

IN THE MATTER between **DAWN MCMANUS**, Applicant, and **STACEY SMITH**,
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, **HAL LOGSDON**, Rental Officer,
regarding the rental premises at **YELLOWKNIFE, NT**.

BETWEEN:

DAWN MCMANUS

Applicant/Landlord

- and -

STACEY SMITH

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 62(2) of the *Residential Tenancies Act*, the respondent shall pay the applicant compensation for lost rent in the amount of one hundred six dollars and sixty seven cents (\$106.67).

DATED at the City of Yellowknife, in the Northwest Territories this 16th day of May,
2003.

Hal Logsdon
Rental Officer

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-and-

STACEY SMITH

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REASONS FOR DECISION

Date of the Hearing: May 13, 2003

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Dawn McManus, applicant
Stacey Smith, respondent

Date of Decision: May 15, 2003

REASONS FOR DECISION

The applicant alleged that the respondent vacated the rental premises without notice on March 19, 2003 causing her to lose rent for the month of April. The applicant sought an order requiring the respondent to pay compensation for lost rent in the amount of \$440.

The applicant testified that the tenancy agreement commenced in December, 2002 but that she did not charge any rent for that month. In January, 2003, she charged rent in the amount of \$400 but raised the rent to \$440 in either February or March. She stated that she did not give written notice of the increase. The applicant testified that after the respondent vacated the premises on March 19, 2003 she placed an ad in the local paper advertising the room for rent but was not able to re-rent it until May 1, 2003. She stated that the ad was first placed in the April 11, 2003 edition of the newspaper.

The respondent stated that she had indicated to the respondent on several occasions that she intended to leave but did not specify a date. She confirmed that she gave no written notice or any verbal notice for a specific date. The respondent stated that she felt she had to move because the premises were unfit for her son. She stated that the sink had been clogged for three weeks and that the pets the applicant kept were causing her son to have allergic reactions. She stated that a child protection worker had been in the premises and that she feared that her son would be apprehended if she did not move. She provided a letter from the Yellowknife Health and Social Services Board which recommended her for appropriate housing.

Section 62 of the *Residential Tenancies Act* permits a rental officer to order a tenant to pay compensation for lost rent when a tenant abandons rental premises. Abandonment occurs when a tenancy agreement is not terminated in accordance with the Act and the tenant no longer resides in the premises. Such compensation can only be considered in light of the landlord's efforts to mitigate loss by re-renting the premises as soon as is practicable.

Section 47 of the *Residential Tenancies Act* sets out provisions for rent increases and requires written notice to the tenant at least three months prior to the effective date of the increase.

The rent increase to \$440 was clearly not in accordance with the provisions of the Act and therefore I find the legal rent for the premises to be \$400/month. It was unclear from the testimony of the applicant whether the increased rent was applied in February or March. I shall assume that it became effective on February 1, 2003.

Having become aware of the tenant's departure on March 19th, the applicant could have inserted a classified ad in the March 26th edition of the newspaper. The deadline for that edition would have been 4PM on March 24th. Instead the ad appeared 16 days later, on April 11th. In my opinion, the delay by the applicant caused the loss of rent to be more severe.

In my opinion, the problems the tenant was having with the premises is not a reasonable defence for not giving proper notice. The tenancy was month-to-month and required only 30 days notice to quit. Even a shorter notice would have, in all likelihood, permitted the landlord to re-rent the

premises without loss.

Taking into consideration the illegal rent increase and the landlord's delay in advertising the premises for rent, I find reasonable compensation for lost rent to be \$106.67, calculated as follows:

April rent	\$400.00
Reduction of 16 days @\$13.33/day	(213.33)
Overpayment of rent- Feb. & March	<u>(80.00)</u>
Amount of compensation due	\$106.67

An order shall be issued requiring the respondent to pay the applicant compensation for lost rent in the amount of \$106.67.

Hal Logsdon
Rental Officer