

IN THE MATTER between **MARK DAHL AND JULIE DAHL**, Applicants, and
SCOTT CUTTING AND MARY KODAKIN, Respondents;

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:

MARK DAHL AND JULIE DAHL

Applicants/Landlords

- and -

SCOTT CUTTING AND MARY KODAKIN

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18(5) of the *Residential Tenancies Act*, the applicants shall apply the balance of the security deposit in the amount of two hundred eighty three dollars and eighty one cents (\$283.81) toward the satisfaction of the previous order (File #10-9026, filed on May 25, 2006).

DATED at the City of Yellowknife, in the Northwest Territories this 1st day of August,
2006.

Hal Logsdon
Rental Officer

IN THE MATTER between **MARK DAHL AND JULIE DAHL**, Applicants, and,
SCOTT CUTTING AND MARY KODAKIN Respondents.

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter
R-5 (the "Act");

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-and-

SCOTT CUTTING AND MARY KODAKIN

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	July 27, 2006
<u>Place of the Hearing:</u>	Yellowknife, NT
<u>Appearances at Hearing:</u>	Mark Dahl, applicant Julie Dahl, applicant Scott Cutting, respondent
<u>Date of Decision:</u>	August 1, 2006

REASONS FOR DECISION

The tenancy agreement between the parties was terminated on May 25, 2006 by order of the rental officer (File # 10-9026, filed on May 25, 2006) and the respondents vacated the premises in accordance with that order. The respondents were ordered to pay rent arrears of \$4364 to the applicants. The order did not include consideration of the security deposit held by the applicants as the respondents were still in possession of the rental premises.

The applicants now allege that the respondents failed to leave the fuel tank full at the termination of the tenancy agreement, failed to pay for the full cost of water during the term of the agreement and caused damages to the premises. The applicants also seek compensation for costs to change travel plans due to the non-payment of rent by the respondents and interest on the rent arrears. In total the applicants seek relief in the amount of \$2294.83 calculated as follows:

Fuel costs	\$631.04
Water costs	811.25
Damages to premises	2158.10
Compensation for travel fees	677.31
Interest on rent arrears	64.39
Less security deposit and interest	<u>(2047.26)</u>
Relief sought	\$2294.83

The respondent did not dispute the allegations pertaining to unpaid fuel and water. The written tenancy agreement between the parties obligates the respondents to pay for water and fuel during the term of the tenancy agreement. The applicants provided invoices and receipts in evidence documenting the costs of the utilities.

The rental premises consist of a single family dwelling. The residential complex includes a garage. Although not specifically identified in the written tenancy agreement as a facility available to the tenants, the parties agreed that the garage was made available to the respondents for their use. The tenancy agreement lists all furnishings and appliances as facilities for the use of the tenants during the term of the agreement. The parties agreed that other household items such as kitchen utensils were provided to the respondents for their use during the tenancy agreement.

The applicants rented the premises to the respondents for a term to coincide with their travel plans. The applicants stored some of their personal possessions in the garage. The applicants allege that a number of these possessions are damaged and stated that a dog, presumably kept in the garage by the respondents, had damaged the possessions. A list of the alleged damages, photographs and repair or replacement estimates were provided in evidence.

The applicants testified that since the issuance of the previous order (File # 10-9026, filed on May 25, 2006), no payments of rent had been received from the respondents. The respondents did not dispute the allegation. The penalty claimed includes interest to the day of the hearing.

The respondent stated that he did not think he should be responsible for the stored possessions of the applicants and noted that there was no list of the stored possessions or any evidence of the condition of the stored goods. There was no mention of any obligation of the tenant to care for the stored goods in the tenancy agreement or any evidence of an inspection report setting out the condition or the contents of the premises at the commencement of the tenancy agreement.

Section 15(1) of the *Residential Tenancies Act* and section 9(1) of the tenancy agreement require a condition report.

- 15. (1) At the commencement of the tenancy and when a security deposit is requested, a landlord and tenant shall sign a document that sets out the condition and contents of the rental premises.**
- 9.(1) The landlord and tenant agree that the landlord and the tenant will inspect the premises at the commencement of the tenancy and on surrender of possession at or following the expiration of the tenancy and that the condition of the premises will be noted on the document attached to this Agreement. The attached document shall be signed by the parties performing the inspection.**
- (2) The landlord and tenant agree that the inspection document may be used as proof of the condition of the premises at the times indicated and in determining the appropriateness of any deductions taken by the landlord from the security deposit in accordance with section 6.**

Section 42 of the *Residential Tenancies Act* obligates a tenant to repair any damages to the premises.

- 42. (1) A tenant shall repair damage to the rental premises and the residential complex caused by the wilful or negligent conduct of the tenant or persons who are permitted on the premises by the tenant.**

Rental premises, residential complex, and services and facilities are defined as follows:

"rental premises" means a living accommodation or land for a mobile home used or intended for use as rental premises and includes a room in a boarding house or lodging house.

"residential complex" means a building, related group of buildings or mobile home park, in which one or more rental premises are located and includes all common areas, services and facilities available for the use of tenants of the building, buildings or park.

