IN THE MATTER between **STEPHANIE MCCOSHEN**, Applicant, and **VALERIE MEERES**, 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:

### STEPHANIE MCCOSHEN

Applicant/Landlord

- and -

### VALERIE MEERES

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 four hundred thirty seven dollars and thirty nine cents ($437.39).

        DATED at the City of Yellowknife, in the Northwest Territories this 23rd day of March, 2006.

                                                            _____
                                                            Hal Logsdon
                                                            Rental Officer

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BETWEEN:

## STEPHANIE MCCOSHEN

Applicant/Landlord

-and-

## VALERIE MEERES

Respondent/Tenant

## REASONS FOR DECISION

**Date of the Hearing:**      **March 21, 2006**

**Place of the Hearing:**      **Yellowknife, NT**

**Appearances at Hearing:**      **Stephanie McCoshen, applicant**
**Valerie Meeres, respondent**
**Sheila McGrath, witness for the respondent**

**Date of Decision:**      **March 21, 2006**

## REASONS FOR DECISION

The applicant alleged that the respondent vacated the rental premises without giving adequate notice, causing the loss of one month's rent. The applicant sought an order requiring the respondent to pay compensation for the loss.

The applicant rented a room to the respondent in an apartment where they shared common areas including kitchen facilities. The rent for the premises was $700/month and the respondent provided a $300 security deposit.

The applicant testified that the respondent vacated the premises on or about November 26, 2005 after giving only 1-2 days notice. The applicant retained the entire security deposit and accrued interest although she completed a statement of deductions which indicated a balance owing to the respondent of $152.61. The deductions included cleaning charges, long distance telephone charges and advertising expenses. The applicant testified that she advertised the premises but was unable to re-rent the premises until January 1, 2006.

The respondent disputed the existence of a tenancy agreement although she acknowledged that she paid rent to the applicant for the room and provided a security deposit. The respondent stated that she was repeatedly disturbed by the applicant and her guests and did not feel secure in the apartment because of the landlord's guests. She stated that she was forced to find other accommodation due to the lack of quiet enjoyment and security. The respondent also disputed the retention of the security deposit stating that the room was clean when she vacated and that the

rent was inclusive of all amenities, including long distance charges. The respondent also stated

that she believed another person moved into the apartment in December, 2005.

The *Residential Tenancies Act* defines a tenancy agreement as "an agreement between a landlord

and a tenant for the right to occupy rental premises, whether written, oral or implied, including

renewals of such an agreement." Clearly the respondent had sole possession of her room (the

rental premises) and paid rent to the landlord for the right to occupy. The fact that the parties did

not commit the contract to writing does not invalidate it.

As a month to month tenancy agreement which had been in existence for less than one year, the

applicant was entitled to 30 days notice to terminate at the end of any month. The alleged breach

of the landlord does not entitle the respondent to terminate without notice. I note also that the

respondent could have made an application to a rental officer to have the tenancy terminated by

order.

Having failed to give adequate notice or to seek the termination of the agreement by order, the

respondent is liable for lost rent to a maximum of one month subject to reasonable efforts on the

part of the applicant to mitigate loss by re-renting the premises as soon as practicable. The

applicant testified that she advertised the premises and could not re-rent them prior to January 1,

2006. Although the respondent appears to dispute this testimony, she offers no direct evidence

and I have no reason to question the credibility of the applicant's testimony. I find the

respondent's inadequate notice caused the applicant's loss of the December, 2005 rent in the

amount of $700.

In the matter of the security deposit, the deductions for cleaning and advertising are denied. The *Residential Tenancies Act* does not permit the retention of a security deposit for costs other than rent arrears and repair and cleaning costs for the rental premises. The advertising costs are a cost of doing business and would have been incurred by the landlord regardless of the respondent's notice.  By the applicant's testimony, much of the cleaning involved the common areas which are not the sole responsibility of the respondent. Although the respondent stated that her understanding of the agreement was that the rent included everything, including long distance charges, I can not accept that such an agreement was intended by the applicant. Surely, no landlord would agree to provide unlimited long distance use for a fixed monthly rent. I find the long distance charges part of the rent and reasonable to deduct from the deposit.

I find the compensation for lost rent, net of the retained security deposit, to be $437.39, calculated as follows:

| | |
|---|---|
| Security deposit and interest | $302.61 |
| Long distance charges | (40.00) |
| Security deposit credit due respondent | $262.61 |
| Less compensation for lost rent | (700.00) |
| Amount due applicant | $437.39 |

An order shall issue requiring the respondent to pay the applicant compensation for lost rent in the amount of $437.39.

Hal Logsdon
Rental Officer