

IN THE MATTER between **KAREN STRIKE**, Applicant, and **ANDREW LITTLE**, 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:

KAREN STRIKE

Applicant/Landlord

- and -

ANDREW LITTLE

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 62(2) of the *Residential Tenancies Act*, the respondent shall pay the applicant compensation for lost rent in the amount of one thousand one hundred ninety four dollars and fifty seven cents (\$1194.57).

DATED at the City of Yellowknife, in the Northwest Territories this 2nd day of February, 2005.

Hal Logsdon
Rental Officer

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Applicant/Landlord

-and-

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REASONS FOR DECISION

Date of the Hearing: January 25, 2005

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Karen Strike - applicant (by telephone)
Paul Strike, witness for the applicant (by telephone)
Andrew Little, respondent
Mary-Louise Little, witness for the respondent

Date of Decision: January 31, 2005

REASONS FOR DECISION

The tenancy agreement between the parties was terminated on December 16, 2004 when the respondent vacated the premises. The applicant alleged that the respondent had given no written notice and sought an order for compensation for lost rent and repair costs in the amount of \$2389.11.

There appears to have been a written tenancy agreement between the parties but neither party produced it at the hearing. The parties agreed that the tenancy agreement was month-to-month and that the rent for the premises was \$1100/month plus utilities which included electricity, heat, water and phone. The utility payments were to be paid to the landlord. The parties agreed that the tenancy agreement commenced on December 10, 2004 and that the rent was due on the 10th day of each month. There was no security deposit required.

The applicant testified that he was given verbal notice on December 13, 2004 that the respondent intended to vacate at the end of that week. The applicant stated that to the best of his knowledge, the respondent vacated the premises on December 16, 2004 but that the keys, which were returned to a neighbour, were not returned until December 22, 2004. The applicant stated that he had advertised the premises in the newspaper but had been unable to rent it in January, 2005. He stated that he had entered into a tenancy agreement to commence on February 1, 2005. The applicant stated that the respondent had paid only \$550 in rent and sought compensation for rent and utilities in the amount of \$2203.58. An itemised statement of the utility costs was provided in evidence, some of which was estimated. The applicant also alleged that the premises ran out of

fuel and caused damage to the plumbing. He sought compensation for repair costs in the amount of \$185.53.

The respondent testified that the hot water tank failed shortly after taking possession of the premises and that circuit breakers were constantly shutting off. He also testified that even with the furnace and the wood stove operating, it was impossible to use the bedroom due to the cold. Both the respondent and his wife stated that they had to sleep in the living room by the woodstove to keep warm and had to vacate as the premises were too cold, and in their opinion dangerous. No application was filed by the respondents.

The applicant did not dispute the hot water tank failure but stated that he repaired it in a timely manner. He denied that there were any other problems with the electrical system in the premises. The applicant did not dispute that the premises required the woodstove to be operating on cold days and stated that he too, had to sleep in the living room just prior to vacating the premises. He stated, however that he believed that the cold temperature of the premises on that occasion was due primarily to the lack of furniture.

Section 52 of the *Residential Tenancies Act* sets out the tenant's notice requirements 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;**
- (c) 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.**

Further, Section 55 sets out required contents of a notice of termination.

55. (1) A notice of termination by a tenant or a landlord shall be in writing and must

- (a) be signed by the tenant or the landlord or an agent of the tenant or the landlord;**
- (b) identify the rental premises to which the notice applies;**
- (c) state the date on which the tenancy is to terminate; and**
- (d) state the reason for the termination of the tenancy.**

The verbal notice given by the respondent to the applicant was not sufficient to terminate the tenancy agreement because it did not comply with either section 52 or 55. No application to terminate the agreement was filed by the respondents nor was the tenancy agreement terminated by mutual agreement between the landlord and tenant. Therefore the premises must be considered abandoned by the tenants on December 16, 2004 when the respondent vacated the premises.

Subject to the landlord's obligation to mitigate loss of future rent, a tenant who abandons rental premises remains liable to compensate the landlord for loss of future rent that would have been payable under the tenancy agreement.

In my opinion, the evidence supports the fact that the premises were very difficult to heat in the

winter and suggests that without repair, could be difficult to rent during the winter months. Had the respondent made application to terminate the tenancy agreement based on the landlord's failure to repair, he may have been successful, but he did not do so. But surely, if a landlord's inability to re-rent premises is related to a significant defect in the premises, which the landlord is obligated to repair, the liability of the tenant who abandoned the premises because of the defect should be limited by that fact. In my opinion, the lack of sufficient heat during cold weather is a significant defect and in my opinion, the liability of the respondent should be limited to lost rent to the end of the rent period, December 10, 2004 to January 10, 2005.

The applicant's request for repair costs due to freezing damage is denied. The applicant indicated that the propane tank ran out of fuel on or about December 31, 2004. This is clearly after the respondents abandoned the premises and the landlord had possession. In my opinion, the landlord was responsible to ensure the fuel in the tank was sufficient, not the tenant.

In this matter, the utility costs must be considered as rent as they were payable to the landlord.

Taking into consideration the rent which was paid by the respondent to the applicant, I find reasonable compensation to be \$1194.57, calculated as follows:

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|---|-------------|
| Rent (December 10/04 to December 16/04 - 7days) | |
| Base rent @ \$36.16/day | \$253.12 |
| Electricity @ \$5.18/day | 36.26 |
| Propane @ \$11.59/day | 81.13 |
| Water @ \$2.30/day | 16.10 |
| Phone @ \$.946/day | 6.62 |
| Phone calls at cost | <u>3.12</u> |
| Total Rent due | \$396.35 |

Compensation (December 17/04 to January 9/05 - 24 days at same per diem rates)

| | |
|--------------------|--------------|
| Base rent | \$867.84 |
| Electricity | 124.32 |
| Propane | 278.16 |
| Water | 55.20 |
| Phone | <u>22.70</u> |
| Total Compensation | \$1348.22 |

| | |
|----------------------|-----------|
| Rent + Compensation | \$1744.57 |
| Less rent paid | (550.00) |
| Amount due Applicant | \$1194.57 |

An order shall issue requiring the respondent to pay the applicant compensation for lost rent in the amount of \$1194.57.

Hal Logsdon
Rental Officer