

IN THE MATTER between **L. LESLIE SAX**, Applicant, and **NOVA ESTATES (994552 NWT LTD.)**, 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:

L. LESLIE SAX

Applicant/Tenant

- and -

NOVA ESTATES (994552 NWT LTD.)

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18(5) of the *Residential Tenancies Act*, the respondent shall return the security deposit and accrued interest to the applicant in the amount of one thousand two hundred seventy six dollars and forty nine cents (\$1276.49).
2. Pursuant to section 34(2)(c) of the *Residential Tenancies Act* the respondent shall pay the applicant compensation for loss of full enjoyment of the residential complex in the amount of four hundred dollars (\$400.00).

DATED at the City of Yellowknife, in the Northwest Territories this 23rd day of September, 2004.

Hal Logsdon
Rental Officer

IN THE MATTER between **L. LESLIE SAX**, Applicant, and **NOVA ESTATES (994552 NWT LTD.)**, 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:

L. LESLIE SAX

Applicant/Tenant

-and-

NOVA ESTATES (994552 NWT LTD.)

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: September 21, 2004

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Louis Walsh, representing the applicant
Martha Temple, representing the applicant
Vince Dixon, representing the respondent

Date of Decision: September 22, 2004

REASONS FOR DECISION

The tenancy agreement between the parties was terminated on or about February 29, 2004 when the applicant vacated the premises. The respondent retained the security deposit of \$1265 but did not issue an itemized statement of account as required by section 18(3)(b) of the *Residential Tenancies Act*. The respondent sought the return of the security deposit.

There is no evidence of rent arrears or requirement to repair damages to the premises. The respondent testified that the deposit was retained as a penalty for breaking the tenancy agreement. The tenancy agreement was made for a one-year term commencing November 1, 2003.

The applicant also sought compensation for loss of full enjoyment of the residential complex. The applicant claimed that a reserved energized parking stall and use of an exercise room were services and facilities provided in the tenancy agreement. The applicant's affidavit stated that neither of these services and facilities were available during the tenancy. The respondent acknowledged that a reserved parking stall was not available as there was a technical problem with the electrical supply. He stated that an alternate space was made available but the electrical supply was problematic. The respondent also acknowledged that the exercise room was not functional during the applicant's tenancy due to the rupture of a water supply pipe.

Section 18(2) of the *Residential Tenancies Act* specifies what deductions may be made from a tenant's security deposit.

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

A penalty for breaking a tenancy agreement or compensation for lost rent are not amounts which may be deducted from a security deposit. As there are no rent arrears or repair costs, the respondent has no right to retain the deposit. I find the interest on the deposit to be \$11.49.

The written tenancy agreement between the parties obligates the landlord to provide an assigned parking stall to the tenant at no extra cost. It is apparent from the evidence that this was not adequately provided. The applicant's representative suggested that compensation of \$50 month was reasonable. Comparing costs of other reserved parking in the city, I agree.

The tenancy agreement does not mention the use of an exercise room but the parties acknowledge that it was an amenity that was to be made available to tenants as a service and facility. Clearly it was not available for use by the applicant during her tenancy. The applicant's representative suggested that \$50/month would represent reasonable compensation. I agree.

An order shall issue requiring the respondent to return the retained security deposit and accrued interest on the deposit to the applicant in the amount of \$1276.49 and to pay the applicant compensation for loss of full enjoyment of the rental premises in the amount of \$400.

Hal Logsdon
Rental Officer