

IN THE MATTER between **ROB NELSON**, Landlord, and **SARA MACMILLAN**,
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:

ROB NELSON

Landlord

- and -

SARA MACMILLAN

Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18(5) of the *Residential Tenancies Act*, the landlord shall return the accrued interest on the security deposit to the tenant in the amount of one hundred eighteen dollars and fourteen cents (\$118.14).

DATED at the City of Yellowknife, in the Northwest Territories this 11th day of
September, 2007.

Hal Logsdon
Rental Officer

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ROB NELSON

Landlord

-and-

SARA MACMILLAN

Tenant

REASONS FOR DECISION

Date of the Hearing: September 4, 2007

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Ann Lanteigne, representing the landlord
Sara MacMillan, tenant
Joel DeVilla, witness for the tenant

Date of Decision: September 11, 2007

REASONS FOR DECISION

The landlord's application was filed on July 19, 2007 alleging that the tenant had failed to pay the full amount of rent and had left the premises unoccupied without making arrangements to have the premises checked, causing damage due to freezing.

The tenant's application was filed on August 10, 2007 alleging that the landlord had failed to repair the premises or return the security deposit and had unreasonably withheld approval to assign the tenancy agreement.

Both applications refer to the same rental premises and the same tenancy agreement. With the consent of both parties, both applications were heard at a common hearing.

The tenancy agreement between the parties was terminated on July 31, 2007 when the tenant vacated the rental premises. The tenancy agreement commenced on December 1, 2003. The tenant's premises consisted of two bedrooms and a private bathroom. The tenant shared a kitchen, bathroom and other common areas with another tenant on the second floor. A third suite is located on the main floor of the complex. All three premises are served by a common heating plant. The rent for the premises was \$1050/month. The landlord has retained the security deposit of \$1050 and the accrued interest.

THE LANDLORD'S APPLICATION

Non-payment of rent

The landlord alleged that the tenant failed to pay the July, 2007 rent of \$1050. The tenant did not dispute the allegation and stated that she expected the landlord to use the security deposit of \$1050 as the last month's rent. Section 14(5) of the *Residential Tenancies Act*, prohibits the collection of the last month's rent in advance.

14.(5) No landlord shall require or receive any amount as a deposit for the amount of the first month's or the last month's rent from a tenant or any other amount from a tenant or prospective tenant other than a security deposit referred to in this section.

I find the tenant in breach of her obligation to pay the July rent and find the rent arrears to be \$1050.

Damages to the premises

The tenant left town on January 1, 2007 and returned the morning of January 12, 2007. On her return, she discovered that the heat was off in the residential complex, left a message with the landlord and called a plumber. Some water lines were frozen as well as the sewer line. The toilet reservoirs in all three premises were frozen and one was cracked. On thawing the lines, some water damage occurred to the ceiling tiles in the downstairs suite. The cause of the furnace failure appeared to be contaminated fuel and/or a worn fuel pump.

The landlord argued that the repairs related to the freezing of the premises should be the responsibility of the two tenants on the second floor. The main floor suite was not rented at

the time. The landlord sought \$781.49 from Ms. MacMillan and \$409.35 from the other tenant.

Section 42 sets out a tenant's obligation to repair premises.

- 42.(1) A tenant shall repair damage to the rental premises and the residential complex caused by the wilful or negligent conduct of the tenant or persons who are permitted on the premises by the tenant.**
- (2) Ordinary wear and tear of rental premises does not constitute damage to the premises.**

There is no evidence to indicate that the heating plant failed due to any wilful or negligent conduct of the tenant. This was acknowledged by the landlord. The landlord instead rests his claim on a rule established in the written tenancy agreement between the parties.

- 6. HOLIDAYS - If the tenant is absent from the suite, and the suite is unoccupied when the outside temperature drops below -20C, arrangements are to be made with a competent person to check the heat and water daily.**

The tenant stated that she notified the landlord of her impending absence and arranged for several people to look after the premises. She stated that the other tenant, Mr. DeVilla occupied his premises and the shared facilities from January 1, 2007 to January 6, 2007. The tenant also stated that the second bedroom in her premises was rented to a woman named Pam who occupied the room during the entire period she was out of town. The tenant also stated that she arranged for Nathan Jarman to take care of her plants and a letter from Mr. Jarman indicates he attended the premises on January 7, 2007 and January 9 or 10, 2007 and found all to be in order. The tenant stated that her housekeeper attended the premises on

January 9 or 10, 2007.

