

IN THE MATTER between **SUE ENGE**, Applicant, and **STEVE THOMPSON**,
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, **HAL LOGSDON**, Rental Officer,
regarding the rental premises at **YELLOWKNIFE, NT**.

BETWEEN:

SUE ENGE

Applicant/Landlord

- and -

STEVE THOMPSON

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 11th day of April,
2002.

Hal Logsdon
Rental Officer

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-and-

STEVE THOMPSON

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REASONS FOR DECISION

<u>Date of the Hearing:</u>	April 9, 2002
<u>Place of the Hearing:</u>	Yellowknife, NT
<u>Appearances at Hearing:</u>	Sue Enge, applicant Steve Thompson, respondent
<u>Date of Decision:</u>	April 9, 2002

REASONS FOR DECISION

The respondent vacated the rental premises after this application was made on February 15, 2002. The applicant alleged that the respondent had failed to pay the full amount of rent and sought an order for the respondent to pay the alleged rent arrears and termination of the tenancy agreement.

At the hearing, the applicant presented additional allegations concerning damages to the premises, failure of the respondent to give adequate notice resulting in lost rent and failure of the respondent to pay for utilities. The applicant still held a security deposit at the time of the hearing. The extent of damages resulting from any alleged lack of notice is unable to be determined as the premises are as yet unrented. The applicant was unsure of the amounts of outstanding utility charges, if any. For these reasons and because the allegations did not form a part of the application, I can not make a determination in any matter other than rent.

The applicant produced two notices of rent increase. The first, dated November 1, 2001, notified the respondent of a rent increase effective January 1, 2002. The second, dated November 29, 2001, notified the respondent of a rent increase effective January 1, 2002. The applicant testified that she sent both notices to the respondent at the rental premises by regular mail. The respondent denied receiving the first notice but testified that he received the second notice and interpreted it as effective March 1, 2002. The respondent paid the increased rent for March, 2002 but refused to pay the \$200 increase in February. That is the extent of the alleged rent arrears as the respondent vacated the premises prior to April 1, 2002.

Sections 47(2) and 47(3) of the *Residential Tenancies Act* sets out the required period of notice for rent increases:

- 47(2) The landlord shall give the tenant notice of the rent increase in writing at least three months before the date the rent increase is to be effective.
- (3) An increase in rent by a landlord is not effective until three months have expired from the date of the notice of the rent increase.

Section 71 of the *Residential Tenancies Act* sets out how notices may be served:

- 71.(1) Subject to subsection (3), any notice, process or document to be served by or on a landlord, a tenant or the rental officer may be served by personal delivery or by registered mail to the landlord at the address given in the tenancy agreement or mailed to the tenant at the address of the rental premises and to the rental officer at the address of the office of the rental officer.
- (2) A notice, process or document sent by registered mail shall be deemed to have been served on the 7th day after the day of mailing.
- (3) Where a notice can not be served personally on a tenant or a landlord who is absent or evading service, the notice may be served on the tenant or the landlord by serving it on any adult who apparently resides with the tenant or landlord.

At the hearing, referring to a precedent case in the Ontario Court of Appeal (*Wolkow v Dunnell* (1988), 112 O.A.C 102 165 DLR (4th) 375 (Ont. C.A.)), I stated that the notices provided by the applicant regarding the rent increases were of no effect because they did not conform with the required notice period of three months. On closer review of that case, the Ontario legislation and the NWT *Residential Tenancies Act*, I do not believe that interpretation is correct. In my opinion, section 47(3) of the *Residential Tenancies Act* serves to postpone the effective date of the rent increase in the applicant's notice to the respondent and I find nothing in the Act that serves to void the notice.

However, there remains the question of which notice was served on the respondent. The respondent acknowledges receiving only the notice dated November 29, 2001. As the earlier notice was not served in person or by registered mail, in accordance with the service provisions of the Act, there is no evidence to dispute the testimony of the respondent. Accepting that notice of the rent increase was served as per the November 29, 2001 notice and taking into consideration a reasonable time for delivery by mail, the notice was, in my opinion, effective notice to raise the rent on March 1, 2002. As the alleged rent arrears relate to the increase in rent for February, 2002, the application is accordingly dismissed.

Hal Logsdon
Rental Officer