

IN THE MATTER between **VANESSA WORSLEY**, Tenant, and **JIVKO JIVKOV**,
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 **YELLOWKNIFE, NT.**

BETWEEN:

VANESSA WORSLEY

Tenant

- and -

JIVKO JIVKOV

Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 33(3)(c) of the *Residential Tenancies Act*, the Landlord shall pay compensation to the Tenant for interruption of heat to the rental premises in the amount of \$218.36.

2. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the Tenant shall pay the Landlord rent arrears in the amount of three hundred dollars (\$300.00).

DATED at the City of Yellowknife, in the Northwest Territories this 30th day of January, 2006.

Hal Logsdon
Rental Officer

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AND IN THE MATTER of a Hearing before **Hal Logsdon**, Rental Officer.

BETWEEN:

VANESSA WORSLEY

Tenant

-and-

JIVKO JIVKOV

Landlord

REASONS FOR DECISION

Date of the Hearing: January 25, 2006

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Vanessa Worsley, Tenant
Cassandra Ricketts, witness for the Tenant
Jivko Jivkov, Landlord (by telephone)

Date of Decision: January 27, 2006

REASONS FOR DECISION

The Tenant's application was filed on January 4, 2006 and alleged that the Landlord had interfered with the supply of a vital service (heat) and sought compensation related to the alleged breach of his obligation to supply heat. The Landlords application was filed on January 12, 2006 and alleged that the Tenant had failed to pay rent and had disturbed the landlord by leaving spoiled food in the refrigerator. The Landlord sought an order for rent arrears, compensation for the disturbance and termination of the tenancy agreement.

The Tenant testified that the Landlord left town on December 9, 2005 without leaving any information regarding who to contact should there be a problem with the premises. She stated that a leak developed in the laundry room on December 10, 2005 and that there was no heat in the premises from December 23, 2005 to December 28, 2005 forcing her to stay with her parents. She testified that she paid her parents \$100 for room and board. The Tenant's witness, who lived with the Tenant during November and December, 2005 confirmed the facts as set out by the Tenant. The Tenant also testified that her room was without power from January 17 to January 24, 2006 while the shared part of the accommodation had power. She stated that she had continued to live with her parents during this period and paid them \$50/day for room and board. She stated that she had not notified the Landlord of this problem, although he had returned from travel on December 28, 2005. The Tenant stated that she felt \$400 was reasonable compensation.

The Tenant stated that she had discussed compensation with the Landlord who became irritated and told her to pay what she thought was fair for January rent. She remitted \$300 in rent. The monthly rent for the premises is \$600.

The Landlord did not dispute the laundry room leak or the disruption of heat. He stated that the leak was minor and did no damage to any property belonging to the Tenant not did it affect the operation of the equipment in the laundry room. He stated that the heat was disrupted due to fuel exhaustion. The Landlord stated that the Tenant should have taken reasonable steps to arrange for the restoration of heat by calling a contractor. He stated he would have been willing to pay any costs related to the restoration of the heat. The Landlord disputed that there had been any disruption of the electrical service to the Tenant's room.

The Landlord stated that the Tenant had given him only \$300 for the January, 2006 rent and he did not feel that any compensation was reasonable.

The Landlord testified that the Tenant had left spoiled food in the refrigerator causing an odour which affected his office in the same building. He stated that he had notified the Tenant of the problem in writing on January 10 and entered the premises on January 11 and cleaned out the refrigerator. He sought compensation for the incident. The Tenant stated that the refrigerator was shared with the Landlord's other tenant who had vacated the premises. The Tenant stated that the food belonged to the other tenant and that she had not noticed any offensive odour.

Section 33 of the *Residential Tenancies Act* prohibits a landlord from causing a vital service to be withheld.

- 33. (1) In this section, "vital service" includes heat, fuel, electricity, gas, hot and cold water and any other public utility.**
- (2) No landlord shall, until the date the tenant vacates or abandons the rental premises,**
- (a) withhold or cause to be withheld the reasonable supply of a vital service that the landlord is obligated to supply under the tenancy agreement; or**
 - (b) deliberately interfere with the supply of a vital service, whether or not the landlord is obligated to supply that service under the tenancy agreement.**

The rent for the premises included the provision of heat. In my opinion, it is not reasonable for a landlord to expect a tenant to arrange for the restoration of heat or any other repair in the landlord's absence without some direction from the landlord. In this case there was none given prior to the Landlord's departure nor were there any persons identified to contact should there be any problems. In my opinion, the Tenant had little choice but to seek accommodation elsewhere due to the disruption of the heat and her expenses of \$100 are reasonable for a six day stay with her parents. As well, I believe compensation for six days rent is reasonable as the Tenant was not able to enjoy the premises during that period. I find that amount to be \$118.36.

In my opinion, the leak in the laundry did not cause any significant inconvenience to the Tenant nor did it

damage any of her property. Her request for compensation is denied.

I note that the Tenant did not notify the Landlord of any disruption of electricity to her room. If there was any disruption, and balance of evidence does not support the Tenant's allegation, the Landlord should have had an opportunity to address the problem. I find no breach of the landlord in the matter of the alleged interruption of electricity and the Tenant's request for compensation is denied.

There does not appear to be any agreement between the parties regarding deduction from the January, 2006 rent. Withholding rent is not a remedy available to a tenant when a landlord breaches an obligation. I find the Tenant in breach of her obligation to pay rent and find the rent arrears to be \$300.

The Tenant's premises consist of a room. Another tenant rented another room and both tenants shared a bath and kitchen, including the refrigerator. The other tenant had vacated the premises. If the other tenant left food in the refrigerator or other items in the shared area, in my opinion, it was not the responsibility of the Tenant to deal with these items. Rather it was the Landlord's responsibility. In any case, on the balance of evidence, I can not find that there was any offensive odour. The Landlord's request for compensation is denied.

I note that the Tenant has given notice to terminate this tenancy agreement on January 31, 2006. I see little merit in ordering the termination any earlier nor do I find compelling grounds to do so. The request for an order terminating the tenancy is denied.

In summary, I find the Landlord in breach of his obligation to provide heat and find reasonable compensation to be \$218.36. I find the Tenant in breach of her obligation to pay rent and find the rent arrears to be \$300. Therefore, deducting the compensation from the rent owing, the order may be satisfied by a payment of \$81.64 cents from the Tenant to the Landlord.

Hal Logsdon
Rental Officer