

IN THE MATTER between **CANDACE J. SEDDON-DAVIES**, Applicant, and **DAVID STEWART**, 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:

CANDACE J. SEDDON-DAVIES

Applicant/Landlord

- and -

DAVID STEWART

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 forty dollars and twenty five cents (\$40.25).
2. Pursuant to section 62(2) of the *Residential Tenancies Act*, the respondent shall pay the applicant compensation for lost rent in the amount of eight hundred dollars (\$800.00).

DATED at the City of Yellowknife, in the Northwest Territories this 25th day of January, 2006.

Hal Logsdon
Rental Officer

IN THE MATTER between **CANDACE J. SEDDON-DAVIES**, Applicant, and **DAVID STEWART**, 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:

CANDACE J. SEDDON-DAVIES

Applicant/Landlord

-and-

DAVID STEWART

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: January 19, 2006

Place of the Hearing: Inuvik, NT via teleconference

Appearances at Hearing: Candace J. Seddon-Davies, applicant
David Stewart, respondent

Date of Decision: January 19, 2006

REASONS FOR DECISION

The applicant alleged that the respondent had vacated the premises without adequate notice, causing a loss of future rent. The applicant also alleged that the respondent had failed to pay phone and internet charges and charges for food and incidental household items. The applicant sought an order requiring the respondent to pay compensation for lost rent and costs related to other services provided by the landlord.

The parties agreed that the tenancy agreement between them was oral and obligated the tenant to pay monthly rent of \$800 plus costs of internet and phone services which were supplied by the landlord. The premises consist of a room and the landlord and tenant shared bathroom and kitchen facilities.

The applicant testified that the respondent vacated the premises on November 26, 2005 without giving notice. The applicant testified that she advertised the premises and re-rented them on January 01, 2006 losing rental revenue for December, 2005 in the amount of \$800. The applicant sought compensation of \$800 plus late payment charges. The applicant provided a copy of the advertisement in evidence. The respondent did not dispute the facts but stated that the relationship between the parties had become so strained as to make the continuation of the tenancy impossible.

The applicant testified that there remained outstanding phone and internet charges in the amount

of \$40.25. The respondent did not dispute that the amount was due and payable to the landlord.

The applicant testified that the parties had agreed to share miscellaneous household incidental expenses such as laundry detergent, soap, food staples, etc. She estimated that the respondent had consumed about \$100 worth of these items during the tenancy and had paid her \$40, resulting in an amount owing of \$60. She sought compensation in that amount. The respondent agreed that the parties were to share these costs but stated that \$60 was a more accurate estimate of items used.

The strained relationship between the parties did not entitle the respondent to abandon the premises. He could have given notice to quit or made application to a rental officer to terminate the tenancy agreement by order. His abandonment of the premises with no notice make him potentially liable for the landlord's loss of rent. Regardless of whether the tenancy agreement was made for a term or was month-to-month, the liability of a tenant who abandons rental premises is limited to the actual losses of the landlord. In this case the landlord lost one month's rent or \$800. The applicant stated that after the respondent vacated the premises, she committed herself to a tenancy agreement on December 6, 2005 to commence on January 1, 2006. She stated that she did get additional inquiries about the premises after December 6, but could not consider any other offers to rent the premises. Section 5 of the *Residential Tenancies Act* sets out a landlord's obligation to mitigate loss.

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.**

In my opinion, the applicant took reasonable steps to rent the premises as soon as was practicable. It is possible that the applicant could have shown the premises throughout the month of December, hoping to rent the premises during that month and thereby reducing her losses to an amount less than a full month's rent. However, doing so would have involved a risk of losing even more rent as most prospective tenants are required to give notice to their current landlords. I find the respondent's liability for compensation to be one month's rent or \$800. Penalties for late rent apply only to rent pursuant to section 41, not to compensation. The applicant's request for late charges is denied.

The applicant is entitled to the uncontested charges for telephone and internet. These amounts are considered rent as they are "services and facilities" provided by the landlord.

In my opinion, the charges for food and household incidentals can only be considered rent if the parties had agreed on how they were to be charged. Unless the charges for these items can be definitively described (such as charges per meal, monthly charges, or costs of specific items), they can not be considered part of the tenancy agreement. Consequently, the applicant's request for compensation for these items is denied.

An order shall issue requiring the respondent to pay the applicant compensation for lost rent in the amount of \$800 and rent arrears in the amount of \$40.25.

Hal Logsdon
Rental Officer