

IN THE MATTER between **HARVEY HAMILTON**, Applicant, and **ELSIE GRESL AND LARRY GRESL**, 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 **HAY RIVER, NT**.

BETWEEN:

HARVEY HAMILTON

Applicant/Landlord

- and -

ELSIE GRESL AND LARRY GRESL

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 one thousand three hundred seventy five dollars and ninety seven cents (\$1375.97).

DATED at the City of Yellowknife, in the Northwest Territories this 2nd day of December, 2008.

Hal Logsdon
Rental Officer

IN THE MATTER between **HARVEY HAMILTON**, Applicant, and **ELSIE GRESL AND LARRY GRESL**, 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.

BETWEEN:

HARVEY HAMILTON

Applicant/Landlord

-and-

ELSIE GRESL AND LARRY GRESL

Respondents/Tenants

REASONS FOR DECISION

| | |
|---------------------------------------|--|
| <u>Date of the Hearing:</u> | December 1, 2008 |
| <u>Place of the Hearing:</u> | Hay River, NT via teleconference |
| <u>Appearances at Hearing:</u> | Harvey Hamilton, representing the applicant Elsie Gresl, respondent |
| <u>Date of Decision:</u> | December 2, 2008 |

REASONS FOR DECISION

The respondents first name of Ms. Gresl was mis-spelled on the application. The style of cause of the order shall reflect the correct spelling of the respondents' names.

The tenancy agreement between the parties was oral in nature and commenced on July 1, 2008.

The parties agreed that the monthly rent for the premises was \$1200 plus an additional payment of \$350 made to the landlord for utilities. In fact, the monthly rent was \$1550 as rent is defined in the *Residential Tenancies Act* as follows:

“rent” includes the amount of any consideration paid or required to be paid by a tenant to a landlord or his or her agent for the right to occupy rental premises and for any services and facilities, privilege, accommodation or thing that the landlord provides for the tenant in respect of his or her occupancy of the rental premises, whether or not a separate charge is made for the services and facilities, privilege, accommodation or thing.

The applicant served a Notice of Early Termination on the respondents on September 4, 2008 seeking vacant possession on September 14, 2008. The applicant initially stated that the respondents vacated the premises on October 7th or 8th, but later stated that he had the dates confused because the tenants had already vacated the premises when he served the Application to a Rental Officer on them on September 25, 2008. In fact, the applicant called the Rental Office on September 19, 2008 and stated that the respondents had vacated the premises. The respondent acknowledged that they had not vacated the premises on September 14, 2008 but had left later that week. The evidence suggests that the premises were vacated on or about September 18, 2008.

The applicant retained the security deposit (\$1200), applying it against rent arrears (\$2850), general cleaning (\$150) and carpet cleaning (\$210) leaving a balance owing to the landlord of \$2010. The applicant sought an order requiring the respondents to pay that amount.

The respondent disputed the rent arrears, stating that she had moved out in compliance with the Notice of Early Termination and should not have to pay the full month's rent for September, 2008. I agree with the respondents in this regard. Rent is payment for the right of possession. When possession is given up by the tenant, rent is no longer due. If a tenant abandons the rental premises, they may be liable for compensation for lost rent but, in my opinion, abandonment did not occur in this situation. The respondents substantially complied with the Notice of Early Termination, bringing the tenancy agreement to an end. I calculate the rent due for September, 2008 to be \$330, calculated as follows:

| | |
|----------------------------------|--------------|
| Prorated amount (Sept. 01 to 18) | \$930 |
| Less amount paid | <u>(600)</u> |
| September rent | \$330 |

Adjusting the September rent accordingly, I find rent arrears in the amount of \$2230, calculated as follows:

| | |
|-------------------------------|------------|
| Rent arrears, July, 2008 | \$350 |
| Rent arrears, August, 2008 | 1550 |
| Rent arrears, September, 2008 | <u>330</u> |
| Total | \$2330 |

The respondent also disputed the cleaning charges, stating that she was told by the applicant that she did not have to clean the premises. The applicant acknowledged speaking to the respondent

when he served the Application to a Rental Officer, indicating to her that he had already cleaned the premises. According to the applicant's confirmation of service, that occurred on September 25, 2008. The applicants had adequate time to clean the premises prior to vacating on or about September 19, 2008. They can not expect to vacate and be relieved of the obligation to pay rent and also be given the opportunity to re-enter the premises to clean. In my opinion, the cleaning charges are reasonable.

The applicant has not calculated interest on the security deposit which I find to be \$14.03.

Applying the security deposit first to the cleaning costs. I find rent arrears owing to the applicant in the amount of \$1375.97, calculated as follows:

| | |
|----------------------|------------------|
| Security deposit | \$1200.00 |
| Interest | 14.03 |
| General cleaning | (150.00) |
| Carpet cleaning | (210.00) |
| Rent arrears | <u>(2230.00)</u> |
| Amount due applicant | \$1375.97 |

An order shall issue requiring the respondents to pay the applicant rent arrears in the amount of \$1375.97.

Hal Logsdon
Rental Officer