

IN THE MATTER between **IRENE CATHOLIQUE**, Tenant, and **WADE FRIESEN**,
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:

IRENE CATHOLIQUE

Tenant

- and -

WADE FRIESEN

Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 34(2)(c) of the *Residential Tenancies Act*, the landlord shall pay the tenant compensation for loss that has been or will be suffered as a result of the disturbance of the tenant's lawful possession of the premises in the amount of one hundred twenty nine dollars and seventy eight cents (\$129.78).
2. Pursuant to sections 66(b) and 83(2) of the *Residential Tenancies Act*, the landlord shall return and transport the tenant's personal possessions to her at her convenience and to a location in the City of Yellowknife of her choosing, without charge. The landlord shall continue to store the goods in a safe manner until claimed by the tenant or approval is

obtained from the rental officer to dispose of the goods should the tenant fail to claim them within a reasonable period of time.

DATED at the City of Yellowknife, in the Northwest Territories this 13th day of February, 2009.

Hal Logsdon
Rental Officer

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BETWEEN:

IRENE CATHOLIQUE

Tenant

-and-

WADE FRIESEN

Landlord

REASONS FOR DECISION

Date of the Hearing: February 10, 2009

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Irene Catholique, tenant
Arlene Hache, representing the tenant
Wade Friesen, landlord
Ron Lacroix, witness for the landlord
George Hebert, witness for the landlord

Date of Decision: February 13, 2009

REASONS FOR DECISION

The tenant filed an application against the landlord on January 22, 2009 alleging that the landlord had disturbed her possession of the rental premises and failed to maintain the premises in a good state of repair. The landlord filed an application against the tenant on January 26, 2009 alleging that the tenant had failed to pay rent and utilities and had failed to repair the premises or leave them in a state of ordinary cleanliness. The landlord also alleged that the tenant had abandoned the premises and sought compensation for lost rent. With the agreement of both parties, the two applications were heard at a common hearing.

The tenant stated that she had gone to LutselKe on December 24, 2008 to visit family during Christmas and when she returned on January 6, 2009 she discovered that the premises had been rented to someone else. The tenant also alleged that the furnace quit in October, 2008 and the landlord failed to make repairs. The tenant stated that she hired someone to replace the pump on the furnace which cost her \$600. The tenant also alleged that the landlord had failed to attend to leaks in the walls and windows and a broken door.

The landlord stated that the tenant had told him that she was going to vacate the premises on December 31, 2008. The landlord stated that he attended the premises four times during the last five days of December, 2008 but no one was home. The landlord stated that he considered the premises to be abandoned and took possession on January 1, 2009. The landlord retained the security deposit (\$1150) and accrued interest (\$94.53) applying it against rent arrears (\$3950),

repairs to the walls (\$470), the replacement of a door (\$150), repainting cupboards and bathroom (\$300), cleaning and removal of garbage (\$1100) and dump fees (\$88), fuel (\$903.51) and water charges (\$824.84) resulting in a balance owing of \$6541.82. The landlord also sought compensation for lost rent in the amount of \$600 and packing and storage fees of \$1411.25.

The landlord stated that he had never been informed about wall or window leakage or any problems with the door. The landlord acknowledged that the tenant had told him about the problem with the furnace but he did not have the money to make the repair. He told the tenant if she paid him the rent she owed, he would be able to attend to the problem. A few days later the landlord installed a used pump but it did not work. In the meantime, the tenant arranged for the repairs. The landlord disputed the cost, stating that the repairs should only cost about \$225. A quotation from a local mechanical firm was provided in evidence.

Section 1(3) of the *Residential Tenancies Act* sets out the criteria for abandonment of rental premises.

- 1.(3) For the purpose of this Act, a tenant has abandoned the rental premises and the residential complex where the tenancy has not been terminated in accordance with this Act and**
- (a) the landlord has reasonable grounds to believe that the tenant has left the rental premises; or**
 - (b) the tenant does not ordinarily live in the rental premises, has not expressed an intention to resume living in the rental premises, and the rent the tenant has paid is no longer sufficient to meet the tenant's obligation to pay rent.**

In order to determine if there are reasonable grounds to believe the tenant has left the rental premises, a landlord must consider all of the facts. In determining whether there

were reasonable grounds in this matter it appears the landlord has relied almost exclusively on one fact - that the tenant told him that she intended to leave on December 31, 2008. The tenant testified that she told the landlord she was going to leave on December 31, 2008 out of continued frustration with the landlord's failure to perform his obligations. The evidence supports that the relationship between the parties had become strained. Mr. Hebert, who now resides in the premises, testified that his former girlfriend spoke to the tenant by phone and was told by the tenant that she intended to leave the premises at the end of December, 2008. The tenant denied saying this to Mr Hebert's former girlfriend. I must take into consideration that Mr Hebert's testimony in this regard is hearsay and must be weighed accordingly.

