

IN THE MATTER between **HEIN WOOLDRIK AND GERDA WOOLDRIK**,
Tenants, and **JOY STEWART**, Landlord;

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 **HAY RIVER, NT**.

BETWEEN:

HEIN WOOLDRIK AND GERDA WOOLDRIK

Tenants

- and -

JOY STEWART

Landlord

ORDER

IT IS HEREBY ORDERED:

1. Both applications are dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 11th day of October,
2005.

Hal Logsdon
Rental Officer

IN THE MATTER between **HEIN WOOLDRIK AND GERDA WOOLDRIK**,
Tenants, and **JOY STEWART**, Landlord.

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:

HEIN WOOLDRIK AND GERDA WOOLDRIK

Tenants

-and-

JOY STEWART

Landlord

REASONS FOR DECISION

Date of the Hearing: October 7, 2005

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Gearda Wooldrik, tenant
Joy Stewart, landlord

Date of Decision: October 7, 2005

REASONS FOR DECISION

The tenants' application was filed on August 3, 2005 and the Landlord's application was filed on August 29, 2005. As both applications relate to the same rental premises and tenancy agreement, with the consent of the parties, both matters were heard at a common hearing.

The tenancy agreement commenced on July 1, 2005 but the tenants took possession several days earlier and provided the landlord with the full security deposit of \$1100.00 and the first month's rent. The tenants vacated the premises on July 13, 2005 on short notice. After the tenants vacated the premises, the landlord retained the security deposit. No statement of the security deposit was issued to the tenants. The tenants now seek the return of the security deposit.

The landlord alleged that the tenants failed to give adequate notice and that as a result, she lost rent for the months of August and September, 2005. The landlord testified that upon learning of the tenants' intention of leaving, she placed the premises for rent with two realtors, put advertisements in two newspapers and contacted several companies, offering the premises for rent for \$1100.00 a month, the same amount of rent charged to the tenants. She testified that she showed the premises to prospective tenants and was unable to re-rent the premises until October 1, 2005. She sought compensation for lost rent for only the month of August, 2005 in the amount of \$1100.00.

There was some disagreement as to the term of the tenancy agreement but in my opinion, it is unimportant, as the compensation sought is equivalent to only one month's rent.

Section 18 of the *Residential Tenancies Act* permits a landlord to retain all or part of a security deposit for arrears of rent and repairs of tenant damage to the premises. In this matter, there were no arrears of rent and the parties agreed the premises were left clean and in good repair. Therefore, the landlord was obligated to return the security deposit of \$1100.00 with accrued interest, which is \$1.38.

Section 62 of the *Residential Tenancies Act* permits a rental officer, on the application of a landlord, to make an order requiring the tenant to compensate the landlord, for rent that would have come due if the tenancy agreement had continued, when a tenant abandons rental premises. Such compensation is limited to the actual losses of the landlord, who is obligated to do what is reasonable to re-rent the premises as soon as practicable. Compensation for lost rent can *not* be deducted from a security deposit. It is not arrears of rent. In this matter, I find that the landlord took reasonable steps to mitigate the loss of rent after the tenants gave short notice and vacated the premises. In my opinion, the landlord is entitled to compensation equivalent to the August, 2005 rent or \$1100.00.

It has been the practice of this tribunal, where a landlord repeatedly deducts compensation for lost rent from security deposits, to hear the tenant's application first and hear the landlord's application only after any order for the return of the security deposit to the tenant has been satisfied. As this appears to be the first occurrence of this practice by the landlord, I trust she will treat the return of security deposits and applications for compensation of lost rent in accordance with the Act in the future.

I find the retention of the security deposit not in accordance with the Act and find the landlord liable to return the security deposit and interest in the amount of \$1101.38. I find the tenants liable for lost rent in the amount of \$1100.00. The difference is the interest on the deposit of \$1.38 which I consider trivial. As the liability of each party to the other is equal, both applications shall be dismissed.

Hal Logsdon
Rental Officer