

IN THE MATTER between **MIKE MCGRATH**, Applicant, and **GREG SPRONKEN**, 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:

MIKE MCGRATH

Applicant/Landlord

- and -

GREG SPRONKEN

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 45(4)(c) of the *Residential Tenancies Act*, the respondent shall pay the applicant costs of utilities which were paid on his behalf in the amount of three thousand four hundred ninety dollars and eighty nine cents (\$3490.89).

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

Hal Logsdon
Rental Officer

IN THE MATTER between **MIKE MCGRATH**, Applicant, and **GREG SPRONKEN**, 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.

BETWEEN:

MIKE MCGRATH

Applicant/Landlord

-and-

GREG SPRONKEN

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: May 23, 2006

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Mike McGrath, representing the applicant
Greg Spronken, respondent

Date of Decision: May 30, 2006

REASONS FOR DECISION

The applicant alleged that the respondent failed to pay for water and fuel costs during the term of the tenancy agreement and sought an order requiring the respondent to pay compensation for utility costs which were paid on his behalf.

The tenancy agreement between the parties was terminated on July 31, 2005. The application was filed on April 27, 2006 nearly nine months after the tenancy ended. Section 68 of the *Residential Tenancies Act* sets out a time limit for filing applications.

- 68. (1) An application by a landlord or a tenant to a rental officer must be made within six months after the breach of an obligation under this Act or the tenancy agreement or the situation referred to in the application arose.**
- (2) A landlord or a tenant making an application to a rental officer for an order or a decision under this Act must file the application with the rental officer and serve a copy of the application on the other party within at least 14 days after the filing of the application.**
- (3) A rental officer may extend the time for the making of an application to the rental officer, whether or not the time for making the application to a rental officer has expired, where the rental officer is of the opinion that it would not be unfair to do so.**

The applicant stated that he had made an application to the Territorial Court for an order on October 18, 2005 and that the application had been heard in April, 2006 and dismissed. The applicant stated that the Court directed him to seek remedy through an application to a rental officer. The applicant stated that since the tenancy agreement had been terminated he believed the matter was no longer a landlord/tenant matter and outside the jurisdiction of the rental officer. The

applicant sought an extension of the time limit for filing.

The respondent noted that the applicant was an established landlord and should be knowledgeable about the law pertaining to landlord and tenant matters. He also stated that he had filed a statement of defence with the Court in which he stated that he would prefer the dispute be heard by a rental officer. The respondent stated that he had numerous issues with the landlord and when no application to a rental officer was made, he assumed that the landlord had decided to not pursue his claim if he would not pursue any of his issues. The applicant acknowledged receiving the statement of defence but stated that he considered a hearing before a rental officer to be an option rather than a requirement.

Section 69 of the *Residential Tenancies Act* does provide for applications to be made to the Court but only with the agreement of the landlord and tenant.

69. Notwithstanding any other provision of this Act, where this Act provides that an application is to be made to a rental officer, the application may be made, within the time limit set out in subsection 68(1), to a judge of the Supreme Court or territorial judge only where the landlord and tenant agree to apply to a judge of the Supreme Court or territorial judge.

Clearly, the respondent did not agree to the application being made to the Court.

I agree with the respondent that the landlord should have understood the jurisdiction of the rental officer. The applicant has appeared before a rental officer on four previous occasions, two as applicant and two as respondent. All of the matters involved tenancy agreements which were terminated prior to the hearing and two involved claims for utilities paid on behalf of the tenant.

However, I must also consider that the applicant did take timely, but incorrect, action to seek relief and that a tenant's breach of the obligation to pay for utilities should result in compensation to the landlord. In my opinion, justice is best served if the extension is granted and doing so is not unfair to either party.

The applicant stated that the respondent had failed to pay for the full costs of water and that part of these costs were added to his property taxes and part were paid directly to the municipality on behalf of the respondent. The applicant provided a statement of the water account which indicated that the applicant had paid a total of \$2789.25 on behalf of the respondent including penalties for late payment charged by the municipality.

The applicant also testified that the fuel tank was empty at the termination of the tenancy agreement and that the cost to fill it was \$701.64.

The respondent did not dispute the allegations but stated that a separation agreement between himself and his spouse had been made and filed in the British Columbia Court making his spouse responsible for all previous debts incurred. The parties agreed that the tenancy agreement was made between the applicant and the respondent and his spouse as joint tenants. The application was made against Mr. Spronken only, which is the right of the landlord. In my opinion, the separation agreement has no bearing on this order or the right of the landlord to seek relief from the respondent only.

I find the respondent in breach of his obligation to pay for utilities during the term of the tenancy.

I find the outstanding balance of fuel and water paid on behalf of the respondent to be \$3490.89.

An order shall issue requiring the respondent to pay the applicant utility costs which were paid on his behalf in the amount of \$3490.89.

Hal Logsdon
Rental Officer