

IN THE MATTER between **CHRIS POTYOK**, Applicant, and **ARCTIC APPLIANCE SERVICE 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:

CHRIS POTYOK

Applicant/Tenant

- and -

ARCTIC APPLIANCE SERVICE LTD.

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18(5) of the *Residential Tenancies Act*, the respondent shall return the retained security deposit to the applicant in the amount of one thousand five hundred dollars (\$1500.00).

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

Hal Logsdon
Rental Officer

IN THE MATTER between **CHRIS POTYOK**, Applicant, and **ARCTIC APPLIANCE SERVICE 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:

CHRIS POTYOK

Applicant/Tenant

-and-

ARCTIC APPLIANCE SERVICE LTD.

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: October 12, 2004

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Chris Potyok, applicant (by telephones)
Steve Chung, representing the respondent

Date of Decision: October 12, 2004

REASONS FOR DECISION

The parties entered into a written tenancy agreement which was to commence on September 1, 2004. The applicant provided the respondent with a security deposit in the amount of \$1500 on August 13, 2004. Prior to the commencement of the agreement, the applicant notified the respondent that he did not intend to take possession of the premises. The applicant did not take possession of the premises. The respondent retained the security deposit of \$1500.

The applicant sought an order requiring the respondent to return the deposit.

The respondent acknowledged that the applicant had notified him prior to the commencement of the tenancy agreement that he did not intend to take possession of the premises. The respondent stated that he advertised the premises for rent and did not rent it until October 1, 2004.

Section 14(5) of the *Residential Tenancies Act* prohibits the collection of any deposit other than a security deposit:

14.(5) No landlord shall require or receive any amount as a deposit for the amount of the first month's or the last month's rent from a tenant or any other amount from a tenant or prospective tenant other than a security deposit referred to in this section.

Section 18(2) outlines what deductions a landlord may make from a 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.

The respondent's claim is not one of rent arrears but compensation for rent which would have come due if the tenancy agreement had continued. Clearly, if the applicant did not take possession, there could not have been any damages to the premises. As rent arrears and repairs of damages are the only amounts which can be deducted from a security deposit, the landlord had no right to retain it.

Section 62 of the *Residential Tenancies Act* permits a rental officer to order a tenant to pay a landlord compensation for lost rent. Such an order, requires an application to a rental officer. The respondent has made no application. Therefore I can not consider the respondent's claim for lost rent at this time.

An order shall issue requiring the respondent to return the retained security deposit to the applicant in the amount of \$1500.

Hal Logsdon
Rental Officer