File #10-7756 & #10-7779

IN THE MATTER between **SHELDON MILLER AND WENDY ELIAS**, Tenants, and **WAYNE GUY AND CONSTANTINA TSETSOS**, Landlords;

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:

SHELDON MILLER AND WENDY ELIAS

Tenants

- and -

WAYNE GUY AND CONSTANTINA TSETSOS

Landlords

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18(5) of the *Residential Tenancies Act*, the landlords shall return the security deposit and accrued interest in the amount of one thousand four hundred four dollars and ninety-nine cents ($1,404.99).

2. Pursuant to section 78(2) of the *Residential Tenancies Act*, the matters contained in the landlords' application shall be adjourned to March 2, 2004 at 4:00PM in the large board room, Panda II Centre.

DATED at the City of Yellowknife in the Northwest Territories this 18th day of February 2004.

Hal Logsdon
Rental Officer

IN THE MATTER between **SHELDON MILLER AND WENDY ELIAS**, Tenants, and **WAYNE GUY AND CONSTANTINA TSETSOS**, Landlords.

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

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BETWEEN:

SHELDON MILLER AND WENDY ELIAS

Tenants

-and-

WAYNE GUY AND CONSTANTINA TSETSOS

Landlords

REASONS FOR DECISION

Date of the Hearing:	**February 11, 2004**
Place of the Hearing:	**Yellowknife, NT**
Appearances at Hearing:	**Sheldon Miller, tenant** **Wendy Elias, tenant** **Constantina Tsetsos, landlord**
Date of Decision:	**February 11, 2004**

REASONS FOR DECISION

The tenants' application was filed on January 19, 2004 seeking the return of the security deposit. The landlords' application was filed on January 30, 2004 seeking compensation for lost rent. Both applications refer to the same tenancy agreement and premises. With the consent of the parties, both applications were heard at a common hearing.

I note that the written tenancy agreement names the landlords as Wayne Guy and Constantina Tsetsos. The parties agreed that the style of cause of the order should reflect the proper names of the landlords. The proper names shall be used in the order.

The tenancy agreement between the parties commenced on November 1, 2003 and was made for a term of one year. The tenants stated that they initially provided $450 to the landlords as a partial payment of the required security deposit of $1,400. On November 15, 2003 the Salvation Army provided the landlords with the full security deposit of $1,400 and the landlords refunded the initial deposit to the tenants, deducting $75 for charges related to an extra water delivery. On December 4, 2003 the tenants gave notice to the landlords of their intent to vacate the premises on January 1, 2004 and gave up possession on December 31, 2003. The tenants testified that no statement of the security deposit was received from the landlord. They testified that the rent was paid in full to December 31, 2003 and that there were no damages to the premises. They sought the return of the deposit and the $75 deduction for water made from the initial deposit.

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The landlord sent a notice to the tenants on December 4, 2003 stating that they would be required to pay for the month of January, but would be reimbursed if the premises were rented on January 1, 2004. The landlord stated that upon receiving the tenants' notice to vacate, they advertised the premises for rent and showed them to prospective tenants. The landlord stated that they were unable to rent the premises until February 1, 2004 and sought compensation for lost rent.

Section 18 of the *Residential Tenancies Act* sets out deductions that a landlord may make from a security deposit.

> **"A landlord may, in accordance with this section, retain all or part of a security deposit for repairs of damage caused by a tenant to the rental premises and for any arrears of rent."**

Section 18 also outlines the landlords obligation to make such deductions and to provide a statement or estimated statement to the tenant within ten days after the tenant vacates the premises.

When a tenant fails to give adequate notice or abandons rental premises, the tenant is liable, subject to the landlords efforts to mitigate loss, for loss of rent which would have come due. Such compensation is considered damages, not rent, and may not be deducted from a security deposit. A landlord is required to make an application to a rental officer pursuant to section 62 of the *Residential Tenancies Act*.

In this matter, the tenants did not have any rental arrears, nor was the unit damaged or unclean. There were no legitimate deductions from the security deposit and the deposit and accrued interest should have been returned to the tenants no later than January 10, 2004.

In my opinion, it is not proper for a rental officer to consider an application from a landlord for compensation for lost rent when the landlord has retained the security deposit for that purpose. To do so puts the onus on the tenant to file an application for the return of the deposit when the onus should be on the landlord alone to file for compensation. Therefore, I am not prepared to consider the landlords' application until the deposit has been returned and shall adjourn the matters contained in the landlords' application to March 2, 2004. I shall hear the landlords' application at that time provided the security deposit has been returned.

In the matter of the $75 deduction for the extra water delivery, the tenancy agreement states that the rent includes water during trucked delivery periods. Extra deliveries should be the responsibility of the tenant. The tenants argued that since the residential complex contains two rental premises, both served by a common water holding tank, the requirement for an extra delivery can not be attributed to their water consumption alone. The landlord argued that extra deliveries had not been required in the past and the tenants' water consumption was the only variable that had changed. The landlord also noted that the issue of the $75 charge was not contained in the tenants' application. As the matters contained in the landlords' application is adjourned, I see no reason why this issue should not be adjourned as well to give the landlords time to prepare a response. I shall determine this matter at the continuation of the hearing.

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An order shall issue requiring the landlords' to return the security deposit and accrued interest in the amount of $1,404.99.

Hal Logsdon
Rental Officer