

IN THE MATTER between **5655 NWT LTD.**, Applicant, and **TOM DERRY AND JORDAN STEWART AND JOSHUA BROWN**, 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:

5655 NWT LTD.

Applicant/Landlord

- and -

TOM DERRY AND JORDAN STEWART AND JOSHUA BROWN

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondents shall pay the applicant rent arrears in the amount of eight thousand eight hundred eighty six dollars and seven cents (\$8886.07).
2. Pursuant to section 62(2) of the *Residential Tenancies Act*, the respondents shall pay the applicant compensation for lost rent in the amount of one thousand one hundred twelve dollars and ninety cents (\$1112.90).

DATED at the City of Yellowknife, in the Northwest Territories this 16th day of April, 2008.

Hal Logsdon
Rental Officer

IN THE MATTER between **5655 NWT LTD.**, Applicant, and **TOM DERRY AND JORDAN STEWART AND JOSHUA BROWN**, 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:

5655 NWT LTD.

Applicant/Landlord

-and-

TOM DERRY AND JORDAN STEWART AND JOSHUA BROWN

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	March 18, 2008
<u>Place of the Hearing:</u>	Yellowknife, NT
<u>Appearances at Hearing:</u>	Ted Studer, representing the applicant
<u>Date of Decision:</u>	April 16, 2008

REASONS FOR DECISION

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

The applicant stated that he had been to the rental premises each day since March 8, 2008 and had not found anyone at home or any signs that the respondents were still living in the premises. The applicant stated that the electricity had been disconnected but there were still some possessions in the premises. The applicant provided photographs of the premises and asked that the premises be declared abandoned.

Section 1(3) of the *Residential Tenancies Act* defines 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.**

There is no provision in the Act that requires a landlord to obtain an order or declaration of abandonment from a rental officer. Presumably, the landlord is in the best position to determine

if the definition applies to the circumstances. A tenant who feels aggrieved by a landlord's declaration of abandonment has the opportunity to refer the matter to a rental officer through an application pursuant to section 25 or 34 of the Act. In this matter however, it is difficult to imagine the respondents ordinarily living in the premises without electricity or heat. The applicant has heard nothing concerning their intentions to resume living in the premises and the rent is in serious arrears. In my opinion, it is not unreasonable, given these facts, to conclude that the premises were abandoned on March 8, 2008.

The applicant alleged that the respondents had failed to pay rent and provided a statement of the rent account which indicated a balance of rent owing and late penalties as at February 26, 2008 in the amount of \$8598.97. The applicant testified that no payments of rent had been received since the statement was issued. The rent for the premises is \$1500/month. The applicant does not have a security deposit.

The rent statement includes charges for two NSF cheques at \$100 each. In my opinion, this is excessive compensation as the bank charges are only \$40. Any additional administration costs associated with a returned cheque should not exceed \$10. The charges of \$100 shall be reduced to \$50.

The photographs indicated considerable damages to the premises. In my opinion, despite the best efforts of the landlord to make repairs, the premises will not be made habitable until April 1, 2008. Therefore, in my opinion, the applicant is entitled to relief for rent to March 8, 2008 and

further relief for compensation for rent that will be lost to the end of March, 2008. I calculate these amounts as follows:

Rent arrears to February 28, 2008	\$8598.97
Rent, March 1-8	387.10
NSF fee adjustments	<u>(100.00)</u>
Rent arrears	\$8886.07
Compensation (March 9-31)	<u>\$1112.90</u>
Total due applicant	\$9998.97

An order shall issue requiring the respondents to pay the applicant rent arrears in the amount of \$8886.07 and compensation for lost rent in the amount of \$1112.90.

I remind the applicant of his obligation to handle the abandoned personal property in accordance with sections 64 and 65 of the Act and his right to seek further compensation for repairs and/or lost rent through another application.

Hal Logsdon
Rental Officer