

IN THE MATTER between **ELSBETH FOSSUM**, Tenant, and **HOBBART BONISH**,
Landlord;

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:

ELSBETH FOSSUM

Tenant

- and -

HOBBART BONISH

Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 62(2) of the *Residential Tenancies Act*, the tenant shall pay compensation to the landlord for lost rent in the amount of two hundred seventy four dollars and fifty one cents (\$274.51).

DATED at the City of Yellowknife, in the Northwest Territories this 17th day of March,
2004.

Hal Logsdon
Rental Officer

IN THE MATTER between **ELSBETH FOSSUM**, Tenant, and **HOBART BONISH**,
Landlord.

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:

ELSBETH FOSSUM

Tenant

-and-

HOBART BONISH

Landlord

REASONS FOR DECISION

Date of the Hearing: March 11, 2004

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Elsbeth Fossum, Tenant
Hobart Bonish, Landlord

Date of Decision: March 17, 2004

REASONS FOR DECISION

The tenant filed an application on December 18, 2003 seeking the return of the security deposit. On January 2, 2004 the landlord filed an application seeking compensation for lost rent. Both applications relate to the same tenancy agreement and rental premises. With the consent of the parties, both applications were heard at a common hearing.

The rental premises was a room in an apartment suite. The tenant, landlord and another tenant shared certain common areas in the apartment. The tenancy agreement was oral and the parties agreed that the monthly rent was \$500 plus a proportionate share of water, electrical and telephone costs. The tenancy agreement commenced on November 26, 2003 and the tenant provided a security deposit to the landlord in the amount of \$500 on that day.

The tenant stated that shortly after taking occupancy, the landlord notified her that he was giving his notice to the head landlord and that she would be required to vacate the room by February 1, 2004. The tenant stated that she vacated the premises on December 15, 2003 after giving notice to the landlord on December 13, 2003.

The landlord retained the security deposit but did not provide an itemized statement to the tenant. At the hearing, the landlord provided the statement of his security deposit provided by the head landlord which indicated a single deduction of \$750 for “damages and cleaning”. The landlord testified that \$700 of that amount was for repair of the carpet in the common area and \$50 of the amount was for repair of a wall corner in a common area. The landlord testified that both areas

were damaged by the tenant's puppy chewing the carpet and wall corner. The landlord also testified that the full amount of the tenant's share of utilities had not been paid and stated that the outstanding amount for December, 2003 was \$109.34.

The landlord also sought compensation for lost rent in the amount of \$500 representing the base rent plus utilities for the month of January, 2004. The landlord testified that he advertised the premises but was unable to rent them for the month of January, 2004. He provided a copy of the newspaper advertisement in evidence.

The tenant did not dispute the landlord's allegations regarding the December, 2003 utilities and agreed that the outstanding balance was \$109.34. She also stated that there was a small hole in the carpet at the commencement of the tenancy agreement and that her puppy had enlarged it to about the size of a \$2 coin. She stated that the wall corner damage may have been caused by her dog playing with the landlord's dog. She stated that the carpet was in poor condition at the commencement of the tenancy. She stated that, in her opinion, the cost of replacing the section of carpet was unreasonable given its poor condition.

The tenant also stated that she did not feel it appropriate to have to pay for January utilities as she no longer resided in the premises during that month. She also alleged that the landlord had re-rented the premises in January and provided a letter from the other former tenant who stated that he was in the apartment on December 23, 2003 and noted that another person was occupying the room.

The tenant enjoyed the right of possession until December 31, 2003 as the basic rent had been paid in full. Although the parties agreed to the amount of rent arrears in the form of unpaid utilities to December 31, 2003 my review of the invoices submitted by the landlord indicates an error in the calculation. The water metre was not read until the end of January, resulting in three month's consumption on the January invoice.

Adjusting the water invoice to reflect average consumption in December, I find the rent arrears to be \$117.37 calculated as follows:

Water costs (December)	\$18.35
Electrical costs (December)	88.56
Phone costs (December)	<u>10.46</u>
Total rent arrears	\$117.37

Section 15 of the *Residential Tenancies Act* requires that a condition report be completed when a landlord requires a security deposit.

