File #10-7565

IN THE MATTER between **JENETTA LARKIN AND REGGIE PILGRIM AND MOLLY PILGRIM**, Applicants, and **GLEN MEEK AND WENDY MEEK**, 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:

JENETTA LARKIN AND REGGIE PILGRIM AND MOLLY PILGRIM

Applicants/Tenants

- and -

GLEN MEEK AND WENDY MEEK

Respondents/Landlords

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 25th day of September, 2003.

Hal Logsdon
Rental Officer

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BETWEEN:

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Applicants/Tenants

-and-

GLEN MEEK AND WENDY MEEK

Respondents/Landlords

REASONS FOR DECISION

Date of the Hearing:	**September 24, 2003**
Place of the Hearing:	**Yellowknife, NT**
Appearances at Hearing:	**Jenetta Larkin, applicant** **Reggie Pilgrim, applicant** **Glen Meek, respondent** **Wendy Meek, respondent**
Date of Decision:	**September 24, 2003**

REASONS FOR DECISION

The applicants are former tenants who seek compensation for utility costs paid during the term of the tenancy. The applicants claimed that the tenancy agreement between the parties obligated the landlord to pay for the cost of water, electricity, heat, satellite television and telephone during the tenancy. They provided a copy of the written tenancy agreement which was made in the form of the Schedule to the *Residential Tenancies Act* in evidence. Section 5(3) of that agreement was completed as follows:

> The landlord and the tenant agree that the rent mentioned above includes payment for the following services and facilities:
> *Water, power, heat, television, telephone.*
>
> and that the provision of the following services and facilities is the responsibility of the tenant

The applicants presented an itemized account of the costs paid by them during the tenancy which indicated that they had paid $5707.03 for utilities included in section 5(3) of the agreement during the term of the tenancy agreement. They sought compensation for that amount plus interest in the amount of $157.47.

The applicants testified that the written tenancy agreement was not given to them until June, 2003 although it appears to have been signed by the parties on August 7, 2003. The applicants testified that they established all utility accounts in their names and paid the accounts throughout the tenancy with the understanding that the landlords would reimburse them at the end of the term of the agreement. They indicated that they did not seek any reimbursement during the

tenancy. The applicants stated that they had received a cheque from the respondents at the termination of the tenancy which was provided as a return of the security deposit. The applicants indicated that they had not cashed the cheque.

The respondents testified that they had completed the written tenancy agreement in error. They stated that their oral offer to the applicants required the applicants to pay for utilities and that the written agreement was incorrectly completed and did not reflect the initial mutual understanding of the parties. They pointed out that they occupied the premises prior to renting it to the applicants and had they intended to include the utilities as part of the rent, they would have maintained the accounts in their name. They also stated that the rent charged would have been significantly lower than market rent had utilities been included.

The *Residential Tenancies Act* defines the relationship between a landlord and tenant created under a tenancy agreement as one of contract which can be written, oral or implied. The written tenancy agreement between the parties is unambiguous with regard to responsibility for utilities. The question is whether the written tenancy agreement accurately reflects the contract between the parties or, if when the contract was reduced to writing, a mistake was made.

It is perhaps more common than not, for a landlord and tenant to discuss and agree upon terms of a tenancy agreement prior to putting the agreement in writing. The parties will commonly agree to the amount of rent, responsibility of utilities and other rights and obligations prior to reducing the agreement to writing and executing a written agreement. In cases where there was complete

agreement between the parties, free from ambiguity and not conditional upon further adjustments and the change in the written document appears to be an error in recording and is most easily explicable as such, there may be grounds to rectify the written contract.

In my opinion, I believe the original, oral agreement between the parties concerning the responsibility for the utilities is not reflected in the written agreement and that the written agreement contains a mistake, not of judgement on the part of the respondents, but of recording the agreement in writing.

I base my decision on the following evidence:

a) The landlords occupied the premises immediately preceding the tenancy agreement and all the utilities were in their name. On the formation of the tenancy agreement, the landlords terminated their agreements with utility suppliers and the tenants established accounts for utilities in their name. In my opinion, this clearly implies an agreement that the tenants were responsible for utilities as neither party would be likely to make such changes if the utilities were to be the responsibility of the landlord.

b) While it is not uncommon for rent to include utilities such as heat, electricity and water, it is quite uncommon for a landlord to assume costs of telephone and satellite television. Landlords do not want to be responsible for unlimited long distance charges nor do they want the administrative burden of splitting the bill

between recurring monthly charges and long distance and other charges. Similarly, landlords do not want to assume unlimited charges for movies on satellite television or split the monthly bill with the tenant. Both of these items are almost always the tenant's responsibility in tenancy agreements.

c) The rent for the premises ($1400/month) would be well below prevailing market rent if utilities were included in the rent. While this evidence alone could simply imply a mistake of judgement on the part of the landlords, when considered with the other evidence, it does lend credibility to the respondents' defence.

d) Although the tenants stated that they assumed there would be some reconciliation of the utility costs at the end of the term, it appears that they did not notice the error until they received the written tenancy agreement from the landlord in June, 2003. This leads me to believe that the tenants' understanding of the obligation to pay utilities was not what was reduced to writing in the written tenancy agreement.

In my opinion, the written tenancy agreement between the parties does not accurately reflect the agreement made between the parties and is clearly a mistake in the recording of the agreement. For that reason, I dismiss the application.

Hal Logsdon
Rental Officer