

IN THE MATTER between **COLIN SNOW**, Applicant, and **PENELOPE SHAW**,
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:

COLIN SNOW

Applicant/Tenant

- and -

PENELOPE SHAW

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18(5) of the *Residential Tenancies Act*, the respondent shall return the security deposit to the applicant in the amount of six hundred dollars (\$600.00).

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

Hal Logsdon
Rental Officer

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-and-

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REASONS FOR DECISION

<u>Date of the Hearing:</u>	August 13, 2002
<u>Place of the Hearing:</u>	Yellowknife, NT
<u>Appearances at Hearing:</u>	Colin Snow, applicant Penelope Shaw, respondent
<u>Date of Decision:</u>	August 20, 2002

REASONS FOR DECISION

The applicant testified that he and the respondent entered into a written tenancy agreement for a one year term to commence on June 1, 2002 for a houseboat on May 24, 2002. The applicant stated that he had provided the respondent with the required \$600 security deposit on that day. The applicant testified that he subsequently decided that he could not afford the premises and contacted the landlord via a voicemail message on May 28, 2002 that he would not be taking possession of the premises. He stated that the respondent returned his call on May 30, 2002. The applicant claimed that he offered to rent the premises for one month but the respondent refused. The applicant sought the return of the \$600 security deposit.

The applicant provided the written tenancy agreement as evidence. The tenancy agreement was executed on May 24, 2002 and acknowledged receipt of a \$600 security deposit on that date.

The respondent argued that the parties had entered into a verbal, month-to-month tenancy agreement after the applicant had indicated that he did not intend to take possession of the premises. That tenancy agreement was to commence on June 1, 2002 and did not require a security deposit. The \$600 was accepted as the first month's rent. The applicant denied entering into any verbal tenancy agreement.

In my opinion, the evidence does not support the existence of any tenancy agreement other than the written agreement executed on May 24, 2002. In any case, section 14(5) of the *Residential*

Tenancies Act prohibits a landlord from receiving any deposit for the first month's rent or any amount other than a security deposit. The written agreement clearly acknowledges the receipt of \$600 on May 24, 2002 as a security deposit. I am satisfied from the evidence that the respondent was aware, prior to June 1, 2002 when the applicant was entitled to possession, that the applicant did not intend on taking possession of the premises.

A security deposit is defined in the Act as "security for the repairs of damage caused by the tenant to the rental premises or any arrears of rent." Justice J.Z. Vertes points out in *Greenway Reality Ltd. And N.C. Roy* (CV 07484) that a security deposit may not be retained for loss of future rents and makes the distinction between rent arrears and an economic loss of future rent.

"Nowhere in the Act is the landlord authorized to retain a security deposit as compensation for future rents. This is an economic loss claim. A security deposit may be retained for *arrears of rent* but that is not the same as future rent. The term *arrears of rent*, as used in the Act, clearly means rent that was due at a fixed time and that time has now lapsed without payment being made. It is rent behind, not in the future. To hold otherwise would not only distort the plain meaning of the words used in the statute but could also be viewed as conflicting with the express statutory prohibition on taking a security deposit as security for the first or last month's rent s. 14(5)."

In my opinion, there were no rent arrears and no necessary repairs to the premises. Any claim by the respondent would be a claim for economic loss. Therefore the respondent is required to return the security deposit in full, without interest. An order shall be issued requiring the respondent to return the security deposit to the applicant in the amount of \$600.

Hal Logsdon
Rental Officer