

IN THE MATTER between **PENELOPE SHAW**, Applicant, and **GILLIAN MCNAUGHTON**, 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:

PENELOPE SHAW

Applicant/Landlord

- and -

GILLIAN MCNAUGHTON

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant rent arrears in the amount of four hundred ninety three dollars and seventy seven cents (\$493.77).

DATED at the City of Yellowknife, in the Northwest Territories this 22nd day of September, 2006.

Hal Logsdon
Rental Officer

IN THE MATTER between **PENELOPE SHAW**, Applicant, and **GILLIAN MCNAUGHTON**, 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:

PENELOPE SHAW

Applicant/Landlord

-and-

GILLIAN MCNAUGHTON

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: September 20, 2006

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Penelope Shaw, applicant
Kerry King, representing the respondent
David McNaughton, witness for the respondent

Date of Decision: September 22, 2006

REASONS FOR DECISION

The parties entered into a written tenancy agreement commencing on September 1, 2005 for a term ending on April 30, 2006. The respondent gave written notice on March 27, 2006 to terminate the tenancy agreement on May 31, 2006. The applicant served a notice of early termination on the respondent on May 12, 2006 seeking vacant possession or full payment of the rent by May 22, 2006. The applicant testified that the premises were abandoned on or before May 30, 2006 and she took possession of the premises on that day.

The applicant retained the security deposit and filed an application to a rental officer on July 18, 2006 seeking rent arrears, compensation for lost rent, and costs related to cleaning and repairs of damages in excess of the retained security deposit. The applicant sought relief in the amount of \$2292.95.

Rent Arrears

The respondent's witness, her father, testified that he had delivered the \$600 for the April, 2006 rent to the respondent's workplace for pick-up by the landlord. He stated that the cash was counted and placed in a sealed envelope. A signed statement from an employee at the respondent's workplace states that she saw the \$600 being counted and that she delivered it, in a sealed envelope to another employee who locked it in the safe. The applicant alleged that when she picked up the envelope it contained only \$580.

The applicant alleged that the May, 2006 rent of \$600 was unpaid. The respondent's notice to terminate implies that the landlord agreed that the \$600 security deposit would serve as the last month's rent. The applicant denies accepting the \$600 for the last month's rent.

The evidence supports the respondent's claim that the full \$600 rent was paid in April, 2006.

There is no dispute that the \$600 rent for May, 2006 was not paid. The tenancy agreement clearly sets out a security deposit of \$600. Section 14(5) of the *Residential Tenancies Act* prohibits a landlord from collecting the last months rent in advance. The security deposit is not the last month's rent.

I find the respondent in breach of her obligation to pay the May, 2006 rent in the amount of \$600.

Repairs of Damages

The applicant sought costs related to the repair of damages to the premises in the amount of \$1049.48. Included in this amount is the estimated loss of value of an antique chest which was allegedly damaged by the respondent. Other repairs included the replacement of a door to the propane shed, lock changes and the repair of screens. The applicant alleges that some of the keys provided to the respondent were not returned.

The written tenancy agreement, which is in the form of the Schedule to the *Residential Tenancies Act*, notes that an inspection document shall be signed by both parties at the commencement of the tenancy. No such document was completed. The applicant stated that it was her practice to

substitute photographs for the required document. Although the photographic evidence provided by the applicant is useful to determine the condition of the premises at the end of the tenancy, it fails to adequately document the condition of the premises at the commencement of the tenancy. None of the photographs can be verified as to the date they were taken and, more importantly, their authenticity is not acknowledged by the respondent. Two photographs which purport to indicate the condition of the antique chest prior to the tenancy agreement are undated and lack the detail to accurately determine the condition of the chest. As well, the value of the chest is unauthenticated.

The respondent's witness stated that he personally returned the keys which had been in the respondent's possession to the landlord. The applicant claims that some keys were not returned, including a master key. It is unclear from the evidence what keys were provided to the respondent at the commencement of the tenancy and whether there was a requirement to replace the locking mechanisms in the premises.

In my opinion, there is not sufficient evidence to conclude that the damages claimed by the applicant were caused by the respondent during the term of the tenancy. The request for relief is therefore denied.

Cleaning

The photographic evidence indicates that the premises were not left in a reasonably clean state. The cleanliness of the premises at the beginning of the tenancy is irrelevant. The costs of

cleaning claimed by the applicant including the transportation to and from the premises are \$504.50. In my opinion, these costs are reasonable.

Miscellaneous Expenses

The applicant sought other expenses related to photographic costs, photocopying and three hours of her labour. In my opinion, these expenses relate to normal business expenses of a landlord and are not directly related to the breach of the tenancy agreement or Act. The request for compensation in the amount of \$118.97 is denied.

Compensation for Lost Rent

Section 62 of the *Residential Tenancies Act* permits a rental officer to make an order for compensation of lost rent on the abandonment of the premises by the tenant. The applicant seeks compensation for the month of June, 2006 in the amount of \$600. If these premises were abandoned, they were abandoned only days before the tenancy agreement was to be terminated by notice of the tenant to the landlord. That notice to terminate was effective for May 31, 2006. The tenant has no liability for lost rent past that date. The applicant's request for compensation for the June rent is therefore denied.

In summary, applying the retained security deposit and accrued interest first to cleaning costs, I find rent arrears in the amount of \$493.77, calculated as follows:

Security deposit	\$600.00
Interest on deposit	10.73
Cleaning costs (transportation)	(219.50)

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Cleaning costs (labour)	(285.00)
Rent arrears	<u>(600.00)</u>
Amount due applicant	\$493.77

An order shall issue requiring the respondent to pay the applicant rent arrears in the amount of \$493.77.

Hal Logsdon
Rental Officer