

IN THE MATTER between **LYLE E. YANKE**, Applicant, and **LIRIC CONSTRUCTION LTD.**, 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:

LYLE E. YANKE

Applicant/Tenant

- and -

LIRIC CONSTRUCTION LTD.

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 66(b) of the *Residential Tenancies Act*, the respondent shall return the personal property removed from the rental premises to the applicant upon payment of costs of removal and storage in the amount of one hundred thirty two dollars and fifty cents (\$132.50). If the goods are not claimed by October 31, 2002, the respondent may seek approval from a rental officer to dispose of the property.

2. Pursuant to section 62(3) of the *Residential Tenancies Act*, the applicant shall pay the respondent compensation for lost rent due to the abandonment of the rental premises in the amount of fifteen dollars and sixty three cents (\$15.63).

DATED at the City of Yellowknife, in the Northwest Territories this 9th day of October, 2002.

Hal Logsdon
Rental Officer

IN THE MATTER between **LYLE E. YANKE**, Applicant, and **LIRIC CONSTRUCTION LTD.**, 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.

BETWEEN:

LYLE E. YANKE

Applicant/Tenant

-and-

LIRIC CONSTRUCTION LTD.

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: October 8, 2002

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Lyle Yanke, applicant
Arie Keppel, representing the respondent

Date of Decision: October 9, 2002

REASONS FOR DECISION

The applicant alleged that the respondent had wrongfully taken possession of the rental premises while he was working out of town and put his personal possessions in storage. He also alleged that his security deposit had been retained by the respondent. The applicant sought the return of his personal property without the payment of the demanded removal and storage costs, the replacement costs of his padlock and the return of his security deposit.

The applicant testified that he had left the premises on June 29, 2002 to work out of town. He stated that he left his personal possessions in his room and secured the door with his own padlock. He returned briefly on the evening of July 8 and left again the following morning. He returned to the premises on July 14 to discover the respondent had taken possession of the premises and placed his possessions in storage. The applicant also testified that he had provided a security deposit of \$600 which the respondent had not returned.

The respondent testified that he had filed an application against the applicant on June 28, 2002 alleging disturbance and seeking termination of the tenancy agreement. The respondent testified that he did not see the applicant between June 27, 2002 and September 5, 2002 and did not have any indication from the applicant that he intended to return to the rental premises. The parties agreed that the rent was paid in full to June 30, 2002 but that no rent was paid past that date. The applicant testified that he considered the premises abandoned on July 12, 2002 and removed and stored the personal property left in the premises. The respondent indicated that the padlock was

not damaged and was among the goods currently in storage.

The respondent also provided a statement of the security deposit which contained deductions for rent for July and August, cleaning charges and removal and storage costs resulting in a balance owing to the respondent in the amount of \$800.50.

The *Residential Tenancies Act* defines abandonment in section 1(3)

- 1(3) For the purpose of this Act, a tenant has abandoned the rental premises and the residential complex where the tenancy has not been terminated in accordance with this Act and
- (a) the landlord has reasonable grounds to believe that the tenant has left the rental premises: or
 - (b) the tenant does not ordinarily live in the rental premises, has not expressed an intention to resume living in the rental premises, and the rent the tenant has paid is no longer sufficient to meet the tenant's obligation to pay rent.

Section 27 of the Act permits a landlord to enter rental premises without prior notice to the tenant where the landlord has reasonable grounds to believe the tenant has vacated or abandoned the rental premises.

In my opinion the respondent had reasonable grounds to enter the premises without the notice to the applicant in order to determine if the premises had been abandoned. While it is not unusual for tenants to leave premises for a two week period, the fact that the departure followed an incident between the parties and that rent remained unpaid certainly must have given rise to suspicion that the tenant had vacated the premises. As the lock had been placed on the door by the applicant and the landlord was not provided with a key, it was not inappropriate for the

landlord to cut the hasp in order to gain entry. In my opinion, the landlord had reasonable grounds to consider the premises abandoned. The tenant had not been seen in the premises for two weeks following the filing of an application to a rental officer. The rent for July remained unpaid and no arrangements for late payment had been made. The tenant did not communicate any intention to return to the premises. I do not find that the respondent wrongfully took possession of the premises.

Pursuant to section 64(6) of the *Residential Tenancies Act*, the respondent is obligated to return the personal possessions to the applicant upon payment of the removal and storage fees of \$132.50 which I find to be reasonable. These goods have already been held by the respondent for over 60 days. I do not intend to authorize disposal sooner than October 31, 2002. Should the applicant fail to claim the goods by that date, the respondent may request approval to dispose of the goods.

In the matter of the security deposit I find the following deductions reasonable resulting in an amount owing to the applicant in the amount of \$352.11. I find reasonable costs of cleaning to be \$20.00. I find rent owing from July 1-12 only. The remainder is compensation for lost rent which may not be deducted from a security deposit.

Security Deposit	\$600.00
Interest @2.1%	4.37
Rent (July 1-12)	(232.26)
Cleaning charges	(20.00)
Amount owing applicant	\$352.11

Having considered the premises to be abandoned, the respondent had an obligation to re-rent the premises as soon as practical in order to mitigate the loss of rent. The respondent testified that he did not try to rent the premises until September 1, 2002 as August 31, 2002 was the end of the term of the tenancy agreement. In my opinion, the respondent could have re-rented the premises on August 1, 2002 resulting in a loss of rent of only \$367.74. In my opinion, the respondent is entitled to that compensation. Deducting this amount from the security deposit owing the applicant results in a balance owing to the respondent of \$15.63.

An order shall be issued requiring the respondent to return all personal possessions removed from the rental premises to the applicant upon payment of removal and storage costs of \$132.50 and requiring the applicant to pay compensation for lost rent to the respondent in the amount of \$15.63.

Hal Logsdon
Rental Officer