

IN THE MATTER between **5104 NWT LTD.**, Applicant, and **WARREN EUVERMAN**, 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:

5104 NWT LTD.

Applicant/Landlord

- and -

WARREN EUVERMAN

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 seven hundred thirty five dollars (\$2735.00).

DATED at the City of Yellowknife, in the Northwest Territories this 29th day of September, 2005.

Hal Logsdon
Rental Officer

IN THE MATTER between **5104 NWT LTD.**, Applicant, and **WARREN EUVERMAN**, Respondent.

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:

5104 NWT LTD.

Applicant/Landlord

-and-

WARREN EUVERMAN

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: September 15, 2005

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Mike Hilchey, representing the applicant

Date of Decision: September 29, 2005

REASONS FOR DECISION

The respondent was served with a Notice of Attendance on September 7, 2005, but failed to appear at the hearing. The hearing was held in his absence.

The tenancy agreement between the parties was made for a one year term commencing on June 1, 2005. The applicant stated that the June, 2005 rent was waived as an incentive to enter into a term agreement. The tenancy agreement sets out that the first payment of rent shall be due on July 1, 2005. The applicant testified that no security deposit was received.

The applicant testified that the respondent abandoned the premises on August 12, 2005. The applicant testified that the respondent had failed to pay the full amount of rent for July, 2005 or any rent for August, 2005. The applicant also testified that he had applied a fee for an NSF cheque to the rent account. The rent for the premises was \$1750/month. The applicant testified that the premises were re-rented on September 1, 2005.

The applicant sought an order requiring the respondent to pay rent arrears and the June, 2005 rent totaling \$4485 calculated as follows:

Balance of June/05 rent	\$950
NSF charges	35
August/05 rent	<u>1750</u>
Total of rent arrears	\$2735
Recapture of June/05 rent	<u>1750</u>
Amount sought by applicant	\$4485

In my opinion, the recapture of the June, 2005 rent is a penalty and not permissible under the common law of contracts. It does not represent a reasonable pre-estimate of damages as it assumes the abandonment of the premises will cost the landlord a full month's rent. As well, in this case, the landlord re-rented the premises on September 1, 2005 and will not suffer any damages due to the abandonment of the premises. Accordingly, the request for the June, 2005 rent is denied.

I find the respondent in breach of their obligation to pay the full amount of rent and find the rent arrears to be \$2735. An order shall issue requiring the respondent to pay the applicant rent arrears in the amount of \$2735.

Hal Logsdon
Rental Officer