"services and facilities" includes furniture, appliances and furnishings, parking and

related facilities, laundry facilities, elevator facilities, common recreational facilities, garbage facilities and related services, cleaning or maintenance services, storage facilities, intercom systems, cable television facilities, heating facilities or services, air-conditioning facilities, utilities and related services, and security services or facilities.

In my opinion, it is not the obligation of the respondents to repair or replace many of the alleged damaged or missing articles. The *Act* only obligates the tenant to repair damages to the rental premises or residential complex, which includes the services and facilities available for the use of the tenants. Many of the personal belongings alleged to have been damaged, were not available for use by the tenants nor were they part of the rental premises or residential complex. There is no indication in the written tenancy agreement that the tenants are obliged to care for the stored goods of the applicant.

There are a few items which were alleged to be damaged or missing that were obviously left for the use of the respondents during the term of the tenancy agreement. A lawn mover pull cord was allegedly chewed by a dog and repaired by the applicants at a cost of \$54. The respondent stated that he did keep a dog for a period of time and that it did stay in the garage during cold weather. A hose timer with a replacement value of \$22.46 was allegedly left outside to freeze. A paring knife with a replacement value of \$54.02 was allegedly missing. A portable stereo with a replacement value of \$96.29 was allegedly missing. A throw blanket with a replacement value of \$30 and left in the premises was allegedly missing. Although there is no evidence that the contents of the rental premises and their condition were documented at the commencement of the tenancy agreement, on the balance of probabilities, I believe these items were provided by the

applicants for the use of the respondents during the term of the tenancy and were damaged or not returned by the respondents. In my opinion, the repair or replacement costs are reasonable.

In my opinion, the remainder of the goods were not provided by the applicants for the use of the respondents and were not a part of either the rental premises or the residential complex. As the tenancy agreement did not obligate the respondents to care for the stored goods of the applicants during the tenancy agreement, I have no jurisdiction to consider relief to the applicants. If the applicants have a remedy against the respondents for the remainder of the allegedly damaged or missing property, a matter on which I express no opinion, it must be found elsewhere than in the *Residential Tenancies Act*.

The applicants stated that due to the respondent's failure to pay the rent, they were forced to curtail their travel plans and had to return to Canada early. They sought compensation in the amount of \$677.31 and provided a receipt in evidence indicating the fee paid to change their airline tickets. Section 41 of the *Residential Tenancies Act* outlines a tenant's obligation to pay rent and sets out the remedies that may be ordered by a rental officer.

- 41. (1) A tenant shall pay to the landlord the rent lawfully required by the tenancy agreement on the dates specified by the tenancy agreement.**
- (2) A tenant who pays his or her rent later than the dates specified by the tenancy agreement is liable to a penalty.**
- (3) The penalty referred to in subsection (2) is calculated for each day that the rent is late by multiplying**
 - (a) the rent due,**

by

(b) the bank deposit rate on deposit receipts for 30 days, as determined and published by the Bank of Canada in the periodic publication entitled the *Bank of Canada Review*, in effect on January 1 in the year that the late payment is calculated,

and the total is divided by 365.

- (4) Where, on the application of a landlord, a rental officer determines that a tenant has failed to pay rent in accordance with subsection (1), the rental officer may make an order**
- (a) requiring the tenant to pay the rent owing and any penalty for late payment;**
 - (b) requiring the tenant to pay his or her rent on time in the future; or**
 - (c) terminating the tenancy on the date specified in the order and ordering the tenant to vacate the rental premises on that date.**

As there is no monetary remedy available to a landlord pursuant to the Act other than an order requiring a tenant to pay rent arrears and the applicable penalty, the request for compensation for the fees paid to change the applicant's travel plans must be denied.

The previous order (File # 10-9026, filed on May 25, 2006) did not consider the interest on late rent payments. The applicants have calculated interest on the rent arrears as \$64.39 which I find to be in accordance with the *Act*.

I find the respondents in breach of their obligation to pay for water and fuel during the tenancy agreement. I find the water costs to be \$811.25 and the fuel costs to be \$631.04. I find the respondents in breach of their obligation to repair damages to services and facilities provided to the tenants during the tenancy agreement and find the costs of \$256.77 to be reasonable. I find

the applicant entitled to claim interest on the rent arrears and find the amount of \$64.39 to be calculated in accordance with the *Act*.

Considering the retained security deposit and accrued interest, I find an amount owing to the respondents of \$283.81 calculated as follows:

Security deposit	\$2000.00
Interest	47.26
Fuel costs	(631.04)
Water costs	(811.25)
Repairs/replacements	(256.77)
Interest on arrears	<u>(64.39)</u>
Balance owing respondents	\$283.81

As the previous order did not consider the retained security deposit because the respondents were still in possession of the premises, the balance of the security deposit shall be applied to the satisfaction of that order and not returned to the respondents, bringing the balance of rent owing to \$4080.19 calculated as follows:

Previous order	\$4364.00
Balance owing to respondents	<u>(283.81)</u>
Unsatisfied balance of previous order	\$4080.19

An order shall issue requiring the applicants to apply the balance of the security deposit in the amount of \$283.81 to the satisfaction of the previous order.

Hal Logsdon
Rental Officer