

IN THE MATTER between **JOSEPH OLIVER**, Applicant, and **PENELOPE SHAW**, 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:

**JOSEPH OLIVER**

Applicant/Tenant

- and -

**PENELOPE SHAW**

Respondent/Landlord

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 18(5) of the *Residential Tenancies Act*, the respondent shall return a portion of the retained security deposit to the applicant in the amount of five hundred two dollars and seventy cents (\$502.70).

DATED at the City of Yellowknife, in the Northwest Territories this 8<sup>th</sup> day of July, 2008.

Hal Logsdon  
Rental Officer

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Respondent.

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5  
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AND IN THE MATTER of a Hearing before **Hal Logsdon**, Rental Officer.

BETWEEN:

**JOSEPH OLIVER**

Applicant/Tenant

-and-

**PENELOPE SHAW**

Respondent/Landlord

**REASONS FOR DECISION**

**Date of the Hearing:** June 26, 2008

**Place of the Hearing:** Yellowknife, NT

**Appearances at Hearing:** Joe Oliver, applicant

**Date of Decision:** July 8, 2008

### **REASONS FOR DECISION**

The respondent was served with a Notice of Attendance sent by registered mail and confirmed delivered. The respondent failed to appear at the hearing and the hearing was held in her absence.

The rental premises consist of a houseboat moored in Yellowknife Bay. The applicant stated that he left the premises on March 31, 2008 but acknowledged that he did not give written notice to the landlord as required by section 51 of the *Residential Tenancies Act*. The applicant assumed that no notice was required to terminate the term agreement between the parties.

The respondent retained the security deposit of \$600 and completed a partial statement which noted the application of interest (\$15.98) and deductions for rent arrears (\$600), replacement of missing or damaged items (\$88.28), garbage removal (\$25.00) and removal and replacement of chimney and additional cleaning (\$110.53). The statement also noted deductions for "motor repair" and "compensation" but no amounts are indicated and no final balance owing is shown.

The applicant disputed the deduction for rent arrears testifying that the rent was paid in full to March 31, 2008. It is apparent from the statement of the security deposit that the respondent assumed the applicant was still in possession of the premises in April and charged the rent for that month. If the applicant abandoned the premises on March 31 and the rent was paid to that date, there are no rent arrears. The respondent may be entitled to compensation for lost rent but this can not be deducted from a security deposit.

The applicant acknowledged that he inadvertently packed and removed from the premises a stock pot, pail and a broom. He estimated their value at \$85 and disputed the other items (pillows and shelving) were damaged or missing. There is no evidence to support either the applicant's estimate of \$85 or the respondent's cost of \$88.28. In my opinion, the difference is trivial and I shall accept the respondent's cost.

The applicant questioned the \$25 deduction for garbage removal stating that he only left a rug in the premises. The security deposit statement notes "rugs etc - hire truck". In my opinion, the deduction is reasonable given that any items left behind had to be transported to the landfill and a fee paid to dispose of them.

The applicant disputed the charges for the removal and replacement of the chimney. The applicant testified that he had replaced the chimney to the pellet stove because the chimney provided was unsafe. The applicant testified that on the advice of the retailer who provided the stove, he had installed at his expense an approved chimney. In my opinion, this action can not be considered damage to the premises and the cost can not be deducted from the security deposit.

Recalculating the security deposit statement, I find an amount due to the applicant of \$502.70 calculated as follows:

Security deposit	\$600.00
Interest	15.98
Replacement of items	(88.28)
Garbage removal	<u>(25.00)</u>
Amount due applicant	\$502.70

The applicant also alleged that the respondent had breached the tenancy agreement by failing to

provide propane heating in the premises as agreed to in the written tenancy agreement. The tenancy agreement contains an additional obligation of the landlord: “Propane heat will be installed in December (when the ice permits)”. One must assume that the obligation refers to December, 2007 since the term of the tenancy agreement was one year from October 1, 2007 to March 31, 2008. The applicant testified that instead of installing the propane heat, the respondent installed a wood pellet stove in late December, 2007 or early January, 2008. The applicant stated that he had to stay with a friend from December 10, 2007 to January 10, 2008 because, using only the wood stove, the premises would become very cold during the day while he was at work. The applicant testified that he paid his friend \$1275 for rent during this period and sought an order requiring the respondent to compensate him for this cost.

The respondent was only in breach of her obligation to install propane heat after December 31, 2007. Therefore the rent the applicant paid to his friend in December, 2007 was not a direct result of the landlord’s breach of the obligation. By the end of December, 2007, the landlord had provided a heating system which provided continuous heat. Therefore, the rent the respondent paid to his friend in January, 2008 was not the direct result of the landlord’s failure to install propane heat as that did not necessitate vacating the premises. The applicant’s request for compensation is denied.

The applicant alleged that the respondent breached her obligation to maintain the premises in a good state of repair by improperly installing the chimney for the pellet stove. The applicant stated that he had a proper chimney installed. The applicant sought compensation for the purchase and

installation of a chimney in the amount of \$467.38. Section 30 of the *Residential Tenancies Act* obligates a landlord to maintain the premises in a good state of repair but subsection (5) obligates the tenant to give reasonable notice of any breach that comes to the attention of the tenant.

Subsection (6) gives the landlord ten days to remedy the breach.

**30.(5) A tenant shall give reasonable notice to the landlord of any substantial breach of the obligation imposed by subsection (1) that comes to the attention of the tenant.**

**(6) A landlord shall, within 10 days, remedy any breach referred to in subsection (5).**

In my opinion, the intention of section 30 of the Act is to give the landlord the first opportunity to remedy a breach of section 30 but provide compensation to tenants who are forced to make repairs due to the inaction of the landlord. In this matter, the applicant acknowledged that he did not give notice to the respondent concerning the chimney thereby depriving the landlord of the opportunity to remedy any problem. The applicant's request for compensation is denied.

The applicant alleged that he "inferred" that the respondent had taken a life jacket that he kept with the respondent's canoe. The canoe was provided to the applicant during the term of the

tenancy agreement for his use. As the life jacket was not left on the premises, it is not abandoned personal property. The respondent has no obligation pursuant to the Act to store or return items left behind by the applicant except those left on the premises. As well, there is no evidence the life jacket was taken by the respondent. The applicant's request for compensation is denied.

A major concern of the applicant was the condition of the pellet stove. The applicant alleged that the appliance was only certified for use as a tent heater and that it created excessively high levels of carbon monoxide. As the applicant is no longer a tenant I do not think it is appropriate to consider ordered repairs which are not going to offer any relief to the applicant.

The *Residential Tenancies Act* is intended to be remedial for either tenant or landlord. It is not the rental officer's role to investigate or hear anyone's allegation concerning a breach of the Act. To do so would put the rental officer in the position of an inspector similar to a fire marshal or environmental health officer. Therefore, I shall not deal with the condition of the pellet stove.

An order shall issue requiring the respondent to return a portion of the retained security deposit to the applicant in the amount of \$502.70.

Hal Logsdon  
Rental Officer

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