

IN THE MATTER between **BEHCHOKO KO GHA K'AODEE**, Applicant, and  
**DOREEN WEDAWIN AND BARRY FRANKLIN**, Respondents;

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, **HAL LOGSDON**, Rental Officer,  
regarding the rental premises at **BEHCHOKO, NT.**

BETWEEN:

**BEHCHOKO KO GHA K'AODEE**

Applicant/Landlord

- and -

**DOREEN WEDAWIN AND BARRY FRANKLIN**

Respondents/Tenants

**ORDER**

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 19th day of  
September, 2013.

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Hal Logsdon  
Rental Officer

IN THE MATTER between **BEHCHOKO KO GHA K'AODEE**, Applicant, and  
**DOREEN WEDAWIN AND BARRY FRANKLIN**, 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:

**BEHCHOKO KO GHA K'AODEE**

Applicant/Landlord

-and-

**DOREEN WEDAWIN AND BARRY FRANKLIN**

Respondents/Tenants

**REASONS FOR DECISION**

**Date of the Hearing:** August 23, 2013

**Place of the Hearing:** Behchoko, NT

**Appearances at Hearing:** Mike Keohane, representing the applicant

**Date of Decision:** September 19, 2013

### **REASONS FOR DECISION**

The respondents were personally served with Notices of Attendance but failed to appear at the hearing. The hearing was held in their absence.

This tenancy agreement was terminated by order on August 15, 2008 (file #10-10045, filed on July 16, 2008). The respondents continued to occupy the premises and the applicant obtained an eviction order to be effective on October 31, 2011 (file #10-12218B, filed on September 21, 2011). The applicant also obtained an order to pay compensation of \$56,977.90 for use and occupation of the premises after August 15, 2008 plus per diem compensation for each day the respondents continued to occupy the premises up to October 31, 2011.

The applicant stated that the Minister Responsible for the NWT Housing Corporation declared a moratorium on evictions due to non-payment of rent in October, 2011 to be effective until April 1, 2012 making it impossible for them to enforce the eviction order before it expired.

The applicant stated that he understood that the premises continued to be occupied after October 2011 but no application for eviction was made after the moratorium expired on April 1, 2012.

The applicant stated that they were notified on February 18, 2013 that the electricity has been disconnected to the premises, the door had been kicked in and the premises were frozen. The applicant declared the premises abandoned, took possession and secured the unit. A notice was

sent to the respondents on February 18, 2013 advising them of the landlord's intention to seek repair costs for the damages which they estimated to be \$9000. An inspection was conducted on April 29, 2013 which estimated damages to be \$9225. The applicant sought relief for the estimated repair costs. To date no repairs have been completed.

The application also seeks an order requiring the respondents to pay rent arrears of \$111,269.98 and legal costs of \$4096.12. As I outlined in my order of September 21, 2011 (file #10-12298), the rent arrears that accrued to August 15, 2008 have been satisfied. This tribunal does not consider compensation for legal costs. Therefore if there is to be additional monetary relief considered it would have to be compensation for use and occupation after October 31 and/or repair costs.

There is no evidence that the eviction order was filed with the Supreme Court. If it had been filed, it would not have expired and could have been enforced immediately after April 1, 2012. Notwithstanding the Minister's moratorium on evictions (which was announced in the Legislative Assembly on December 7, 2011), the eviction order was legally valid. It was the landlord's decision alone to not enforce it. In my opinion, the principle of mitigation of loss applies here with respect to any further compensation for use and occupation. The applicant could have taken timely action to enforce the eviction order. They can not simply allow the tenant to overhold indefinitely and expect compensation.

There is no evidence to suggest how long the respondents continued to occupy the premises. The

September 21, 2011 order determined that they were still in possession. The applicant stated that it was his understanding that at least one of the respondents continued to occupy the premises after that date. It is established that they had vacated by February 18, 2013. There is no definitive evidence establishing how long the unit had been vacant and unsecured before February 18, 2013. In the normal course of events, the landlord would be notified by the supplier that the electrical services was to be disconnected. It would appear that much of the damage could have been eliminated if the applicant had taken timely action to avoid disconnection and secure the premises. To what extent was the damage caused by vandalism? Again, in my opinion, the principle of mitigation of loss applies here.

In my opinion, the applicant failed to take reasonable action to mitigate loss. The request for additional compensation for use and occupation and the request for repair costs is denied. The application shall be dismissed.

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Hal Logsdon  
Rental Officer