**File #10-10740**

IN THE MATTER between **JONATHAN CHAYKOWSKI AND JESSICA CHAYKOWSKI**, Applicants, and **809656 ALBERTA 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:

**JONATHAN CHAYKOWSKI AND JESSICA CHAYKOWSKI**

Applicants/Tenants

- and -

**809656 ALBERTA LTD.**

Respondent/Landlord

**ORDER**

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 15th day of April, 2009.

Hal Logsdon
Rental Officer

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## REASONS FOR DECISION

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|---|---|
| **Date of the Hearing:** | **April 1, 2009** |
| **Place of the Hearing:** | **Yellowknife, NT** |
| **Appearances at Hearing:** | **Jonathan Chaykowski, applicant**<br>**Jessica Chaykowski, applicant**<br>**Aleem Shivji, representing the respondent** |
| **Date of Decision:** | **April 15, 2009** |

## REASONS FOR DECISION

The name of the landlord was incorrect on the application. The order shall reflect the correct legal name of the landlord.

The tenancy agreement between the parties was terminated on February 28, 2009 when the applicants vacated the premises. The applicants alleged that during the term of the agreement the heat in the apartment was inadequate, their assigned parking space was not made available to them and that the landlord failed to maintain the rental premises and residential complex in a good state of repair. The applicants sought an order requiring the respondent to make certain repairs and an unspecified amount of compensation.

Numerous photographs of the premises and the residential complex were provided by the applicants in evidence.

The applicants filed a previous application against the landlord on December 3, 2008 when the supply of heat was interrupted. The matter was heard on January 7, 2009. At the hearing the parties agreed that the heat had been restored and that a reduction of rent in the amount of $617.15 was reasonable and fair compensation for the days the applicants were without adequate heat. An order was issued requiring the landlord to provide that compensation in the form of a rent credit. There were no other issues contained in the application nor did the applicants seek any additional remedies.

The respondent stated that a parking stall was supplied to the applicants but not the one they preferred. A copy of the tenancy agreement between the parties was provided in evidence. The tenancy agreement does not specify any particular parking stall or obligate the landlord to provide energized parking but does obligate the landlord to provide one parking stall for the use of the tenant. Unless the applicants were deprived of any parking space whatsoever, I can not find the landlord in breach of the tenancy agreement. The evidence does not indicate that the tenants were deprived of any parking area whatsoever and I must therefore deny their request for compensation.

Section 30(1)(a) of the *Residential Tenancies Act* obligates a landlord to maintain the rental premises and the residential complex during the tenancy.

> **30.(1) A landlord shall**
>
> > **(a) provide and maintain the rental premises, the residential complex and all services and facilities provided by the landlord, whether or not included in a written tenancy agreement, in a good state of repair and fit for habitation during the tenancy**

The applicants stated that approximately two weeks after the previous order was issued, they were again without adequate heat in the apartment. The respondent stated that he was unaware that the tenants were again having problems with heat and was not advised of the problem by the tenants. The applicants acknowledged that they did not notify the landlord of this problem. Section 30(5) of the *Residential Tenancies Act* obligates the tenant to advise the landlord of any necessary repairs.

**30.(5) A tenant shall give reasonable notice to the landlord of any substantial breach of the obligation imposed by subsection (1) that comes to the attention of the tenant.**

It is not reasonable to expect the landlord of such a large complex to know if the heat is insufficient in a specific apartment. The evidence suggests that the heating system was working and the problem was restricted to the applicants' apartment. The applicants' request for compensation is therefore denied.

It is apparent from the evidence that many of the complaints concerning the condition of the premises have existed for some time, most likely since the commencement of the tenancy agreement in September, 2008. The applicants note in their application,

> "We feel we have a right to rent money back. Some if not all since the day we moved in we have spent money trying to keep us safe, warm and able to be operational day to day to keep our jobs".

The applicants filed this application on February 20, 2009 and vacated the premises eight days later by mutual agreement with the landlord. The applicants stated that they did not include the numerous complaints concerning the condition of the premises in the previous application filed in December 2008 because they were preoccupied with the more urgent matter of having no heat. Undoubtedly, the heat issue was more urgent than a broken mailbox lock, damaged door latch or missing baseboards. However, had the applicants included these issues in the December, 2008 application, a repair order would have offered them some relief. At this point in time, a repair order provides no relief to the tenants leaving only the remedy of compensation.

I am at a loss to determine what quantum of monetary compensation would be appropriate, if any. It is unclear if the landlord was advised of any or all of the complaints concerning the condition of the premises. The amount of money the applicants allegedly spent to offset the landlord's alleged failure to repair is unknown. It is not clear if any of these "costs" incurred have already been addressed in the previous compensation which was deemed adequate by the applicants. As well, any loss which may have been incurred could have been significantly reduced by the applicants by including the present allegations in the December, 2008 application. In my opinion, the applicants have not provided sufficient evidence to support the remedy of compensation.

For these reasons the application is dismissed.

Hal Logsdon
Rental Officer