Both parties agree that the plumber who attended the premises on January 12, 2007 indicated that he believed the heat had been off for approximately 24 hours. The temperature on January 11, 2007 ranged from -25.2C to -36.6C. The mean temperature on that day was -30.9C.

Notwithstanding the reasonableness of rule 6 of the tenancy agreement, which I find questionable where a residential complex contains multiple premises serviced by a single heating plant, I can not find sufficient evidence to conclude that the tenant failed to comply with it's provisions. There is nothing to indicate that Pam (the tenant's tenant) was not in the premises sometime on January 11, 2007, the day the heating plant presumably failed. An inspection at or after 9:50 AM on January 11 is all that would be required to satisfy the rule. The premises could have easily frozen before the tenant returned home. Just because the premises were frozen does not establish a breach of the rule. In my opinion, a house could easily freeze in less than 24 hours when the mean temperature is below -30C. The landlord's claim for repair costs is denied.

THE TENANT'S APPLICATION

Failure to repair premises

The tenant alleged that the toilet reservoir in the common bathroom cracked causing the reservoir to leak. The tenant stated that she notified the landlord on two occasions but that

the toilet was not replaced until August 25, 2007, some ten weeks after the problem was reported to the landlord. The tenant sought compensation for loss of her private bathroom, stating that she was required to share it with the other tenant until the repairs were completed. The landlord stated that the repairs were delayed because suppliers did not have an insulated tank in the proper colour in stock. The landlord stated that the toilet could be flushed by adding a bucket of water to the bowl and that a bucket was supplied to the other tenant, making it unnecessary for the tenant's bathroom to be used by the other tenant. There is no evidence to suggest that any other fixtures in the bathroom were inoperative. In my opinion, there is no reason why the tenant should have suffered any inconvenience or loss of her privacy. It appears that she permitted the other tenant to use her bathroom as a courtesy rather than out of necessity. In my opinion, there are no grounds for compensation and the tenant's claim is denied.

The security deposit

There is no dispute that the landlord retained the \$1050 security deposit and the accrued interest. The parties agreed that \$600 was paid on December 1, 2003 and the remaining \$450 was paid on January 1, 2004. There is no evidence that the landlord completed a statement of the security deposit in accordance with section 18 of the *Residential Tenancies Act*. The landlord was certainly entitled to deduct the arrears of rent for July, 2007 from the security deposit, leaving the interest owing to the tenant which I find to be \$118.41.

Assignment of the tenancy agreement

The tenant testified that she sought the approval to assign the remainder of the term of the tenancy agreement but the landlord refused to approve the assignment because he intended to sell the property. The tenant stated that she would have moved out on July 14, 2007 rather than July 31, 2007 had the landlord approved the assignment, reducing her liability to 50% of the July, 2007 rent. The tenant provided a letter from the prospective assignee stating that she would have rented the premises on July 15, 2007 had it been available to her. The tenant sought the return of one-half months rent and advertising costs to find a prospective assignee.

Sections 22(3) and 22(4) of the *Residential Tenancies Act* set out only one remedy for a tenant whose landlord has unreasonably withheld the approval to sublet or assign.

22.(3) Where a landlord unreasonably withholds consent to a subletting, a tenant may request an order from the rental officer permitting the subletting without the landlord's written consent.

22.(4) A rental officer may issue an order permitting the subletting without the landlord's written consent pursuant to a request referred to in subsection (3).

Notwithstanding whether the landlord's refusal to approve an assignment was reasonable or unreasonable, there is no remedy for compensation in the Act. The tenant's claim for compensation must be denied.

CONCLUSION

I find the tenant breached the tenancy agreement by failing to pay the July, 2007 rent. The

landlord is entitled to retain a portion of the retained security deposit to cover the rent arrears but shall return the accrued interest of \$118.41 to the tenant. An order shall issue requiring the landlord to return the accrued interest of \$118.41 to the tenant.

Hal Logsdon
Rental Officer