: Darren Pickup

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REASONS FOR JUDGMENT OF
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