

IN THE MATTER between **BROOKE LEWIS**, Applicant, and **GEORGE KOVACS**, 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 **FORT SMITH, NT**.

BETWEEN:

BROOKE LEWIS

Applicant/Tenant

- and -

GEORGE KOVACS

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 14(6)(b) of the *Residential Tenancies Act*, the respondent shall return the amount collected as the last month's rent to the applicant in the amount of seven hundred fifty dollars (\$750.00).

DATED at the City of Yellowknife, in the Northwest Territories this 23rd day of April, 2003.

Hal Logsdon
Rental Officer

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REASONS FOR DECISION

<u>Date of the Hearing:</u>	April 23, 2003
<u>Place of the Hearing:</u>	Yellowknife, NT via teleconference
<u>Appearances at Hearing:</u>	Brooke Lewis, applicant George Kovacs, respondent
<u>Date of Decision:</u>	April 23, 2003

REASONS FOR DECISION

On the commencement of the tenancy on September 1, 2002, the applicant provided post dated cheques for each succeeding month's rent to May, 2003. A cheque for the June, 2003 rent was dated September 1, 2002 and was cashed by the respondent, along with the cheque for the September, 2002 rent. The rent for the premises was \$750/month. The parties agreed that the cheque for the June, 2003 rent was intended as rent paid in advance for the last month rent and not a security deposit.

The applicant gave notice to terminate the tenancy agreement on February 28, 2003 on February 15, 2003 and vacated the premises on February 28, 2003. The respondent retained the \$750 paid for June, 2003.

The applicant sought an order requiring the respondent to return the \$750, stating there were no rent arrears or damages to the rental premises.

The respondent defended his right to retain the amount due to damages to the rental premises, failure of the applicant to leave the premises in a clean state, failure to give adequate notice and excessive use of electricity during the tenancy agreement.

Section 14(5) of the Residential Tenancies Act states:

No landlord shall require or receive any amount as a deposit for the amount of the first month's or the last month's rent from a tenant or any other amount from a tenant or prospective tenant other than a security deposit referred to in this section.

The parties agreed that the \$750 was provided as the last month's rent and not a security deposit. The parties did not sign any document setting out the condition of the premises at the commencement of the tenancy, a requirement under the Act when a security deposit is required. The respondent did not provide any notice or statement to the applicant setting out his intention to retain the amount and details of the deductions. In all aspects, the \$750 appears to be the last month's rent paid in advance and not a security deposit.

The respondent's reasons for retaining the \$750 are therefore irrelevant as the amount received by the respondent is clearly not permitted by the Act. No agreement made by a landlord and tenant may contradict the provisions of the Act.

There is no need for me to make any determination as to whether the applicant breached her obligation to repair damages or to leave the premises in a state of reasonable cleanliness. Similarly, there is no need for me to determine if the landlord is entitled to damages for the failure of the tenant to give proper notice. These allegations should be addressed in an application by the landlord. They can not be used as a defence for obtaining a deposit prohibited by the Act.

An order shall be issued requiring the respondent to return the last month's rent in the amount of \$750 to the applicant. No interest is due as the amount is not a security deposit.

Hal Logsdon
Rental Officer