

IN THE MATTER between **MACKENZIE PLACE HI-RISE**, Applicant, and **MARIE LUNDBEK AND TIM TIMMER**, 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 **HAY RIVER, NT**.

BETWEEN:

MACKENZIE PLACE HI-RISE

Applicant/Landlord

- and -

MARIE LUNDBEK AND TIM TIMMER

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondents shall pay the applicant rent arrears in the amount of six hundred thirty four dollars and eighteen cents (\$634.18).

DATED at the City of Yellowknife, in the Northwest Territories this 8th day of May, 2002.

Hal Logsdon
Rental Officer

IN THE MATTER between **MACKENZIE PLACE HI-RISE**, Applicant, and **MARIE LUNDBEK AND TIM TIMMER**, 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:

MACKENZIE PLACE HI-RISE

Applicant/Landlord

-and-

MARIE LUNDBEK AND TIM TIMMER

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	May 7, 2002
<u>Place of the Hearing:</u>	Hay River, NT via teleconference
<u>Appearances at Hearing:</u>	Edward Plante, representing the applicant Tim Timmer, respondent
<u>Date of Decision:</u>	May 7, 2002

REASONS FOR DECISION

The applicant alleged that the respondents had breached the tenancy agreement by failing to pay rent and sought an order for the payment of alleged rent arrears. The applicant testified that the tenancy agreement was terminated on April 30, 2002 when the respondents vacated the rental premises. The applicant testified that as at April 30, 2002 the respondents owed \$1592.23 in rent arrears. The applicant provided a statement with copies of receipts and a rent roll as evidence alleging that the rent arrears accrued in the following manner:

Rent (Feb 01/02 to April 30/02 @ \$900/month)	\$2700.00
Payment - Feb 08/02	(200.00)
Work credit - Feb 08/02	(400.00)
Payment - March 07/02	<u>(507.77)</u>
Balance of rent owing	\$1592.23

The respondent disputed the balance, testifying that he had made one additional payment of \$300 in March, 2002. The respondent did not provide any evidence supporting the claim.

It concerns me that the rent roll does not indicate the same balance owing as the remainder of the evidence. The statement with receipts indicate a balance of \$1592.23 as at April 30, 2002. This is consistent with the amount claimed on the application, taking into consideration additional rent which accrued and amounts paid to April 30th. The rent roll, however, notes arrears of \$1112.23. Neither party accepted the rent roll figure as accurate. In my opinion, the evidence supports rent arrears in the amount of \$1592.23. I see no evidence of an additional payment by the applicant.

The respondent claimed that a security deposit of \$900 was provided to the landlord. He claimed that 50% was paid at the commencement of the tenancy on January 1, 2001 and the remainder paid on February 1, 2001. The applicant's rent roll indicates a security deposit of \$900. The applicant claimed that since the security deposit was paid to the former landlord, the receiver had no obligation to consider it. I disagree. Provided the tenancy was terminated after the appointment of the receiver, the receiver as new landlord is obligated to handle security deposits in accordance with the Act.

Calculating interest on the security deposit I find the accrued interest to be \$58.05. The applicant is entitled to retain the entire security deposit and accrued interest to apply against the rent arrears, leaving a balance of rent arrears owing of \$634.18, calculated as follows:

Rent Arrears	\$1592.23
Security deposit	(900.00)
Interest on deposit	<u>(58.05)</u>
Balance owing	\$634.18

The applicant made no further claim with respect to compensation for repairs of damages at the hearing but is entitled to do so through a future application should there be damages to the premises.

The respondent alleged that the respondent had failed to provide adequate heat in September and October, 2001 and that the premises were in poor condition and unclean at the commencement of the tenancy agreement. He suggested that reasonable compensation for these alleged breaches by the landlord should be equal to the balance of rent arrears owing and that the application should

therefore be dismissed.

The applicant was appointed receiver and manager of the residential complex by order of the Supreme Court of the NWT on March 21, 2002. Pursuant to the order, all persons in occupation of the premises become tenants of the receiver and manager. Pursuant to section 20(b), the *Residential Tenancies Act* the former landlord is liable to the respondents for breaches of the tenancy agreement and Act which occurred prior to March 21, 2002.

20. Where there is a change of landlord

- (b) the former landlord is liable to a tenant for any breach of the landlord's obligations under this Act or the tenancy agreement, where the breach relates to the period before the change of landlord.

Therefore, any claim for compensation by the respondents must be made against the former landlord and not the receiver. The respondents' claim for compensation is denied.

The applicant also alleged that the respondents had vacated without providing notice and sought compensation for the month of May, 2002 in the amount of \$900. Section 5 of the *Residential Tenancies Act* requires a landlord to mitigate losses which are the result of insufficient notice.

- 5. (1) Where a landlord or tenant is liable to the other for damages as a result of a breach of a tenancy agreement or this Act, the landlord or tenant entitled to claim damages shall mitigate his or her damages.
- (2) Without limiting subsection (1), where a tenant terminates a tenancy agreement, contravenes a tenancy agreement, or vacates or abandons rental premises, other than in accordance with this Act or the tenancy agreement, the landlord shall rent the premises again as soon as is practicable and at a reasonable rent in order to mitigate the damages of the landlord.

As the damages are limited to the actual damages incurred by the landlord, it is not reasonable to

consider damages equal to the full month of May's rent this time. In fact, the damages can not be determined at this time as the premises have not been re-rented. The applicant may make a future application in this matter.

In summary I find the respondents breached the tenancy agreement by failing to pay the lawful rent to the landlord. Taking into account the security deposit, I find those rent arrears to be \$634.18. An order shall be issued for the respondents to pay the applicant that amount.

Hal Logsdon
Rental Officer