

IN THE MATTER between **STAN KUKOVICA**, Applicant, and **ALLEN AUGIER**,
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 **FORT SMITH, NT**.

BETWEEN:

STAN KUKOVICA

Applicant/Landlord

- and -

ALLEN AUGIER

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 seven hundred dollars (\$700.00).

DATED at the City of Yellowknife, in the Northwest Territories this 19th day of
December, 2006.

Hal Logsdon
Rental Officer

IN THE MATTER between **STAN KUKOVICA**, Applicant, and **ALLEN AUGIER**,
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:

STAN KUKOVICA

Applicant/Landlord

-and-

ALLEN AUGIER

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	December 12, 2006
<u>Place of the Hearing:</u>	Fort Smith, NT via teleconference
<u>Appearances at Hearing:</u>	Stan Kukovica, applicant Allen Augier, respondent (by telephone)
<u>Date of Decision:</u>	December 19, 2006

REASONS FOR DECISION

The parties entered into a written tenancy agreement for a two year term commencing on September 1, 2005. In early May, the respondent verbally notified the applicant that he would be leaving the premises on May 30, 2006. He vacated the premises on that date without the applicant's agreement to terminate the tenancy agreement. There was no request by the respondent to assign the tenancy agreement. The rent was paid in full to May 31, 2006.

The applicant testified that he advertised the premises in the newspaper but was not able to find a suitable tenant until September 15, 2006 when he re-rented the premises. The applicant testified that he took applications from 12-15 prospective tenants but did not find any of them suitable due to insufficient income and/or poor references. The premises were re-rented for \$50/month more than what the respondent was paying for rent. The applicant stated that the rent for the premises was normally \$750/month but that he had reduced it to \$700/month for the respondent in consideration of the longer term tenancy agreement.

Both the applicant and the respondent were employed at one of the remote mines and worked rotational shifts. The respondent stated that he had lost his job and assumed the care of his mother and was forced to leave the community. He stated that while he was still in possession of the premises, two persons had inquired about renting the apartment and were referred to the landlord.

A term tenancy agreement may only be terminated by the tenant's notice to the landlord at the end of the term. When a tenant fails to provide such notice they may be liable for rent that would have come due if the tenancy had continued. However, the tenant's liability for lost rent is subject to the landlord's obligation to mitigate the loss. Sections 62 and 5 of the *Residential Tenancies Act* sets out the tenant's liability and the landlord's obligation to mitigate.

- 62.(1) Where a tenant abandons a rental premises, the tenancy agreement is terminated on the date the rental premises were abandoned but the tenant remains liable, subject to subsection 9(2), to compensate the landlord for loss of future rent that would have been payable under the tenancy agreement. (note that the reference to section 9(2) is an error in the Act and should read section 5(2)).**
- (2) Where, on the application of a landlord, a rental officer determines that a tenant has abandoned a rental premises, the rental officer may make an order requiring the tenant to pay to the landlord the compensation for which the tenant is liable by reason of subsection (1).**
- 5.(1) Where a landlord or tenant is liable to the other for damages as a result of a breach of a tenancy agreement or this Act, the landlord or tenant entitled to claim damages shall mitigate his or her damages.**
- (2) Without limiting subsection (1), where a tenant terminates a tenancy agreement, contravenes a tenancy agreement, or vacates or abandons rental premises, other than in accordance with this Act or the tenancy agreement, the landlord shall rent the rental premises again as soon as is practicable and at a reasonable rent in order to mitigate the damages of the landlord.**

The respondent failed to give proper notice and is therefore liable subject to section 5. The premises were obviously of some interest to prospective tenants as a considerable number made application to the landlord to rent them. In my opinion, section 5(2) does not oblige the landlord to rent to anyone in order to mitigate his damages but there must be some limitation applied to how selective the landlord can be. It is not reasonable for a landlord to wait until the ideal tenant

appears if it is at the former tenant's expense. "As soon as is practicable" does not, in my opinion, imply that the landlord may apply their own highly selective tenant selection criteria. On the contrary, it implies that practical, commonly used criteria should be applied.

There was no evidence provided by the applicant to support the rejection of the 12-15 applications the applicant received other than the testimony of the applicant that they did not have sufficient income or suitable references. In my opinion, in a rental market such as Fort Smith, it would be unusual for any landlord to reject 12-15 applications for a vacant unit over a period of more than three months. Considering that the respondent made it known to the applicant in early May that he would be leaving at the end of that month, it is not practical or reasonable that the applicant was unable to re-rent the premises until mid-September, given that 12-15 people appeared to be willing to rent them. In my opinion, the applicant has not provided sufficient evidence of his efforts to mitigate damages to support a claim equivalent to three months rent.

In my opinion, the premises could have practically been re-rented by July 1, 2006 and the reasonable damages to the applicant should be limited to one months rent or \$700. An order shall issue requiring the respondent to pay the applicant compensation for lost rent in the amount of \$700.

Hal Logsdon
Rental Officer