

IN THE MATTER between **ANNE LESKIW-MUELLER**, Applicant, and **JOHN WARD AND BOBBY EMARD**, 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 **ENTERPRISE, NT**.

BETWEEN:

ANNE LESKIW-MUELLER

Applicant/Landlord

- and -

JOHN WARD AND BOBBY EMARD

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondents shall pay the applicant rent arrears in the amount of one thousand eight hundred eighty four dollars and ninety two cents (\$1884.92).
2. Pursuant to section 45(4)(c) of the *Residential Tenancies Act*, the respondents shall pay the applicant charges for water and sewage costs in the amount of two hundred sixty seven dollars and six cents (\$267.06).
3. Pursuant to section 45(4)(c) of the *Residential Tenancies Act*, the respondents shall pay the applicant costs of fuel in the amount of nine hundred seventeen dollars and seventeen

cents (\$917.17).

4. Pursuant to section 62(2) of the *Residential Tenancies Act*, the respondents shall pay the applicant compensation for lost rent in the amount of one thousand three hundred fifty dollars (\$1350.00).

DATED at the City of Yellowknife, in the Northwest Territories this 21st day of May,
2015.

Hal Logsdon
Rental Officer

IN THE MATTER between **ANNE LESKIW-MUELLER**, Applicant, and **JOHN WARD AND BOBBY EMARD**, 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:

ANNE LESKIW-MUELLER

Applicant/Landlord

-and-

JOHN WARD AND BOBBY EMARD

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: April 30, 2015

Place of the Hearing: Yellowknife, NT via teleconference

Appearances at Hearing: John Leskiw, representing the applicant

Date of Decision: May 21, 2015

REASONS FOR DECISION

The respondents were served with Notices of Attendance sent by registered mail and confirmed delivered. The respondents failed to appear at the hearing and the hearing was held in their absence.

The applicant stated that the respondents moved out without notice sometime between December 5-15, 2014. For purposes of calculation, I shall assume that the respondents vacated the premises on December 15, 2014. The applicant took possession and found the premises without any fuel and frozen. The tenancy agreement between the parties commenced on September 1, 2014 and was made for a term to end on August 31, 2015. The monthly rent for the premises was \$900 and the tenants were obligated to pay for fuel, electricity, water, sewage and garbage during the term. A security deposit of \$900 was required.

The applicant alleged that the respondents had failed to pay for the full amount of rent or pay for water and sewage charges. Only \$450 of the required security deposit was paid. The applicant sought an order requiring the respondents to pay the alleged rent arrears, fuel, water and sewage charges, repair costs and compensation for lost rent to March 31, 2015. The applicant provided photographs of the damages in evidence as well as invoices for fuel, water and sewage, and documentation regarding the replacement cost of the water pump. A statement of the rent account was also provided in evidence.

The applicant retained the security deposit. There is no evidence that a statement of the security deposit was completed although a statement of account was included in the application which was filed on February 25, 2015 and served on the respondents by registered mail.

The applicant testified that the premises were re-rented on April 1, 2015. He stated that he had an offer to rent the house prior to that date but was unable to provide the prospective tenant possession until the repairs were completed. He stated that repairs were done in February, 2015 but he had to wait for a trades person to repair the ruptured pipes in the wall and was unable to offer possession to the new tenants until the repairs were complete.

RENT ARREARS

The applicant's rent ledger, submitted in evidence indicates a balance of rent owing as at February 1, 2015 of \$4745. That balance includes the outstanding security deposit, rent from December 15-31 and the full rent for January and February, 2015. Since the tenancy agreement was terminated on December 15, 2014 by abandonment, the application of rent after that date is not reasonable and I shall consider those amounts as part of the applicant's request for compensation for lost rent.

The applicant stated that he often accepted payment of rent in kind when the tenants cleared the driveway of snow or performed maintenance or improvements to the property.

I find rent arrears of \$2045 calculated as follows:

Rent Sept - Nov/14 @ \$900/month	\$2700
Rent Dec 1 - 15	450
Payments and credits	<u>(1105)</u>
Rent arrears	\$2045

REPAIRS

The applicant stated that he had to replace the water pump and repair some water supply lines that had ruptured from freezing due to fuel exhaustion. The cost of the water pump was \$289.99. No other costs were noted. As the respondents were obligated to provide fuel to the premises during the term, in my opinion, their abandonment of the premises without notice or sufficient fuel constitutes negligence. I find the repair costs of \$289.99 to be reasonable.

A landlord may retain all or part of a security deposit to cover arrears of rent and repairs required due to the negligence of the tenant. Considering the interest due on the security deposit and applying it first to the repair costs I find net rent arrears due to the applicant of \$1884.92 calculated as follows:

Security Deposit	(\$450.00)
Interest	(0.07)
Repairs	289.99
Rent arrears	<u>2045.00</u>
Total net rent arrears	\$1884.92

WATER AND SEWAGE

The applicant provided a receipt indicating that the respondents had left a balance on their water and sewer account with a balance owing of \$267.06 which was paid by the applicant on January 16, 2015. As the respondents were obligated to pay for these charges during the tenancy agreement, I find them in breach of that obligation.

FUEL

The applicant testified that the fuel tank was full at the commencement of the tenancy agreement. He stated that after the respondents moved out he had several fuel deliveries in order to reestablish the heat to the premises and complete repairs. The applicant provided two invoices for fuel dated December 16, 2014 for \$617.23 and January 26, 2015 for \$299.94. The applicant also sought a third amount of \$1238 but was unable to provide any evidence of payment, delivery or date of delivery. Although the applicant submitted that the \$1238 represented more accurately the cost to fill the tank, I do not accept it without a date of delivery or receipt. In my opinion, the December and January invoices most accurately reflect the amount of fuel necessary to fill the tank left empty by the respondents.

COMPENSATION FOR LOST RENT

A landlord is entitled to compensation for lost rent when a tenant abandons rental premises. The amount of compensation must be equal to the actual loss and is subject to reasonable efforts by the landlord to mitigate the loss. In practical terms, the

landlord must show the premises to prospective tenants, offer the premises at a reasonable rent and re-rent the premises as soon as practical. The applicant stated that he had not been able to re-rent the premises until April 1, 2015 primarily due to the fact that he could not complete the repairs until that date. He stated that he had difficulty contracting a trades person to repair some of the ruptured pipes and could not offer his prospective tenant occupancy until the water system was fully operative. I found no evidence of a contract to complete these repairs, nor did the applicant make any claims against the respondents for labour to repair the damages.

Given that the damages were discovered in mid December, I can not accept that this work could not have been completed until April. The extent of the damages and required repairs and the proximity of the premises to competent contractors do not warrant a delay of over three months. In my opinion, the loss of the December and January rents in the amount of \$1350 is reasonable.

In summary, an order shall issue requiring the respondents to pay the applicant the following amounts:

Rent arrears	\$1884.92
Water and Sewer charges	267.06
Fuel costs	917.17
Compensation for lost rent	<u>1350.00</u>
Total	\$4419.15

Hal Logsdon
Rental Officer