

IN THE MATTER between **DENENDEH MANOR GP LTD.**, Applicant, and **JAMES JENKA AND ROBIN GLADSTONE**, 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 **YELLOWKNIFE, NT.**

BETWEEN:

DENENDEH MANOR GP LTD.

Applicant/Landlord

- and -

JAMES JENKA AND ROBIN GLADSTONE

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 25th day of March, 2014.

Hal Logsdon
Rental Officer

IN THE MATTER between **DENENDEH MANOR GP LTD.**, Applicant, and **JAMES JENKA AND ROBIN GLADSTONE**, 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:

DENENDEH MANOR GP LTD.

Applicant/Landlord

-and-

JAMES JENKA AND ROBIN GLADSTONE

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: February 19, 2014

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Margaret Gorman, representing the applicant
Robin Gladstone, respondent

Date of Decision: February 19, 2014

REASONS FOR DECISION

The tenancy agreement between the parties was made for a term ending on December 31, 2013. The applicant alleged that the respondents had abandoned the rental premises at the end of October, 2013. The applicant stated that the apartment was not re-rented until November 29 and sought an order requiring the respondents to pay compensation for lost rent in the amount of \$1800.

The applicant stated that another tenant in the residential complex had expressed interest in renting an apartment with a balcony and agreed to rent apartment #302 (the respondents' premises) to him. The applicant stated that the interested party did not want to move in early November and that the landlord needed to replace the carpets and complete some repairs. The respondents had lived in the apartment for six years. As a result, #302 was not advertised or shown to prospective tenants. Apartment #101 (vacated by the other tenant) was shown but will not be rented until March 1.

The respondent stated that she felt the tenant in #101 was ready to take occupancy in early November and had purchased their curtains in anticipation of the move. She stated that she felt the delay was due to difficulties getting trades persons to do the required repair work.

There is no question that the respondents abandoned the premises by leaving before the end of the term. On the abandonment by a tenant, a landlord is obligated to mitigate loss of rent. Section

5 of the *Residential Tenancies Act* sets out this obligation.

5. (1) **Where a landlord or tenant is liable to the other for damages as a result of a breach of a tenancy agreement or this Act, the landlord or tenant entitled to claim damages shall mitigate his or her damages.**
- (2) **Without limiting subsection (1), where a tenant terminates a tenancy agreement, contravenes a tenancy agreement, or vacates or abandons rental premises, other than in accordance with this Act or the tenancy agreement, the landlord shall rent the rental premises again as soon as is practicable and at a reasonable rent in order to mitigate the damages of the landlord.**

The premises were only offered to the tenant in #101. Had it been advertised and shown, it may have been rented earlier. The applicant did not necessarily require notice from the tenant in #101. Other than the landlord's intention to paint and replace carpets, there does not appear to be any reason why the apartment could not have been occupied earlier than November 29. None of the repairs appear to be the result of tenant damage.

The fact that moving an existing tenant to #302 created a vacancy elsewhere in the building might be a consideration but the evidence indicates that the two apartments were significantly different in terms of amenities and rent. Apartment #101 had high ceilings, a separate entrance and was intended for use as office space.

In my opinion, the applicant has not satisfied the obligation to mitigate the loss of rent and is therefore not entitled to the damages. The application shall be dismissed.

Hal Logsdon
Rental Officer