

IN THE MATTER between **JOSEPHINE LAMALICE**, Applicant, and **KYLE REID**, 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 **HAY RIVER, NT**.

BETWEEN:

JOSEPHINE LAMALICE

Applicant/Tenant

- and -

KYLE REID

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 14(6)(b) of the *Residential Tenancies Act*, the respondent shall return the security deposit to the applicant in the amount of eight hundred dollars (\$800.00).

DATED at the City of Yellowknife, in the Northwest Territories this 12th day of May, 2006.

Hal Logsdon
Rental Officer

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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:

JOSEPHINE LAMALICE

Applicant/Tenant

-and-

KYLE REID

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REASONS FOR DECISION

<u>Date of the Hearing:</u>	May 4, 2006
<u>Place of the Hearing:</u>	Hay River, NT via teleconference
<u>Appearances at Hearing:</u>	Josephine Lamalice, applicant Kyle Reid, respondent
<u>Date of Decision:</u>	May 4, 2006

REASONS FOR DECISION

The applicant testified that she had provided a deposit of \$800 to the respondent on December 23, 2005 in anticipation of premises becoming available for rent on January 15, 2006. The applicant stated that the premises were not available to rent on January 15 because the former tenants had not given up possession. She stated that she informed the respondent that she did not intend to rent the premises and the respondent advised her that the deposit would be forfeited. The applicant sought an order requiring the respondent to return the deposit.

The respondent did not dispute the facts as stated by the applicant but stated that the deposit was intended to hold the unit for the applicant. He stated that the applicant did not let him know that she would not be renting the premises until January 30, 2006, only days before he was to go on vacation. The parties agreed that a written tenancy agreement had been drafted but had not been signed by either party.

Section 14(5) of the *Residential Tenancies Act* prohibits deposits other than a security deposit as described in the Act.

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.

A security deposit as described in the Act is a deposit held in trust by a landlord for the term of a tenancy agreement. At the end of the tenancy agreement a landlord may deduct rent arrears and

repairs of damages from a security deposit

Therefore if the deposit collected by the applicant was intended to hold the premises or be a deposit for the first month's rent, it is not permitted pursuant to section 14(5) and must be returned. If the deposit was intended to be a security deposit in accordance with the Act, then it must also be returned as there were certainly no damages to the premises or rent arrears to be deducted as the applicant never took possession and the tenancy agreement never commenced.

An order shall issue requiring the respondent to return the deposit to the applicant in the amount of \$800.

Hal Logsdon
Rental Officer