

IN THE MATTER between **DAVID KAYLO**, Applicant, and **KAREN SIEBOLD**, 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:

**DAVID KAYLO**

Applicant/Landlord

- and -

**KAREN SIEBOLD**

Respondent/Tenant

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant rent arrears in the amount of four hundred twenty four dollars and ninety three cents (\$424.93).
2. Pursuant to section 28(b) of the *Residential Tenancies Act*, the respondent shall pay the applicant compensation for lost rent as a result of the respondent's refusal to permit the applicant to enter the premises to show it to prospective tenants in the amount of five hundred ninety eight dollars and thirty nine cents (\$598.39).

DATED at the City of Yellowknife, in the Northwest Territories this 19th day of January, 2004.

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Hal Logsdon  
Rental Officer

IN THE MATTER between **DAVID KAYLO**, Applicant, and **KAREN SIEBOLD**,  
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:

**DAVID KAYLO**

Applicant/Landlord

-and-

**KAREN SIEBOLD**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:** January 13, 2004

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

**Appearances at Hearing:** David Kaylo, applicant

**Date of Decision:** January 17, 2004

**REASONS FOR DECISION**

The respondent was served with a Notice of Attendance on December 22, 2004 but failed to appear at the hearing. The hearing was held in her absence.

The applicant testified that the respondent had given written notice on December 1, 2003 to terminate the tenancy agreement on December 31, 2003 and vacated the premises on or about December 24, 2003. The applicant alleged that the respondent had failed to pay the full amount of the December, 2003 rent and had not permitted him to show the premises to prospective tenants after she had given notice to quit. The applicant sought an order requiring the respondent to pay the alleged rent arrears and compensation for lost rent and utility costs related to the respondent's refusal to permit him entry to show the premises.

The applicant provided a copy of the respondent's notice to terminate the tenancy agreement which also explained the details of the partial December rent payment. The respondent explained in the notice that she was deducting the following amounts from the December rent resulting in a payment of \$721.58 rather than \$1400.

Invoice from Arctic Appliance	\$69.95
Invoice from NorthwestTel	\$43.87
Garage rental	\$315.00
Security deposit	\$250.00

In my opinion, none of the above deductions can be made from the rent owing of \$1400. I find no evidence that the respondent notified the landlord of any repairs required or that the repairs were

the responsibility of the landlord or any agreement concerning the use of the garage. The security deposit can not be applied to rent by the tenant during the tenancy. I find the respondent failed to pay the applicant the full amount of the December rent and find the amount owing to be \$678.42.

The applicant has retained the security deposit for rent arrears. There were no repairs of damages. Taking the retained deposit into account I find the balance of rent arrears owing to the applicant to be \$424.93, calculated as follows:

December rent	\$1400.00
Amount paid	<u>721.58</u>
Rent arrears	\$678.42
Less security deposit	(250.00)
Less interest on deposit	<u>(3.49)</u>
Rent arrears owing applicant	<b>\$424.93</b>

The applicant testified that following the notice to terminate given by the respondent permission to enter the premises in order to show the premises to prospective tenants. He testified that the respondent refused to permit him to enter at the times stated on the notices. The applicant stated that he was unable to show the premises until after the tenant vacated and has to this date only been able to find a tenant willing to rent on February 1, 2004. The applicant sought compensation in the amount of \$2378. The amount includes rent and estimated utilities for the month of January, 2004.

I find the respondent breached her obligation to permit the landlord entry upon written notice in order to show the premises. Section 28 of the *Residential Tenancies Act* permits a rental officer to make an order requiring a tenant to compensate a landlord for loss suffered as a direct result of

the breach. Section 5 of the Act also obligates the landlord to take reasonable steps to mitigate loss. In my opinion, the loss of rent and utility costs is a direct result of the tenant's refusal to permit the landlord to enter. The applicant has advertised the premises and, to date, has only found a tenant willing to rent it on February 1, 2004. However, he has been advertising it at a rent higher (\$1450/month) than the respondent was paying. As the premises were first rented on July 1, 2003, the landlord is not entitled to raise the rent until July 1, 2004. In my opinion, the increased rent may have had some effect on the landlord's ability to re-rent the premises. In any case, the losses to date are only 13 days of rent which I find to be \$598.39. There is still an opportunity for the landlord to re-rent the premises before February 1, 2004. I am not prepared to consider estimates of utilities without some evidence to demonstrate their accuracy. The applicant may make a future application when the amounts are known.

An order shall issue requiring the respondent to pay the applicant rent arrears in the amount of \$424.93 and compensation for lost rent in the amount of \$598.39.

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Hal Logsdon  
Rental Officer