

IN THE MATTER between **AHMED EL SAIS**, Applicant, and **EMMA NOKSANA**,
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 **INUVIK, NT.**

BETWEEN:

AHMED EL SAIS

Applicant/Landlord

- and -

EMMA NOKSANA

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act* the respondent shall pay the applicant rent arrears in the amount of five thousand four hundred twenty dollars (\$5420.00).

DATED at the City of Yellowknife, in the Northwest Territories this 23rd day of April,
2009.

Hal Logsdon
Rental Officer

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REASONS FOR DECISION

Date of the Hearing: April 20, 2009

Place of the Hearing: Inuvik, NT

Appearances at Hearing: Ahmed El Sais, applicant
Gafar Karmalla, representing the applicant
Emma Noksana, respondent

Date of Decision: April 23, 2009

REASONS FOR DECISION

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay rent and sought an order requiring the respondent to pay the alleged rent arrears and terminating the tenancy agreement. The premises consist of a lot in a mobile home park.

The applicant's representative stated that the mobile home had been damaged by fire in the summer of 2008 and that the respondent had not lived there since that time. The mobile home remains on the lot and the applicant has continued to charge rent of \$250/month. The applicant provided a statement which indicated rent owing to December 31, 2008 in the amount of \$6740 calculated as follows:

Oct/06	\$240
Nov/06	250
Dec/06	250
Jan-Dec/07	3000
Jan-Dec/08	<u>3000</u>
Total	\$6740

The applicant's representative stated that no rent had been paid in 2009 bringing the balance owing to \$7740.

The respondent testified that the sewage backed up in April, 2008 flooding the mobile home. The respondent provided a report by the Environmental Health Officer outlining how the premises should be decontaminated. The respondent stated that she thought the landlord was responsible to repair the damage and stated that she tried to contact the landlord without success.

On June 27, 2008 the mobile home was damaged by fire rendering it uninhabitable. The respondent stated that the Fire Department had condemned the mobile home and that she was in the process of obtaining a permit for demolition. She stated that she intended to demolish the mobile home as soon as a permit was issued.

The applicant was aware that the mobile home was damaged by fire and that the respondent was no longer occupying the unit. In a letter to the applicant dated September 26, 2008 the rental officer referred to section 1(3) of the *Residential Tenancies Act* and outlined how the applicant could proceed if the premises were abandoned. The applicant did not proceed to declare the premises abandoned. No inventory of abandoned personal property was filed nor was any action taken to remove the mobile home from the lot. The applicant stated that he did not take any steps to remove the mobile home from the lot or declare it abandoned because he did not want to assume any expenses associated with removal or eventual demolition.

It is apparent from the evidence that the mobile home was abandoned, if not in April/08 after the sewage back-up then certainly in June/08 after the fire. I shall consider June 28, 2008 to be the date of abandonment making the following rent arrears payable to the applicant:

Oct/06	\$240
Nov/06	250
Dec/06	250
Jan-Dec/07	3000
Jan-June/08	<u>1500</u>
Total	\$5420

Any amount due to the landlord after abandonment is considered compensation for lost rent.

Compensation for lost rent is available to a landlord when a tenant abandons a rental premises. The compensation is limited to the actual amount of rent lost and is subject to the landlord's reasonable efforts to mitigate loss. In practical terms, the landlord is obligated to re-rent the premises as soon as practical at a reasonable rent so that rent loss is held to a minimum.

In this case, the applicant could have removed the mobile home from the lot, filed an inventory and sought the approval of the rental officer to dispose of the mobile home. Given it's condition, the applicant could have sought the rental officer's permission to waive the storage of the mobile home and demolish the unit immediately. He chose not to do so, leaving the mobile home on the lot. As the applicant took no steps to mitigate the loss of future rent after the premises were abandoned, compensation for the months of July, 2008 to present is denied.

There is no reason to terminate this tenancy agreement. It was terminated on June 28, 2008 when the premises were abandoned.

Although the respondent appears to be in the process of removing the mobile home from the lot, if she fails to do so, the applicant may consider the unit to be abandoned and seek permission of the rental officer to demolish the unit himself.

I find the respondent in breach of her obligation to pay rent. An order shall issue requiring the respondent to pay the applicant rent arrears in the amount of \$5420.

Hal Logsdon
Rental Officer