File #10-6852

IN THE MATTER between **POLAR DEVELOPMENTS LTD.**, Applicant, and **YVONNE BUXTON AND ALLAN BUXTON**, Respondents;

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, regarding the rental premises at **YELLOWKNIFE, NT.**

BETWEEN:

POLAR DEVELOPMENTS LTD.

Applicant/Landlord

- and -

YVONNE BUXTON AND ALLAN BUXTON

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 20th day of February, 2002.

Hal Logsdon
Rental Officer

File #**10-6852**

IN THE MATTER between **POLAR DEVELOPMENTS LTD.**, Applicant, and **YVONNE BUXTON AND ALLAN BUXTON**, Respondents.

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:

POLAR DEVELOPMENTS LTD.

Applicant/Landlord

-and-

YVONNE BUXTON AND ALLAN BUXTON

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing:	**February 15, 2002**
Place of the Hearing:	**Yellowknife, NT**
Appearances at Hearing:	**Gabrielle Decorby, representing the applicant** **Yvonne Buxton, respondent** **Allan Buxton, respondent**
Date of Decision:	**February 20, 2002**

REASONS FOR DECISION

The applicant alleged that respondents had failed to give adequate notice to terminate the tenancy agreement causing a loss of rental revenue. The applicant sought compensation for one half of a months rent ($614.50).

The tenancy agreement between the parties was for a twelve month term commencing on November 1, 2000 to expire on October 31, 2001. The respondents notified the applicant in writing on September 14, 2001 setting out their intentions to vacate the premises on October 1, 2001. The applicant testified that the premises were not re-rented until October 17, 2001.

Pursuant to section 62 of the *Residential Tenancies Act*, a tenant who abandons rental premises remains liable to compensate the landlord for loss of future rent that would have been payable under the tenancy agreement. A landlord entitled to claim damages must mitigate damages by renting the premises again as soon as practicable. Therefore in order to consider compensation for lost rent, a rental officer must find that rent was indeed lost and that the landlord took reasonable steps to mitigate that loss.

In this case, the applicant retained $614.50 from the respondents' security deposit as compensation for lost rent. This prompted an application by the respondents. The matter was heard and the applicant ordered to return the $614.50 *(Yvonne Buxton and Allen Buxton and Polar Developments Ltd, File # 10-6811).* The retention of all or part of a security deposit for

other than rent arrears or repairs of damage to the premises is a contravention of section 18 of the Act as is the failure to reconcile the security deposit within the time period contained in that section. The Act clearly places the onus on the landlord to file an application, demonstrating both loss and efforts to mitigate loss, in order to claim compensation for lost rent. It is evident that this application was made only because the respondents filed an application pursuant to section 18.

In my opinion, the applicant's acts with regard to the security deposit should not prevent them from obtaining fair consideration, on their application, for compensation for lost rent. Section 91(a) of the Act provides sufficient punishment to deter landlords from contravening the Act with respect to security deposits.

There is no evidence to indicate that the premises were rented prior to October 17, 2001 which leaves only the issue of mitigation to be determined.

After giving notice to vacate, the respondents solicited applications on behalf of the landlord and provided a list of some fifteen potential tenants. Two in particular were considered by the respondents to be excellent prospective tenants who were willing to rent the premises on October 1, 2001. Although the use of the word "assign" is somewhat confused, it is apparent in both a letter to the landlord dated September 28, 2001 and in a note contained on a completed application that the respondents wished to assign the remainder of their tenancy agreement to either of these two prospective tenants. The applicant did not respond to the September 28 letter.

The applicant indicated that they were not able to rent to any of the referrals either because the referrals did not file applications, were not in a position to rent the premises on October 1, 2001, did not meet the landlords criteria, or did not provide sufficient information. Of the two prospective tenants favoured by the respondents, the landlord claimed one failed to complete the application or return calls requesting missing information and one did not have the financial capacity to afford the rent and later withdrew her application.

The applicant also testified that the premises were offered to four prospective tenants whose applications were on file with the landlord and none expressed interest in renting the premises.

Demand for apartments in Yellowknife in October, 2001 was quite high with vacancy rates approaching 1%. In my opinion, the applicant, with reasonable effort, could have rented the premises commencing October 1, 2001. If a formal request to assign the tenancy agreement to one of the respondents' preferred prospective tenants had been made, there would not have been, in my opinion, any reason not to approve it.

I find that the applicant failed to take reasonable steps to mitigate the loss of rent following the termination of the tenancy agreement by the respondents. Accordingly, the application is dismissed.

Hal Logsdon
Rental Officer