File #10-10903

IN THE MATTER between **CARL MALMSTEN**, Applicant, and **BRIAN SUTHERLAND AND MIKI YAMADA**, 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:

CARL MALMSTEN

Applicant/Landlord

- and -

BRIAN SUTHERLAND AND MIKI YAMADA

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 13th day of July, 2009.

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");

AND IN THE MATTER of a Hearing before **Hal Logsdon**, Rental Officer.

BETWEEN:

CARL MALMSTEN

Applicant/Landlord

-and-

BRIAN SUTHERLAND AND MIKI YAMADA

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing:	**July 7, 2009**
Place of the Hearing:	**Yellowknife, NT**
Appearances at Hearing:	**Carl Malmsten, applicant** **Garth Wallbridge, representing the respondents**
Date of Decision:	**July 13, 2009**

REASONS FOR DECISION

The applicant alleged that the respondents had breached the tenancy agreement by failing to repair damages to the premises, failing to pay for the full cost of fuel during the term of the tenancy agreement, failing to pay for the maintenance of the heating system and failing to pay for water, the cost of which was payable to the landlord. The applicant sought relief totalling $14,391.92.

This matter is very similar to another application filed by Mr. Malmsten against Mr. Sutherland (file #10-10902, filed on June 15, 2009). Therefore the reasons for decision are also similar. The respondents' representative argued that the matter should be dismissed because it had already been determined at a previous hearing and an order issued (file #10-10786, filed on May 4, 2009) The respondents' representative further argued that the application was not filed within the time limit set out pursuant to section 68(1) of the *Residential Tenancies Act* and that it would not be fair to extend that time limitation.

The previous matter involved an application from the tenant pursuant to section 18(5) requesting that the security deposit and accrued interest retained by the landlord be returned. The landlord had issued an estimated statement of the repairs but had not issued a final statement as required by section 18(4) of the Act at the time the matter was heard. The landlord was ordered to return the full security deposit and accrued interest to the tenant.

As is the case in the other application between the parties, the applicant has included a final statement of the repair costs which were only estimates when the respondent's application was heard on April 22, 2009. Many of these repair costs are now documented with dated invoices which substantiate the costs incurred. Most of these invoices indicate that the costs incurred were known to the applicant on April 22, 2009. This includes the fuel costs and maintenance costs which can not be deducted from a security deposit. Therefore, the applicant failed to put forward evidence regarding final costs which were central to the determination of the matter when that evidence appears to have been readily available to him. He can not now put that evidence forward when he should have done so previously.

In my opinion, the applicant's request for the fuel costs and maintenance costs could possibly have been considered had the application been made in a timely manner as these costs can not be deducted from a security deposit and should properly be the subject of an application by the landlord. However, these costs were known by the applicant well before the expiry of the six month time limitation. I find no compelling reason to consider an extension.

Because of the above reasons, the application is dismissed.

Hal Logsdon
Rental Officer