

IN THE MATTER between **STEPHANE FORTIN**, Landlord, and **MICHAEL NEMCSOK**, Tenant;

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:

STEPHANE FORTIN

Landlord

- and -

MICHAEL NEMCSOK

Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 62(2) of the *Residential Tenancies Act* the tenant shall pay the landlord compensation for lost rent in the amount of one thousand five hundred fifty eight dollars and sixty one cents (\$1558.61).

DATED at the City of Yellowknife, in the Northwest Territories this 20th day of June, 2007.

Hal Logsdon
Rental Officer

IN THE MATTER between **STEPHANE FORTIN**, Landlord, and **MICHAEL NEMCSOK**, Tenant;

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:

STEPHANE FORTIN

Landlord

-and-

MICHAEL NEMCSOK

Tenant

REASONS FOR DECISION

Date of the Hearing: June 19, 2007

Place of the Hearing: Yellowknife, NT via teleconference

Appearances at Hearing: Stephane Fortin, Landlord
Michael Nemcsok, Tenant

Date of Decision: June 20, 2007

REASONS FOR DECISION

Both applications deal with the same tenancy agreement and rental premises. With the agreement of both parties, both matters were heard at a common hearing.

The parties entered into a term tenancy agreement commencing on September 15, 2006 and ending on September 15, 2007. The tenancy agreement between the parties was terminated on March 14, 2007 when the tenant vacated the premises. The landlord filed an application on March 28, 2007 seeking compensation for lost rent and cleaning costs. The tenant filed an application on April 20, 2007 seeking the return of the security deposit.

THE LANDLORD'S APPLICATION

The landlord alleged that the tenant had abandoned the rental premises prior to the expiry of the tenancy agreement and sought compensation for lost rent for the remainder of the term in the amount of \$9000. The landlord also sought compensation for lost wages (\$6825), travel expenses (\$2000), advertising costs (\$40) and costs for professional carpet cleaning (\$75).

The tenant disputed the allegations stating that the landlord served a notice of rent increase to be effective on March 15, 2007 which he elected to treat as a notice of termination to be effective on March 14, 2007 pursuant to section 47 of the *Residential Tenancies Act*. The tenant provided a copy of his written notice in evidence.

The landlord acknowledged that he had issued a notice of rent increase by E-mail on December 22, 2006 to be effective on March 15, 2007. The tenant questioned the rent increase in an E-mail response to the landlord and the landlord responded by E-Mail on December 27, 2007 writing,

I'd like to apologize to you for my mistake. I should of done some research before jumping to the gun. I read over our rental agreement and found as well information in The Residential Tenancies Act about rental increase/decrease. First of all, we have a one full year agreement and secondly, no change can be done to the price of rent for twelve months.

The landlord testified that he intended the December 27, 2006 E-mail to rescind the previous notice of rent increase.

The tenant stated that he did not take the landlord's December 27, 2007 E-mail as a revocation of the notice of rent increase. The tenant served notice on the landlord by E-mail on January 17, 2007 and by registered mail sent on January 12, 2007 that he was electing to take the notice of rent increase as a notice of termination effective March 14, 2007.

The landlord testified that he advertised the premises for rent on or about March 1, 2007 and showed the premises to prospective tenants. The landlord testified that he entered into a tenancy agreement with a prospective tenant which was to commence on May 1, 2007 but the tenant failed to take possession and abandoned the tenancy agreement. The landlord stated that he has since decided to sell the property.

The landlord also alleged that the carpets in the premises had not been steam cleaned and sought compensation of \$75. Both the landlord and tenant stated that the carpets had been vacuumed and were reasonably clean.

In my opinion, the E-mail correspondence between the parties indicates that after the tenant called the landlord's attention to the fact that their tenancy agreement was made for a term without any provision for a rent increase during the term, the landlord acknowledged that he was in error and apologised for issuing the notice. Although words such as "rescind", "cancel" or "withdraw" do not appear in the correspondence, in my opinion, any reader would reasonably conclude that the landlord realized he had erred and no longer intended to raise the rent on March 15, 2007. In my opinion, a tenant's election to take a notice of rent increase as a notice of termination can only be made in the presence of an effective notice of rent increase.

Notwithstanding that the landlord withdrew the rent increase notice before the tenant served his notice of intention on the landlord, the landlord's notice was never effective as it was not consistent with the Act. Therefore, the tenant abandoned the premises on March 14, 2007 and is liable for lost rent.

Section 62(1) sets out a tenant's liability for lost rent on abandonment.

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.

Clearly, section 62 limits the compensation to rent and not lost wages, travel expenses or

advertising. Therefore the landlord's request for compensation must be limited to lost rent only. Although the tenancy agreement between the parties contains an accelerated rent provision in Article 6.1., Section 13 of the *Residential Tenancies Act* renders such provisions ineffective.

- 13. No tenancy agreement shall contain any provision to the effect that a breach of the tenant's obligation under the tenancy agreement or this Act results in the whole or any part of the remaining rent becoming due and payable or results in a specific sum becoming due and payable, and a provision of this kind is of no effect.**

Therefore the compensation due to landlord must be equal to his actual losses and is subject to his efforts to mitigate the loss.

The tenant argued that the landlord had failed to take prompt action to re-rent the premises when he learned in January, 2007 of the tenant's intention to vacate on March 14, 2007. My reading of the E-mail correspondence between the parties indicates that the landlord continued to urge the tenant to recognize the landlord's cancellation of the rent increase notice and reconsider the tenant's grounds to terminate the agreement. In my opinion, the landlord had reason to believe that the tenant would eventually honour the term of the agreement until he learned in March, 2007 that the tenant had arranged to have the electrical account transferred to the landlord's name.

I find that the tenant abandoned the premises on March 14, 2007 and that the landlord took reasonable steps to mitigate his loss. I find the lost rent to be \$1558.61 which is the rent which would have become payable from March 15 to May 30, 2007. Any rent payable after May 30, 2007 would be the liability of the next tenant who failed to take possession of the premises on

May 1, 2007. Compensation for lost wages, travel expenses and advertising costs are denied.

The landlord's request for cleaning costs is denied as the parties agreed that the carpets were left in a reasonably clean condition. That is the extent of the tenant's obligation.

THE TENANT'S APPLICATION

The landlord has retained the security deposit of \$750 which was provided to the landlord in lump sum on September 15, 2006. The tenant testified that he had not received any notice from the landlord setting out reasons for the retention of the security deposit or statement setting out any deductions.

Section 18(2) of the *Residential Tenancies Act* sets out what may be retained from a security deposit.

18(2) A landlord may, in accordance with this section, retain all or part of the security deposit for repairs of damage caused by a tenant to the rental premises and for any arrears of the rent.

As there is no evidence of rent arrears or damages to the premises and the cleaning costs requested by the landlord are denied, there are no grounds for the landlord to retain the security deposit. Compensation for lost rent is not arrears of rent. Therefore the landlord is obligated to return the security deposit and accrued interest to the tenant. I calculate the interest on the deposit to be \$13.97.

Taking into account the compensation due to the landlord and the return of the security deposit and interest due to the tenant, I find an amount owing to the landlord in the amount of \$1558.61, calculated as follows:

Compensation for lost rent (March 15-31/07)	\$822.58
Compensation for lost rent (April 1-30/07)	1500.00
Less retained security deposit	(750.00)
Less interest on security deposit	<u>(13.97)</u>
Amount due landlord	\$1558.61

An order shall issue requiring the tenant to pay the landlord compensation for lost rent in the amount of \$1558.61.

Hal Logsdon
Rental Officer