

IN THE MATTER between **809656 ALBERTA LTD.**, Applicant, and **MICHAEL FRASER**, 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:

809656 ALBERTA LTD.

Applicant/Landlord

- and -

MICHAEL FRASER

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 two thousand four hundred fifty dollars (\$2450.00).
2. Pursuant to sections 41(4)(c) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Apartment 304, 5600 52nd Avenue, Yellowknife, NT shall be terminated on September 15, 2004 and the respondent shall vacate the premises on that date, unless the rent arrears are paid in full.

DATED at the City of Yellowknife, in the Northwest Territories this 3rd day of September, 2004.

Hal Logsdon
Rental Officer

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REASONS FOR DECISION

Date of the Hearing: September 2, 2004

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Trina Scott, representing the applicant
Anisa Bhambhani, representing the applicant
Michael Fraser, respondent

Date of Decision: September 2, 2004

REASONS FOR DECISION

The applicant alleged that the respondent breached the tenancy agreement by failing to pay rent and sought an order requiring the respondent to pay the alleged rent arrears and terminating the tenancy agreement unless the arrears were promptly paid.

The applicant provided a copy of the tenant ledger in evidence which indicated a balance of rent owing as at August 3, 2004 in the amount of \$1475. The applicant testified that since that date the September, 2004 rent had come due in the amount of \$975 and no payments of rent had been received, bringing the balance owing to \$2450.

The respondent disputed the allegations, stating that he had paid the rent in full. The respondent provided two receipts for rent in evidence. The first receipt, dated July 2, 2004 acknowledges a payment of \$475 and is marked "June rent bal". In the account section it notes that the balance due is "0". The second receipt, dated July 29, 2004 acknowledges a payment of \$475 and is marked "July rent". In the account section it notes a balance due of \$500. Both payments were recorded on the landlord's ledger.

The parties agreed that the respondent made another payment after July 29, 2004 but after being told that the July rent was only partially paid, he demanded the payment be returned and the monies were returned to the respondent. The respondent stated that he had not made any payments in August or September.

The dispute clearly arises from the fact that the July rent of \$975 was not posted to the ledger until July 3, 2004. When the respondent made the \$475 payment on July 2, 2004 there was a balance owing from June of \$475. As the July rent had not been posted, although it had come due, the statement indicated the account balance was zero after the payment of \$475 was made. Even though the receipt is marked "June rent bal." the respondent obviously understood that the account balance was zero, including the July rent. When the next payment was made on July 29, 2004 the respondent presumably expected to see a credit balance but instead noted a balance owing of \$500 because the July rent had been posted to the ledger.

There is no evidence that the respondent made any payments that are not recorded on the landlord's ledger. However, the landlord's ledger does, at first glance, appear to be in error. The ledger records receipt numbers of all payments and indicates amounts paid in cash and by cheque. The ledger records the previous balance, the rent due, the amount paid and the closing balance for each entry. On three entries, the previous balance is a credit balance. On two of those entries, the landlord has recorded a payment, equal to the credit balance. On the other entry, the landlord has reduced the rent due by the amount of the credit balance and not recorded a payment. None of these entries contains a receipt number or any entry indicating whether the "payment" was by cash or cheque. The accounting method is incorrect but in my opinion, the balance is correct.

The respondent's dispute does not arise from any of the credit balance entries but from the July entries. It is evident that the landlord does not understand how entries should be made when there

is an opening credit balance.

Taking into consideration the payments made which are recorded with receipt numbers on the ledger I find the amount of rent paid for the period March 1, 2004 to August 3, 2004 to be \$3750 calculated as follows:

March 15/04	#598883	\$1250
March 28/04	#110545	\$1550
July 2/04	#631206	\$475
July 29/04	#631353	\$475

The rent for the premises from March 1, 2004 to the date of the hearing was \$6825, calculated as follows:

March/04	\$975
April/04	\$975
May/04	\$975
June/04	\$975
July/04	\$975
Aug/04	\$975
Sept/04	\$975

I find the rent arrears to be \$2450, calculated as follows:

Opening balance March 1, 2004	(\$625)
Rent (March 1 - Sept 2, 2004)	6825
Rent paid (March 1-Sept 2, 2004)	<u>(3750)</u>
Balance owing	\$2450

I find the respondent in breach of his obligation to pay rent. In my opinion, there are sufficient grounds to terminate the tenancy agreement unless the arrears are promptly paid. An order shall issue requiring the respondent to pay the applicant rent arrears in the amount of \$2450 and

terminating the tenancy agreement on September 15, 2004 unless the arrears are paid in full.

Hal Logsdon
Rental Officer