

IN THE MATTER between **Janet Hurlburt**, Applicant, and **Harvey Hamilton**,
Respondent;

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter
R-5 (the "Act") and amendments thereto;

AND IN THE MATTER of a Hearing before, **Adelle Guigon**, Deputy Rental Officer,
regarding a rental premises within **the Town of Hay River in the Northwest
Territories.**

BETWEEN:

JANET HURLBURT

Applicant/Tenant

- and -

HARVEY HAMILTON

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18.1 of the *Residential Tenancies Act*, the Respondent shall pay to the Applicant \$562.02 (five hundred sixty-two dollars two cents).

DATED at the City of Yellowknife, in the Northwest Territories this 9th day of
September 2013.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Janet Hurlburt**, Applicant, and **Harvey Hamilton**,
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 **Adelle Guigon**, Deputy Rental Officer.

BETWEEN:

JANET HURLBURT

Applicant/Tenant

-and-

HARVEY HAMILTON

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: September 6, 2013

Place of the Hearing: Hay River, Northwest Territories, via Teleconference

Appearances at Hearing: Janet Hurlburt, Applicant

Date of Decision: September 6, 2013

REASONS FOR DECISION

Application

This Application to a Rental Officer made by Janet Hurlburt as the Applicant/Tenant against Harvey Hamilton as the Respondent/Landlord regarding the rental premises known as 18-61 Woodland Drive in Hay River, Northwest Territories, was received and filed by the Rental Office on May 28, 2013. The Applicant served a copy of the filed application package on the Respondent by registered mail, which was signed for on June 18, 2013.

The Applicant sought the return of the portion of her security deposit that was withheld by the Respondent, and any other remedies available to her under the *Residential Tenancies Act* (the Act).

The following evidence was included in the application package:

Exhibit 1: Receipt for the Applicant's payment of \$240 for utilities, dated November 27, 2012

Exhibit 2: Receipt for the Applicant's payment of \$1,200 for November rent and \$200 for utilities, dated November 9, 2012

Exhibit 3: Receipt for the Applicant's payment of \$800 for September rent and \$1,200 for security deposit, dated September 10, 2012

Exhibit 4: Receipt for the Applicant's payment of \$1,200 for October rent, dated October 2, 2012

Exhibit 5: Written notice from the tenant dated November 27, 2012, of vacating the premises November 30, 2012

Exhibit 6: Correspondence from the Tenant to the Landlord dated November 30, 2012

Exhibit 7: Accounting from the Landlord to the Tenant of the security deposit withheld, dated December 13, 2012

Also on file is a copy of Rental Office Order 10-13502 issued April 15, 2013, between the same parties regarding the same premises. This order established that the tenant vacated the premises without giving proper notice and she was ordered to pay \$1,200 to the landlord for loss of future rent pursuant to section 62(2) of the Act.

Hearing

A hearing was scheduled for July 29, 2013, for which both parties were served notice by registered mail. The Applicant requested a postponement of the hearing, to which the Respondent did not oppose. The hearing was rescheduled to September 6, 2013, for which both parties were served with new notices of attendance by registered mail. The Applicant appeared at hearing. The Respondent signed for the notice of attendance on August 1, 2013, but failed to appear at hearing. The hearing proceeded in his absence pursuant to section 80(2) of the Act.

Submissions

The Applicant testified that she and the Respondent entered into a verbal tenancy agreement which established the rent at \$1,200 per month plus utilities. It was further verbally established that the maximum monthly amount for utilities would be \$300.

The Applicant took possession of the rental premises on September 8, 2012, and paid the pro-rated amount of \$800 for rent for September plus \$1,200 for her security deposit. A receipt for payment of this amount is in evidence. The rent of \$1,200 was paid for each of October and November, for which receipts are in evidence.

At the request of the Respondent, without corroborating utilities bills, the Applicant paid to the Respondent \$200 on November 9, 2012, which she was informed represented the utilities for September and October. Again at the request of the Respondent, without corroborating utilities bills, the Applicant paid to the Respondent \$240 on November 27, 2012, which she was informed represented the utilities for November. Receipts are in evidence for both of these payments.

The Applicant vacated the rental premises on November 30, 2012. The Respondent provided an accounting of utilities deducted from the Applicant's security deposit and returned the remaining balance to the Applicant. At no time, before or after the tenancy, did the Applicant receive copies of the utilities bills referenced in the security deposit accounting or representing the utilities expenses for the period of the tenancy.

It is the Applicant's position that the utilities portion of the rent had been established to be no more than \$300 per month and that the utilities would be paid to the Respondent as requested. As the Respondent only requested the two payments in November totalling \$440, and advised the

Applicant that these payments represented the utilities for September, October, and November, the Applicant submits that she was not in rental arrears and no amount should have been deducted from her security deposit.

The Respondent did not appear at hearing, nor did he provide any written submissions prior to hearing for consideration.

Determination

I accept that the Applicant and Respondent entered into a verbal tenancy agreement which commenced September 8, 2012, and ended November 30, 2012. I accept that the agreed upon monthly rent was \$1,200 plus a maximum of \$300 for utilities. I accept that the Applicant and Respondent agreed the utilities would be paid to the Respondent when requested, in the amounts requested by the Respondent, to a maximum of \$300 per month.

Utilities invoices reflecting actual utilities costs for the period of the tenancy were not provided either to the tenant, by submission, or at the hearing. I accept that the total amount of \$440 paid by the Applicant to the Respondent represents the utilities costs for the period of the tenancy.

I find the Applicant did not have rental arrears at the end of the tenancy and the Respondent is in breach of section 18(4) of the Act by having retained a portion of the security deposit for rental arrears (utilities).

Order

An order will issue requiring the Respondent to return to the Applicant the retained portion of her security deposit in the amount of \$562.02.

Adelle Guigon
Deputy Rental Officer