

IN THE MATTER between **809656 ALBERTA LTD.**, Applicant, and **RICHARD PAYNE AND NICOLE GAGNON**, 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:

809656 ALBERTA LTD.

Applicant/Landlord

- and -

RICHARD PAYNE AND NICOLE GAGNON

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 14(6)(a) of the *Residential Tenancies Act*, the respondent Richard Payne shall pay the applicant the remainder of the required security deposit in the amount of five hundred fifty two dollars and four cents (\$552.04).

DATED at the City of Yellowknife, in the Northwest Territories this 12th day of September, 2002.

Hal Logsdon
Rental Officer

IN THE MATTER between **809656 ALBERTA LTD.**, Applicant, and **RICHARD PAYNE AND NICOLE GAGNON**, 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:

809656 ALBERTA LTD.

Applicant/Landlord

-and-

RICHARD PAYNE AND NICOLE GAGNON

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: September 10, 2002

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Trena Scott, representing the applicant
Richard Payne, respondent
Nicole Gagnon, respondent

Date of Decision: September 12, 2002

REASONS FOR DECISION

The applicant indicated that the respondent Nicole Gagnon had vacated the premises and that her name had been removed from the tenancy agreement. Although the tenancy agreement shows both respondents as joint tenants and no written assignment was presented in evidence, I shall assume that the applicant has accepted the assignment of Ms. Gagnon's interest in the tenancy to Mr. Payne effective August 31, 2002. Accordingly the rights and obligations of the tenant after that date are those of Mr. Payne alone.

The applicant alleged that the respondent had failed to provide the full amount of the required security deposit for the premises and sought an order for the payment of that amount. The applicant also indicated that the respondent had not paid the full amount of the September, 2002 rent and sought an order requiring the alleged arrears to be paid and all future rent paid on time.

The applicant provided copies of the written tenancy agreement and tenant ledger in evidence. The tenancy agreement commenced on March 1, 2002 and required a security deposit in the amount of \$1095. The tenant ledger indicates that payments of \$422.96 have been made, bringing the balance of security deposit owing to \$672.04. The ledger also indicates a balance of rent owing in the amount of \$775.

The section of the written tenancy agreement pertaining to amount of rent, section 3(a) has not been completed. An addendum (schedule B) to the tenancy agreement names a "market rent rate

of \$1095" and a "discount rent of \$975". It appears from the addendum that the landlord agrees to apply the "discount rent" as long as the tenant does not breach the agreement, pays rent on the first of every month and remains in the premises for the full term of the agreement. The ledger confirms that the "discount rent" has been charged throughout the tenancy and that the amount of security deposit required is based on the "market rent rate" and not the "discount rent".

The *Residential Tenancies Act* defines rent as follows:

"rent" includes the amount of any consideration paid or required to be paid by a tenant to a landlord or his or her agent for the right to occupy rental premises and for any services and facilities, privilege accommodation or thing that the landlord provides for the tenant in respect of his or her occupancy of the rental premises, whether or not a separate charge is made for the services and facilities, privilege, accommodation or thing.

In my opinion the "discount rent" of \$975 is the rent for the premises. It is the amount required to be paid so long as the tenant is not in breach of the agreement. In my opinion the provision contained in the addendum to the tenancy agreement is of no effect as it conflicts with section 13 of the Act which states:

No tenancy agreement shall contain any provision to the effect that a breach of the tenant's obligation under the tenancy agreement or this Act results in the whole or any part of the remaining rent becoming due and payable or results in a specific sum becoming due and payable and a provision of this kind is of no effect.

Furthermore, in my opinion, the addendum conflicts with the provisions set out in the Act for rent increases (s.47) and security deposit amount (s.14) as it would have the effect of permitting a landlord to raise the "discount rent" at will as long as the provisions for rent increases were followed vis a vis the "market rent rate". Similarly the addendum would have the effect of

permitting a landlord to set the security deposit with reference to an amount higher than the amount of rent as defined in the Act.

The rent being \$975/month means that the security deposit may not exceed that amount. The respondents acknowledged that only \$422.06 had been paid but expressed concern that the landlord would refer to the inspection report signed by the parties at the commencement of the tenancy to assess damages at the end of the tenancy agreement. An inspection report, showing no deficiencies was presented by the landlord in evidence. The respondents indicated that they had signed it “in order to get the keys to the apartment” and were told they could add any necessary repairs within the first month of the tenancy. In my opinion, the respondents’ apprehensions concerning what may or may not be deducted from the security deposit are speculative and do not relieve them from their obligation to provide the required security deposit. There are remedies available to a tenant who disagrees with the deductions made from a security deposit but no provisions to withhold a deposit in anticipation of disputed deductions. The respondents are obligated to provide the security deposit in accordance with the agreement and the Act and may dispute any deductions they may disagree with following the termination of the tenancy agreement. I find the outstanding security deposit to be \$552.04 calculated as follows:

Required deposit	\$975.00
Payments made	<u>(422.96)</u>
Balance owing	\$552.04

In the matter of the rent arrears, in my opinion, the incomplete section of the tenancy agreement renders the requirement to pay rent on the first day of each month contained in that clause

ineffective. The rent is a monthly rent and is payable on any day during the month in which it falls due. The request for an order for rent arrears is denied as is the request for an order to pay future rent on time.

An order shall be issued for the respondent, Richard Payne to pay the applicant the balance of the security deposit in the amount of \$552.04.

Hal Logsdon
Rental Officer