The photographic evidence and the inventory of abandoned property filed by the landlord indicate that the premises contained all of the possessions of the tenant including food. The evidence certainly does not suggest that the tenant had left and abandoned only property she had no use for. It should have been clear to the landlord that no personal possessions had been removed from the premises. One photograph, taken by the landlord, shows a decorated Christmas tree in the living room complete with what appears to be presents.

Another fact ignored by the landlord was that during the Christmas season, it is not uncommon for people to travel to visit relatives. The landlord was most certainly aware that the tenant was originally from LutselKe and should have considered that perhaps she was only away for a visit during the holidays. In my opinion, a prudent landlord

would have hesitated to take possession of the premises so quickly and would have taken additional steps, given all of the facts, to determine if the tenant intended to return to the premises.

It should also be noted that the tenant did not give written notice to terminate. Even if she had done so, the decision regarding abandonment is dependent on whether or not the tenant is still *occupying* the premises, not whether the tenancy has been terminated in accordance with the Act. As long as a tenant is still occupying the premises, the landlord can not interfere with or disturb their possession.

In my opinion, the landlord did not have reasonable grounds to consider the premises abandoned and is therefore in breach of his obligation to not disturb the tenant's lawful possession of the premises. In my opinion, the tenant is entitled to reasonable compensation which is directly related to the landlord's breach of that obligation.

The tenant is staying with friends but her children were sent to LutselKe and Ft. Smith to stay with relatives. The tenant has had to pay airfares to transport the children and will have to pay additional airfare when she finds new accommodation. I find these costs to be \$1488.80 calculated as follows:

Two return airfares (Yellowknife to LutselKe)	\$800.00
One return airfare (Yellowknife to Ft. Smith)	<u>688.80</u>
Total	\$1488.80

The tenant has had to pay room and board for herself and children which she indicated was

\$850/month. I am reasonably confident that finding suitable accommodation will require her to pay for March as well, a total of \$2550.

In addition to the compensation for disturbance of her possession, in my opinion, the tenant is entitled to compensation for the repair of the furnace pump, although I agree with the landlord that the repair could have been completed for less. In my opinion, \$236 is reasonable compensation.

The tenant asked that an order be issued requiring the landlord to return possession of the rental premises to her or alternatively, to order the landlord to rent her another dwelling in his portfolio. The landlord testified that all of his properties were currently rented. It is not reasonable to deny another person continued possession in order to put the tenant back in possession of the premises. I can only reasonably consider compensation for the tenant in this matter.

The tenant's request for compensation for the allegedly leaking walls and windows and the door are denied as there is no evidence to indicate that the landlord was made aware of the problems as required by section 30(5) of the *Residential Tenancies Act*.

The landlord is also entitled to relief in this matter. The landlord is entitled to rent to December 31, 2008 and the tenant has not paid the rent to that date. The landlord is entitled to rent arrears of \$3950.

The tenant is responsible for the payment of fuel and water during the term of the agreement but has not paid these amounts in full. The statements provided by the landlord indicate outstanding charges for water to December 31, 2008 of \$824.04. The landlord also filled the fuel tank on January 9, 2009. Reducing the cost by the fuel consumed in January, 2009 I find outstanding fuel costs of \$615.51.

The landlord's request for cleaning and repair costs are denied as the tenant was deprived of the opportunity to either clean the premises or make any repairs that may have been necessary. The landlord's request for compensation for lost rent is also denied as compensation for lost rent can only be considered as a result of abandonment of the premises.

Taking into account the retained security deposit I find the following amounts owed to the parties.

Owing to the Landlord:

Rent arrears	\$3950.00
Fuel	615.51
Water	824.04
Security deposit & interest	<u>(1244.53)</u>
Amount owing landlord	\$4145.02

Owing to the Tenant:

Return air - LutselKe	800.00
Return air - Ft. Smith	688.80
Pump repair	236.00
Room and board (Jan.-March/09)	<u>2550.00</u>
Amount owing tenant	\$4274.80

Off-setting these amounts results in an amount owing to the tenant of \$129.78. An order shall issue requiring the landlord to pay compensation to the tenant in the amount of \$129.78.

In the matter of the tenant's personal possessions, currently being stored by the landlord, the landlord is ordered to return the goods to the tenant as they can not be considered abandoned personal property. The landlord shall release and transport the possessions to a location within the City of Yellowknife designated by the tenant without charge at the convenience of the tenant. The landlord shall continue to store the possessions in a safe manner and shall only dispose of the property with the approval of the rental officer if the property is not claimed within a reasonable period of time.

Hal Logsdon
Rental Officer
