File #10-10520

IN THE MATTER between **DAVID DESORCY**, Applicant, and **LIRIC CONSTRUCTION LTD.**, 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:

DAVID DESORCY

Applicant/Tenant

- and -

LIRIC CONSTRUCTION LTD.

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 39(2)(c) of the *Residential Tenancies Act*, the respondent shall pay the applicant compensation for fees charged for a vehicle plug-in in the amount of two hundred fifty dollars ($250.00). The compensation shall be paid as a rent credit.

DATED at the City of Yellowknife, in the Northwest Territories this 28th day of November, 2008.

Hal Logsdon
Rental Officer

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BETWEEN:

DAVID DESORCY

Applicant/Tenant

-and-

LIRIC CONSTRUCTION LTD.

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing:	**November 25, 2008**
Place of the Hearing:	**Yellowknife, NT**
Appearances at Hearing:	**David Desorcy, applicant** **Arie Keppel, representing the respondent**
Date of Decision:	**November 28, 2008**

REASONS FOR DECISION

The respondent stated that the legal name of the landlord was Liric Construction Ltd. The style of cause of the order shall reflect the legal name of the respondent.

The parties entered into a six month term tenancy agreement commencing on June 1, 2007. The rent for the premises was $600/month. At the expiry date, the parties did not enter into a new tenancy agreement, nor was the agreement terminated in accordance with the *Residential Tenancies Act*, resulting in the automatic renewal of the agreement on a month-to-month basis, pursuant to section 49 of the *Residential Tenancies Act*.

> **49. (1) Where a tenancy agreement ends on a specific date, the landlord and tenant shall be deemed to renew the tenancy agreement on that date as a monthly tenancy with the same rights and obligations as existed under the former tenancy agreement, subject to any rent increase that complies with section 47.**
>
> **(2) Subsection (1) does not apply where**
> - **(a) the landlord and tenant have entered into a new tenancy agreement;**
> - **(b) the tenancy has been terminated in accordance with this Act; or**
> - **(c) the residential complex is composed of one rental premises that was the only residence of the landlord in the Territories.**
>
> **(3) This section does not apply to subsidized public housing or to rental premises provided by an employer to an employee as a benefit of employment.**

The applicant testified that the respondent began charging him an additional $50/month in December, 2007 for the privilege of plugging in his vehicle and he continued to pay the additional charge until the end of April, 2008, when he no longer needed to plug in his vehicle.

The respondent served a notice of rent increase on February 23, 2008 informing the applicant that the rent would increase from $600 to $650. The rent increase was effective June 1, 2008.

The respondent sent a notice to tenants on October 30, 2008 outlining the general increase in electrical rates in the city and announcing that users of parking plug-ins would be charged $100/month during the coming winter season.

The applicant contends that the rent has been increased more than once in a twelve month period which is not in accordance with the provisions of section 47 of the *Residential Tenancies Act* and seeks an order requiring the respondent to refund the rent increases which were charged and paid between December, 2007 and April, 2008.

The respondent stated that the plug-in fee was separate from the rent and only applied in months where the tenant used the facility. He noted that some tenants choose not to use it at all. The respondent stated that he did not want to include it in the rent because he did not want to charge everyone the fee every month. It was necessary to charge the fee some months but not others. The respondent stated that his intention was not to make money on the plug-ins but to cover his costs.

“Rent” is defined in section 1(1) of the *Residential Tenancies Act*.

> **"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.

“Services and facilities is also defined in section 1(1) of the Act.

> **"services and facilities" includes furniture, appliances and furnishings, parking and related facilities, laundry facilities, elevator facilities, common recreational facilities, garbage facilities and related services, cleaning or maintenance services, storage facilities, intercom systems, cable television facilities, heating facilities or services, air-conditioning facilities, utilities and related services, and security services or facilities.**

In my opinion, a vehicle plug-in is a related facility of parking and therefore included in the definition of “services And facilities”. Therefore any charge made for the provision of a vehicle plug-in is, by definition, “rent”.

Section 47 of the Act sets out the provisions for rent increases.

> **47. (1) Notwithstanding a change in landlord, no landlord shall increase the rent in respect of a rental premises until 12 months have expired from**
> **(a) the date the last increase in rent for the rental premises became effective; or**
> **(b) the date on which rent was first charged, where the rental premises have not been previously rented.**
>
> **(2) The landlord shall give the tenant notice of the rent increase in writing at least three months before the date the rent increase is to be effective.**
>
> **(3) An increase in rent by a landlord is not effective until three months have expired from the date of the notice of the rent increase.**
>
> **(4) Where a tenant receives a notice of a rent increase, the tenant**
> **(a) may elect to treat the notice as a notice of termination of the tenancy to be effective on the day immediately preceding the day on which the rent increase is to be effective; and**
> **(b) shall inform the landlord in writing of his or her intent to treat the notice as a notice of termination.**

(5) Where a landlord has given a tenant notice of a rent increase and the tenant terminates the tenancy agreement, the landlord shall

(a) give a new tenant a copy of the notice before the parties agree to a tenancy agreement; and

(b) rent the rental premises at the rent stated in the notice.

(6) This section does not apply to subsidized public housing.

There is no evidence to suggest that a written notice was provided to the applicant prior to the application of the $50 plug-in fee in December, 2007. The December, 2007 increase was not, in my opinion, in accordance with the Act because it was an increase in rent but was not preceded by the obligatory written notice. The $50 payments made by the applicant in December, 2007 and January, February, March and April, 2008 should therefore be returned to the applicant.

The June, 2008 increase was in accordance with the Act. Notwithstanding the increase in December, 2007 which should not have been applied, there had been no rent increase for the past twelve months and notwithstanding the effective date error on the notice, a full three month written notice was provided.

The intent of the provisions for rent increases contained in the Act serve to restrict the frequency of rent increases. If separate charges for “services and facilities” were not considered rent, a landlord could easily circumvent the intent of section 47(1) by increasing fees for these items at any time. Clearly, the intent of the provisions for rent increases are intended to limit the frequency of increases to the ***total*** amount a tenant is obligated to pay a landlord for the right to occupy rental premises, not simply the base rent.

The tenancy agreement between the parties implies that a vehicle plug-in is available but does not set out a separate charge for the service. Because no separate charge is set out in the agreement and such charges are considered part of the rent, one must assume that the plug-in service is an obligation of the landlord provided with no additional charge. In my opinion, charging a fee in excess of the stated rent is a breach of that obligation.

If a landlord wishes to provide a vehicle plug-in but wants to charge only for the months a tenant elects to use it, a landlord may include the monthly fee as a separate charge in the tenancy agreement but state that it will only be applicable for months where the service is used by the tenant. In that way, although the charge appears in every tenant's tenancy agreement it is only applicable to those who use the service and only during the months it is used. The charge can easily be turned on or off without breaching the rent increase provisions of the Act. The fee can be adjusted once a year along with the base rent as necessary.

I find the respondent in breach of his obligation to provide a vehicle plug-in in accordance with the tenancy agreement between the parties. An order shall issue requiring the respondent to compensate the applicant for the plug-in fees applied during the months of December, 2007, January, February , March and April, 2008 in the amount of $250. The compensation shall be paid in the form of a rent credit.

The applicant asked if the proposed increase for the plug-in privileges to $100 can be enforced this winter. In my opinion, it would be a rent increase which is not in accordance with the Act

and can not be enforced because twelve months have not passed since the date of the last rent increase which was June, 2008. The respondent can not raise the rent again until June, 2009.

Hal Logsdon
Rental Officer