

IN THE MATTER between **DEBBIE PLUMADORE**, Applicant, and **DWAYNE KLAUSE AND NICOLE ROMBOUTS**, 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, regarding the rental premises at **HAY RIVER, NT**.

BETWEEN:

DEBBIE PLUMADORE

Applicant/Landlord

- and -

DWAYNE KLAUSE AND NICOLE ROMBOUTS

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 12th day of November, 2008.

Hal Logsdon
Rental Officer

IN THE MATTER between **DEBBIE PLUMADORE**, Applicant, and **DWAYNE KLAUSE AND NICOLE ROMBOUTS**, 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:

DEBBIE PLUMADORE

Applicant/Landlord

-and-

DWAYNE KLAUSE AND NICOLE ROMBOUTS

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: November 6, 2008

Place of the Hearing: Hay River, NT via teleconference

Appearances at Hearing: Debbie Plumadore, applicant
Dwayne Klause, respondent
Nicole Rombouts, respondent

Date of Decision: November 12, 2008

REASONS FOR DECISION

The applicant alleged that the respondents had breached the tenancy agreement by failing to pay for the full cost of fuel used during the term of the tenancy agreement. The applicant sought compensation for fuel costs in the amount of \$1106.27.

The applicant stated that the fuel tank was empty when the respondents vacated the premises on April 30, 2008. The applicant stated that she had not filled up the tank but a calculation made by the fuel supplier based on the volume of the tank and the price of fuel on May 1, 2008 was provided in evidence which indicated that it would have cost \$1406.27 to fill the tank. The applicant stated that she had been paid \$300, bringing the amount owed to \$1106.27.

The tenancy agreement obligated the tenants to pay for fuel during the term of the agreement and also had an additional provision that required the tenants to fill the fuel tank when the tenancy was terminated.

The respondents testified that the fuel tank was not full at the commencement of the tenancy agreement. The respondents stated that the furnace ran out of fuel two weeks after it was started in the fall.

The applicant acknowledged that she had not filled the fuel tank at the commencement of the tenancy agreement but assumed that the previous tenant had done so. She noted, however, that the respondents had previously agreed to pay the fuel costs in installments acknowledging the

debt. An undated letter from Ms. Rombouts, agreeing to pay the fuel costs demanded by the applicant was provided in evidence. The respondents stated that they decided not to pay the fuel costs when the applicant failed to return the security deposit.

The evidence supports the conclusion that the fuel tank was not full at the commencement of the tenancy agreement. A full tank of fuel (1135 litres) would undoubtedly last more than two weeks in September. The applicant acknowledged that she did not check or fill the tank at the commencement of the tenancy agreement. It is also clear from the evidence that the tank was empty at the end of the tenancy agreement. Therefore, while I may conclude that the respondents are in breach of their obligation to pay for fuel during the term of the tenancy agreement, it is impossible to determine the appropriate compensation due to the landlord.

In my opinion, the respondents' prior statement of willingness to pay the fuel costs is not an accurate measure of their liability. As well, the obligation in the tenancy agreement to leave the fuel tank full at the termination of the tenancy agreement is only a reasonable obligation if the tank was full at the commencement of the agreement.

The applicant's failure to confirm that the tank was full at the commencement of the tenancy agreement has deprived her of the evidence necessary to determine a reasonably accurate quantum of compensation. Without such evidence, I must dismiss the application.

Hal Logsdon
Rental Officer