

IN THE MATTER between **809656 ALBERTA LTD.**, Applicant, and **KEVIN GARGAN**, 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:

809656 ALBERTA LTD.

Applicant/Landlord

- and -

KEVIN GARGAN

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant rent arrears in the amount of one thousand four hundred seventy six dollars and thirty cents (\$1476.30).

DATED at the City of Yellowknife, in the Northwest Territories this 15th day of February, 2008.

Hal Logsdon
Rental Officer

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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:

809656 ALBERTA LTD.

Applicant/Landlord

-and-

KEVIN GARGAN

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: February 13, 2008

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Aleem Shivji, representing the applicant

Date of Decision: February 14, 2008

REASONS FOR DECISION

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

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay rent and sought an order requiring the respondent to pay the alleged rent arrears and termination of the tenancy agreement. The applicant stated that he discovered the premises empty on January 1, 2008. The tenancy agreement commenced on September 27, 2007 and was made for a term of one year.

The applicant provided a copy of the tenant ledger which indicated a balance of rent owing including the January, 2008 rent in the amount of \$3094.99. The applicant stated that he held a security deposit of \$537.50. The applicant stated that he had not shown the premises to prospective tenants or attempted to re-rent the premises.

When a tenant gives up possession of rental premises and the tenancy agreement has not been terminated in accordance with the Act, the premises may be considered to be abandoned. Section 1(3) of the *Residential Tenancies Act* sets out the criteria for abandonment.

1.(3) For the purpose of this Act, a tenant has abandoned the rental premises and the residential complex where the tenancy has not been terminated in accordance with this Act and

- (a) **the landlord has reasonable grounds to believe that the tenant has left the rental premises; or**
- (b) **the tenant does not ordinarily live in the rental premises, has not expressed an intention to resume living in the rental premises, and the rent the tenant has paid is no longer sufficient to meet the tenant's obligation to pay rent.**

When a tenant abandons rental premises, the remainder of the rent for the term does not become due, nor is there a specific penalty. The tenant becomes liable, subject to the landlord's efforts to mitigate loss, for rent that was lost due to the abandonment. Section 62 of the Act sets out this liability.

- 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 landlord has an obligation to mitigate loss. That obligation is set out in section 5 of the Act.

- 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.**

In this matter it is clear that the tenant abandoned the premises on or about November 30, 2007.

Therefore the tenancy was terminated on that day and the applicant is entitled to rent to that date.

I find that amount to be \$2019.99 according to the applicant's ledger. The applicant was obligated to create a security deposit statement within ten days of the termination date. As there were no repairs or cleaning necessary, the security deposit statement should have shown the application of the deposit to the outstanding rent, as follows:

Security deposit	\$537.50
Interest (September 27/07 to December 31/07 @4.33%)	6.19
Less rent arrears	<u>(2019.99)</u>
Amount due applicant	\$1476.30

Because the applicant has failed, to date, to show the apartment to prospective tenants, there can be no compensation for lost rent considered at this time. The applicant is free to apply for compensation relating to future rent loss if that occurs.

I find the respondent in breach of his obligation to pay rent and find the rent arrears, after the application for the retained security deposit, to be \$1476.30. An order shall issue requiring the respondent to pay the applicant rent arrears in the amount of \$1476.30

Hal Logsdon
Rental Officer