

IN THE MATTER between **VICENTA SUMCAD-BUGG**, Tenant, and **MARION HUTTON**, Landlord;

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:

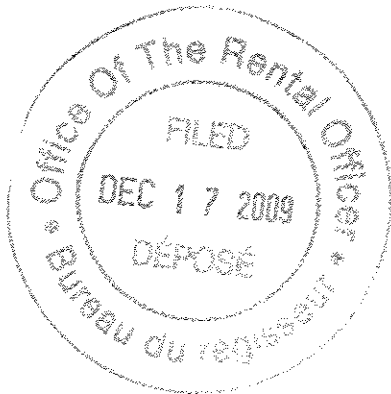
**VICENTA SUMCAD-BUGG**

Tenant

- and -

**MARION HUTTON**

Landlord

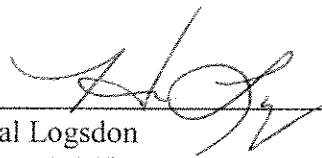


**ORDER**

IT IS HEREBY ORDERED:

1. The applications are dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 17th day of December, 2009.

  
\_\_\_\_\_  
Hal Logsdon  
Rental Officer

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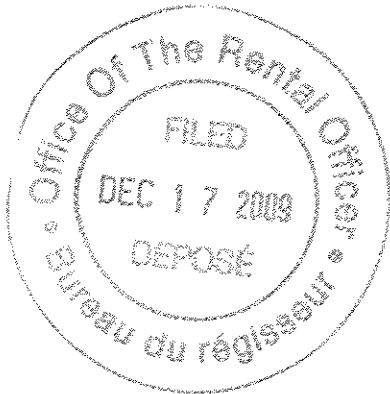
**VICENTA SUMCAD-BUGG**

Tenant

-and-

**MARION HUTTON**

Landlord



**REASONS FOR DECISION**

**Date of the Hearing:** December 9, 2009

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

**Appearances at Hearing:** Terri Bugg, representing the tenant  
Vicenta Sumcad-Bugg, tenant  
Marion Hutton, landlord

**Date of Decision:** December 17, 2009

**REASONS FOR DECISION**

The tenant filed an application on November 16, 2009 seeking the return of the security deposit. On November 24, 2009 the landlord filed an application seeking compensation for utility costs paid on behalf of the tenant. Since both applications deal with the same rental premises and the same tenancy agreement, both matters were determined at a common hearing.

This tenancy agreement commenced on December 1, 2008 and was terminated on October 31, 2009. Although the tenant stated that she ceased occupying the premises on October 24, 2009 she acknowledged that she did return after that date to finish cleaning. The rent was paid to October 31, entitling her to possession to that date. The landlord deducted outstanding water charges (\$95.54) and fuel charges (\$457.97) from the security deposit (\$2000) and accrued interest (\$44.07) and returned the balance of \$1490.56 to the tenant.

The written tenancy agreement between the parties obligates the tenant to pay for fuel and water during the term of the tenancy.

Section 18(2) of the *Residential Tenancies Act* permits a landlord to retain all or part of a security deposit for rent arrears or repairs of damages.

**18.(2) A landlord may, in accordance with this section, retain all or part of the security deposit for repairs of damage caused by a tenant to the rental premises and for any arrears of the rent.**

Since utility costs can not be considered rent unless they are paid to the landlord, there should not

have been any deductions from the tenant's security deposit and it should have been returned to her along with the accrued interest. I find the landlord in breach of section 18(2) of the Act. I find the amount owing to the tenant to be \$553.51 calculated as follows:

Security deposit	\$2000.00
Interest	44.07
Previously returned	<u>(1490.56)</u>
Amount owing tenant	\$553.51

The landlord's application sought compensation for fuel and water costs paid on behalf of the tenant.

The tenant did not dispute that the water account had not been paid in full but, since the amount deducted from the deposit appeared to be an estimated amount, wanted to see documentation concerning the costs. The landlord provided an invoice for the water costs and a receipt indicating that charges of \$194.32 had been paid by the landlord. The tenant accepted the costs as accurate.

The tenant disputed the amounts claimed by the landlord for unpaid fuel. When the tenant is obligated to pay for fuel during the tenancy agreement, it is most practical for the landlord to fill the fuel tank on the day the tenancy begins and for the tenant to fill the tank on the day the tenancy ends. In this case, however, that did not happen.

The invoices provided by the parties indicate that the landlord filled the fuel tank on November 14, 2008 (before the tenancy agreement commenced) and filled it again on December 15, 2008

(after the tenancy had commenced). The latter fill cost \$299.04. Since 31 days elapsed between fillings and the tenancy commenced 15 days prior to the fill, the tenant should pay for 15/31 of the costs. The tenant also disputed the amount because the pipes were frozen in the premises and she claimed that the plumbing contractor turned the heat up very high for 2-3 days to try to thaw the pipes. She claimed that this fuel cost was attributed to the repairs and therefore the responsibility of the landlord. While there may have been some additional fuel used in the attempt to thaw the pipes, there isn't any reliable information to accurately estimate the amount. Clearly the attempt to thaw the pipes did not continue for 15 days. In my opinion the additional amount is insignificant. I calculate the tenants share of the December 15, 2008 charges as \$144.70 calculated as follows:

$$15/31 \times \$299.04 = \$144.70$$

The invoices also indicate that the fuel tank was filled on October 21, 2009 (10 days before the tenancy ended). The cost of the fuel was \$166.88. The tenant ordered the fuel but acknowledged that she did not pay for it. This is the responsibility of the tenant. In addition to this fuel, the tenant should have paid for fuel consumed between October 22-31. Using 75% of the daily consumption in November and December, I estimate this amount as \$45.36 calculated as follows:

Estimated cost of Oil (October 22-31)	
9 days @ 6 litres/day @ \$0.84/litre	\$45.36

I find the tenant in breach of her obligation to pay for utilities and find an amount owing to the landlord in the amount of \$551.26 calculated as follows:

Fuel	\$144.70
Fuel	166.88
Fuel	45.36
Water	<u>194.32</u>
Total owing landlord	\$551.26

Comparing the amounts found owing, results in a difference of only \$2.25. In my opinion, and given that the fuel calculations are based on estimates, this is not a significant amount and does not warrant the issuance of an order. Therefore both applications are dismissed.

In the future, the landlord should only deduct rent arrears and repairs of damages from security deposits. If there are other liabilities of a former tenant, they should be the subject of an application.

I also note that the tenant claimed that they had not cashed the cheque for the security deposit refund which was provided by the landlord. The tenant requested that the landlord stop payment on the cheque and issue a replacement. I do not see why the landlord should incur a bank fee to do so when the cheque has been tendered. I trust the parties can agree on a suitable arrangement if the cheque has been lost or destroyed or is otherwise non-negotiable.

  
\_\_\_\_\_  
Hal Logsdon  
Rental Officer