

IN THE MATTER between **KINGSLEY BROWN AND ANELEISE BROWN**,
Applicants, and **TED STUDER (IN TRUST)**, 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:

KINGSLEY BROWN AND ANELEISE BROWN

Applicants/Tenants

- and -

TED STUDER (IN TRUST)

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18(5) of the *Residential Tenancies Act*, the respondent shall return the retained security deposit to the applicants in the amount of two hundred fifty dollars (\$250.00).

DATED at the City of Yellowknife, in the Northwest Territories this 9th day of February,
2007.

Hal Logsdon
Rental Officer

IN THE MATTER between **KINGSLEY BROWN AND ANELEISE BROWN**,
Applicants, and **TED STUDER (IN TRUST)**, 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.

BETWEEN:

KINGSLEY BROWN AND ANELEISE BROWN

Applicants/Tenants

-and-

TED STUDER (IN TRUST)

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: February 6, 2007

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Kingsley Brown, applicant
Aneleise Brown, applicant
Ted Studer, respondent

Date of Decision: February 8, 2007

REASONS FOR DECISION

The parties executed a written tenancy agreement on August 20, 2006 for an eleven month term to commence on October 1, 2006. The applicants testified that they provided a security deposit for the premises of \$400 consisting of \$250 in cash, \$50 in consideration of a bar refrigerator provided to the landlord and \$100 in consideration for labour provided to the landlord to relocate a shed on the property. In a written notice to the landlord, dated September 18, 2006 the applicants stated that they would not be taking possession of the premises.

The respondent retained the security deposit but has not issued a statement of the security deposit or deductions. The applicants sought an order requiring the respondent to return the security deposit.

The respondent testified that he received only \$200 in cash and agreed to an in kind payment of \$50 for the security deposit. The respondent alleged that because the applicants damaged the property while relocating the shed, he did not pay anything to the applicants or credit the security deposit account for \$100. The respondent stated he acknowledged receipt of \$200 in cash and \$50 for the refrigerator in writing on the back of the tenancy agreement. A copy of the written acknowledgement, purportedly copied from the back of the tenancy agreement, was produced in evidence by the respondent.

Section 18(2) of the *Residential Tenancies Act* sets out reasons a landlord may retain a security deposit.

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. (Emphasis is mine)

Section 2(4) of the *Residential Tenancies Act* sets out when a tenancy agreement commences.

(4) A tenancy agreement takes effect on the date the tenant is entitled to occupy the rental premises.

Clearly, if a prospective tenant declines to take possession of the premises prior to the date they are entitled to take possession, there can be no rent arrears. No rent has come due. The prospective tenant may be liable for lost rent but that is not the issue here.

There can only be damages by a tenant if there is a tenancy agreement in effect.

Otherwise there is no tenant. Therefore there are no grounds for a landlord to retain any of the security deposit if the tenancy agreement is renounced prior to the date the tenant is entitled to occupancy.

The respondent argued that he was entitled to retain the security deposit because the applicants did take possession prior to the commencement date indicated on the written tenancy agreement. The respondent testified that applicants made arrangements to have cable service installed in the premises and established an account for electricity prior to October 1, 2006. The respondent also testified that the applicants were permitted to move certain possessions into the premises and on to the property prior to October 1, 2006.

The respondent acknowledged that he had not given the applicants keys to the premises but that the premises were left unlocked.

The respondent alleged that the applicants used the bathroom in the premises, turning on the water supply to the toilet. The respondent testified that a leak occurred which damaged the flooring. The respondent testified that the repairs required to fix the damaged flooring exceeded the security deposit of \$250, entitling him to retain the deposit for repairs.

The applicants testified that they had not lived in the premises and had only entered the premises to attend to the installation of the cable and store several items in anticipation of the commencement of the tenancy agreement.

In my opinion, the evidence does not suggest that the applicants were entitled to occupy the premises earlier than October 1, 2006. The landlord's permission to store items on the property, install the cable, establish the electrical account or use the bathroom does not constitute an entitlement to occupancy. If the parties had agreed to an earlier occupancy date than October 1, 2006 one would at least expect the landlord to provide keys to the premises if not amend the commencement date on the tenancy agreement and demand rent. The electrical consumption prior to October 1, 2006 is very low and not typical of occupied premises. The damage to the floor, however caused, took place at a time when there was no tenancy agreement in place for the premises. Since the applicants were not tenants at that time, a remedy pursuant to the *Residential Tenancies Act* can not be applied.

The evidence does not support a security deposit of \$400. I find evidence that the respondent accepted \$200 in cash and \$50 in kind for the security deposit. There are no receipts or agreements to the contrary.

The respondent had no grounds to retain the security deposit. An order shall be issued for the respondent to return the security deposit in the amount of \$250 to the applicants. There shall be no interest due on the deposit.

Hal Logsdon
Rental Officer