

IN THE MATTER between **LONA HEGEMAN**, Applicant, and **JACK CARTER AND TRACY CARTER**, 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:

LONA HEGEMAN

Applicant/Landlord

- and -

JACK CARTER AND TRACY CARTER

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. The application was dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 22nd day of August, 2007.

Hal Logsdon
Rental Officer

IN THE MATTER between **LONA HEGEMAN**, Applicant, and **JACK CARTER AND TRACY CARTER**, Respondents.

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BETWEEN:

LONA HEGEMAN

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-and-

JACK CARTER AND TRACY CARTER

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: August 22, 2007

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Lona Hegeman, applicant
Jack Carter, respondent
Tracy Carter, respondent

Date of Decision: August 22, 2007

REASONS FOR DECISION

This application seeks monetary relief for repairs of damage to the premises and rent arrears. The application was filed on June 1, 2007 by the landlord. It follows an application by the tenants (File #10-9458, filed on March 1, 2007) which was heard on March 20, 2007 and resulted in an order being issued on March 28, 2007 requiring the landlord to return the security deposit to the tenants. At the March 20, 2007 hearing, the tenants stated that they vacated the rental premises on October 30, 2006, ending the tenancy agreement. Section 68(1) of the *Residential Tenancies Act* sets out a time limit for making applications.

68.(1) An application by a landlord or a tenant to a rental officer must be made within six months after the breach of an obligation under this Act or the tenancy agreement or the situation referred to in the application arose.

Section 68(3) permits a rental officer to extend this time limit.

68.(3) A rental officer may extend the time for the making of an application to the rental officer, whether or not the time for making the application to a rental officer has expired, where the rental officer is of the opinion that it would not be unfair to do so.

It has been the practice of this tribunal to only extend this time limit where there is a good reason why the applicant was unable to comply with the time limitation or where the application had a reasonable expectation that the matter would be resolved without recourse to legal action.

Therefore, prior to hearing the allegations contained in the landlord's application, it was necessary to determine if the six month limitation had been exceeded and, if so, if there were sufficient grounds to extend the time limitation.

The applicant disputed the testimony of the respondents that the premises were vacated on October 30, 2006. The applicant testified that the respondent's notice to vacate on October 31, 2006 was not served until November 8, 2006 when it was slid under her door. An unsworn statement from Andy Chang, who was staying at the applicant's house at the time was entered in evidence. The respondent's notice to terminate was also entered in evidence. The notice was dated October 11, 2006 and stated that premises would be vacated on October 31. The applicant testified that she had passed by the premises in late November, noted a car on the property and smoke coming from the chimney, and assumed that the respondents were still in possession. She stated that she did not enter the premises, knock on the door or arrange for anyone to check the premises on her behalf. The applicant stated that she considered the tenancy agreement to still be in effect after October 31, 2006 because the notice was not sufficient. The applicant stated that she considered the premises abandoned on December 6, 2006 and took possession.

The respondents testified that they delivered the notice to terminate on October 11, 2006 and vacated the premises prior to October 31, 2006 at the request of the applicant. The applicant denied making such a request. The respondents stated that they also provided similar notices to the applicant by E-mail to her home and office. The applicant denied receiving any E-mails regarding termination of the tenancy agreement.

The date on which the respondents' notice of termination was provided to the landlord is not relevant. It is the date on which the respondents left the premises which must be established.

Abandonment serves to terminate a tenancy agreement.

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.

The respondents' notice to terminate, although not adequate, does clearly indicate the respondents' intentions to vacate on October 31, 2006. If they vacated on or before that date, they would be considered to have abandoned the premises, ending the tenancy agreement. At the previous hearing, the respondents indicated that they left on October 30, 2006. The landlord's application had not been filed, nor had the limitation for such a filing expired. The respondents had no reason to name an earlier date in order to thwart a successful application by the landlord. Their testimony in August, 2007 was not inconsistent with their testimony in March 2007.

It is surprising that the applicant, upon receiving the respondent's notice to terminate and leave the premises on October 31, 2006, did not take more definitive action to ascertain if the respondents had indeed left. The evidence of smoke from the chimney proves only that the heating system is operating. A car on the property, which the applicant could not confirm belonged to the respondents, does not indicate possession. The applicant's testimony and evidence falls well short of establishing that the respondents abandoned the premises any later than October 30, 2006. I must conclude on the evidence that the premises were abandoned on October 30, 2006. Therefore a further application regarding this tenancy should have been made prior to April 30, 2007.

The applicant stated that she felt intimidated by the respondents and therefore hesitated to make an application. While that may have been true, the applicant was well aware of the time limitation,

having made inquiries of the rental officer concerning her opportunity to file an application. It would appear from the evidence that although she took possession of the premises in December, 2006 and was presumably aware of the alleged damages at that time, she did not obtain a written estimate of repairs until May 25, 2007. The applicant claimed that she notified the respondents in writing on December 6, 2006 about her concerns with the condition of the property and provided an undated, unsigned letter to the respondents in evidence. There is no indication that the respondents replied or acknowledged any responsibility. In my opinion, the applicant had no reason to believe that the respondents intended to resolve any of the issues or that legal action would not be necessary to resolve the dispute.

The amount of relief sought by the applicant is significant. It is hard to imagine that the intimidation perceived by the applicant would prevent her from pursuing an application for seven months. I can find no valid reason why the applicant could not have filed an application within the prescribed period of time or any reason why the applicant would have reason to believe that the matter would be resolved without recourse to legal action. For these reasons, the application is dismissed.

Hal Logsdon
Rental Officer