- 15.(1) At the commencement of the tenancy and when a security deposit is requested, a landlord and tenant shall sign a document that sets out the condition and contents of the rental premises.**
- (2) A landlord shall ensure that a signed copy of the document referred to in subsection (1) is delivered to the tenant on receipt of all or a portion of the security deposit, as the case may be.**

No inspection report was completed. The tenant's testimony suggests that the carpet was damaged to some extent at the commencement of the tenancy agreement and was in generally poor condition. While there is no doubt that the tenant's dog enlarged the hole, I do not find sufficient evidence to support the costs of replacing a portion of the carpet. The tenant's testimony suggests an old worn carpet generally in need of replacement and there is no inspection

report or other evidence to suggest otherwise. There is no evidence documenting that the repair cost was actually \$700. The landlord's request for compensation of \$700 is denied. The repair of the wall corner is, in my opinion, reasonable.

I find that the landlord was entitled to retain a portion of the security deposit for rent arrears which I find to be \$117.37 and repair costs of \$50.00.

Section 52 of the *Residential Tenancies Act* sets out the required notices for a tenant to terminate a periodic tenancy agreement.

- 52. (1) Where a tenancy agreement does not specify a date for the termination of the tenancy agreement, the tenant may terminate the tenancy on the last day of a period of the tenancy by giving the landlord a notice of termination,**
- (a) in the case of a weekly tenancy, at least seven days before the termination date stated in the notice of termination;**
 - (b) in the case of a monthly tenancy that has continued for less than 12 months, at least 30 days before the termination date stated in the notice of termination;**
- or**
- ©) in the case of a monthly tenancy that has continued for 12 months or more, at least 60 days before the termination date stated in the notice of termination.**

Clearly, the tenant failed to provide notice in accordance with the Act.

Section 62 entitles a landlord to compensation for lost rent on the tenant's abandonment of rental premises, subject to the landlord's obligation to mitigate loss.

- 62 (1) Where a tenant abandons a rental premises, the tenancy agreement is terminated on the date the rental premises were abandoned but the tenant remains liable, subject to subsection 9(2), to compensate the landlord for**

loss of future rent that would have been payable under the tenancy agreement.

(2) Where, on the application of a landlord, a rental officer determines that a tenant has abandoned a rental premises, the rental officer may make an order requiring the tenant to pay to the landlord the compensation for which the tenant is liable by reason of subsection (1).

Although it was unlikely that the landlord would be able to re-rent the premises for only one month, in my opinion, he took reasonable steps to try to do so. The evidence does not support the tenant's allegation that the landlord re-rented the premises. The landlord testified under oath that he did not re-rent the premises and the unsworn letter from the former tenant notes only that "someone was living in Ms Fossum's room". It does not establish that the landlord was renting the room. It does serve to confirm that the landlord continued to receive calls regarding the room. In my opinion, the landlord is entitled to compensation for January's rent in the amount of \$500. As the rent also included the tenant's share of water, electricity and telephone, the landlord is also entitled to compensation for part of the utility charges that came due in January but only those charges which are not directly related to the consumption of those utilities by the tenant. In that regard, the consumption component of the water charges and the personal use of electrical energy (not including heating) should not be included. I find these costs to be \$107.90 calculated as follows:

January water (less consumption)	\$30.95/3	\$10.32
January electricity (discounted 20% for personal use)	\$108.90 X 80%	87.12
January phone (service charge)	\$31.38/3	<u>10.46</u>
Total		\$107.90

Taking into account the security deposit and accrued interest, an order shall issue requiring the

tenant to pay compensation to the landlord for lost rent in the amount of \$274.51 calculated as

follows:

Security deposit	\$500.00
Interest	.76
Rent arrears	(117.37)
Repair costs	<u>(50.00)</u>
Subtotal	\$333.39
Less compensation for	
January basic rent	(500.00)
Less January utilities	<u>(107.90)</u>
Amount due landlord	\$274.51

Hal Logsdon
Rental Officer