

IN THE MATTER between **NWT CONSTRUCTION ASSOCIATION**, Applicant, and **HEATHER DOLAN AND DAVID KING**, 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:

NWT CONSTRUCTION ASSOCIATION

Applicant/Landlord

- and -

HEATHER DOLAN AND DAVID KING

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 84(3) and 45(4)(a) of the *Residential Tenancies Act*, the previous order (file #10-9438, filed on March 14, 2007) is rescinded and the respondents are ordered to pay the applicant utility costs in the amount of two thousand five hundred fifty nine dollars and seventy two cents (\$2559.72).
2. Pursuant to section 42(3)(a) of the *Residential Tenancies Act*, the respondents shall pay the applicant costs of cleaning, removal and dump fees in the amount of one thousand six hundred forty dollars (\$1640.00).

DATED at the City of Yellowknife, in the Northwest Territories this 18th day of January, 2008.

Hal Logsdon
Rental Officer

IN THE MATTER between **NWT CONSTRUCTION ASSOCIATION**, Applicant, and **HEATHER DOLAN AND DAVID KING**, Respondents.

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

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BETWEEN:

NWT CONSTRUCTION ASSOCIATION

Applicant/Landlord

-and-

HEATHER DOLAN AND DAVID KING

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: January 15, 2008

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Don Worrall, representing the applicant

Date of Decision: January 18, 2008

REASONS FOR DECISION

The respondents were served with Notices of Attendance sent to the rental premises. The respondents failed to appear at the hearing and the hearing was held in their absence.

The tenancy agreement between the parties was made for a term commencing June 1, 2007 and ending on May 31, 2008. The respondents gave two weeks notice and abandoned the premises on or about November 30, 2007.

A previous order (file #10-9438, filed on March 14, 2007) required the respondents to pay utility costs of \$5884.41 in installments of \$750/month and to pay the outstanding security deposit. The applicant testified that the respondents failed to pay the security deposit. The applicant provided a statement which indicated that the respondents made regular payment for the utility arrears until September, 2007, when all payments ceased.

The applicant sought an order rescinding the previous order and ordering the immediate payment of the remaining balance of the utility arrears. The applicant's statement, provided in evidence, indicates that the current balance of utility arrears is \$2559.72. The applicant also seeks cleaning costs and costs to remove items to the dump (\$1640), compensation for lost rent (\$1850), the outstanding security deposit (\$1850) and charges for patching and painting the premises (\$1000) for a total of \$8899.72. However the security deposit is irrelevant since the respondents are no longer in possession and the applicant withdrew his request for compensation for patching and

painting at the hearing, bringing the revised relief sought to \$6049.72.

In the matter of the utility arrears, I find that the previous order has been breached and find the current amount owing to be \$2559.72 calculated as follows:

Balance owing as per previous order	\$5884.41
Utility charges since last order	1925.31
Less payments made since last order	<u>(5250.00)</u>
Outstanding utility charges	\$2559.72

In the matter of the cleaning and removal charges, the applicant testified that the removal charges involved the towing of an abandoned automobile and the corresponding dumping fees. The applicant also testified that the respondent had left large pieces of concrete on the property which required a loader and truck to take to the dump and also involved dumping fees. Given the nature of the items removed and the need for equipment to remove them, I find the charges of \$1640 to be reasonable.

In the matter of compensation for lost rent, I find the applicant failed to mitigate any loss of rent by failing to take sufficient measures to re-rent the premises. The applicant stated that they did not show the premises to prospective tenants because they intended to put the house on the market for sale. Compensation for lost rent is not a penalty but a damages claim. Section 5 of the *Residential Tenancies Act* requires the landlord's effort to re-rent the premises after a tenant's abandonment.

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.**

Accordingly, the request for compensation for lost rent is denied.

I find the respondents in breach of their obligation to pay the utility costs required by the tenancy agreement and in breach of their obligation to leave the rental premises in a reasonable clean condition. I find the outstanding utility costs to be \$2559.72 and the cleaning and removal costs of \$1640 to be reasonable. An order shall issue rescinding the previous order and requiring the respondents to pay the applicant utility costs of \$2559.72 and cleaning and removal costs of \$1640.

Hal Logsdon
Rental Officer