

IN THE MATTER between **MISHELENE TEE**, Applicant, and **TED STUDER**,  
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:

**MISHELENE TEE**

Applicant/Tenant

- and -

**TED STUDER**

Respondent/Landlord

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 14(6)(b) of the *Residential Tenancies Act*, the respondent shall pay the respondent amounts received in excess of the permitted security deposit in the amount of one thousand five hundred dollars (\$1500.00).

DATED at the City of Yellowknife, in the Northwest Territories this 16th day of  
November, 2003.

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Hal Logsdon  
Rental Officer

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BETWEEN:

**MISHELENE TEE**

Applicant/Tenant

-and-

**TED STUDER**

Respondent/Landlord

**REASONS FOR DECISION**

**Date of the Hearing:** November 12, 2003

**Place of the Hearing:** Yellowknife, NT

**Appearances at Hearing:** Mishelene Tee, applicant  
Ted Studer, respondent

**Date of Decision:** November 12, 2003

**REASONS FOR DECISION**

The applicant sought an order for the return of a security deposit. She testified that she had given the respondent a deposit in the amount of \$1500 but did not take possession of the premises. The applicant testified that the premises were to be available to rent on September 20, 2003 but the renovations to the premises were not completed by that date and the anticipated occupancy date was extended to October 1, 2003. She stated that the premises were still not ready on October 1, 2003 and on that date she indicated to the landlord that she would not be renting the premises.

The respondent indicated that the \$1500 was not a security deposit but an application fee which he was entitled to retain as the applicant had not taken possession. The respondent provided a copy of an application in evidence. The application, completed and signed by the applicant, contained the following clause:

I/we the undersigned, understand & agree that the money accompanying this application is a fee to help cover costs of credit checks & reference calls. This fee is fully refundable if I/we don't qualify for the unit or if someone else is accepted before me/us. **The fee is not refunded if the references etc. are called & I/we are accepted but refuse to rent the unit.** Also if I/we ultimately move into the unit it is understood and agreed the fee is credited towards the last month's rent. (emphasis contained in application)

Section 14(5) of the *Residential Tenancies Act* prohibits landlords from receiving certain amounts from tenants or prospective tenants:

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.

Clearly, section 14(5) prohibits the type of fee collected by the respondent. The respondent did not claim that the amount was a security deposit. However, even if the amount had been collected as a security deposit, the respondent would be obliged to return it as there were no rent arrears or damages to the premises.

I find the amount of \$1500 to be in excess of the amount permitted to be collected as a security deposit. An order shall issue requiring the respondent to return the amount to the applicant. No interest shall be due on the amount.

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Hal Logsdon  
Rental Officer