

IN THE MATTER between **TERILYN HUSTON**, Landlord, and **ANGELA OKOGWU**, Tenant;

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:

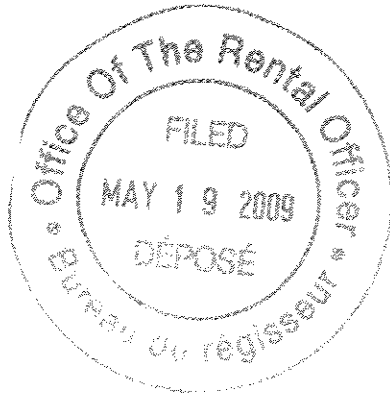
TERILYN HUSTON

Landlord

- and -

ANGELA OKOGWU

Tenant



ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the tenant shall pay the landlord rent arrears in the amount of one hundred ninety two dollars and eighty six cents (\$192.86).

DATED at the City of Yellowknife, in the Northwest Territories this 15th day of May, 2009.



Hal Logsdon
Rental Officer

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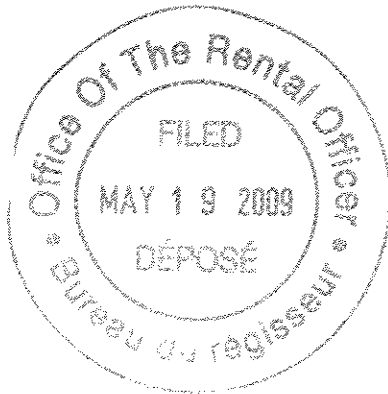
TERILYN HUSTON

Landlord

-and-

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Tenant



REASONS FOR DECISION

<u>Date of the Hearing:</u>	May 11, 2009
<u>Place of the Hearing:</u>	Yellowknife, NT via teleconference
<u>Appearances at Hearing:</u>	Terilyn Huston, landlord (by telephone) Angela Okogwu, tenant (by telephone)
<u>Date of Decision:</u>	May 15, 2009

REASONS FOR DECISION

The landlord's application was filed on February 17, 2009 seeking relief for alleged rent arrears, cleaning costs and the loss of a satellite television receiver. The tenant's application was filed on March 4, 2009 seeking relief for disturbance of possession. Since both applications relate to the same rental premises and tenancy agreement, both matters were heard at a common hearing.

The premises consist of a room in a house. The landlord and tenant share common areas. The tenancy agreement was verbal. The monthly rent for the premises was \$600.

The tenant stated that she had stayed in a hotel until December 6, 2008 waiting for the arrival of her personal goods. She stated that she moved into the premises on December 6, 2008 and that the tenancy agreement ran from the sixth day of the month to the sixth day of the following month. The landlord stated that the tenant was entitled to take possession on December 1, 2008 and that the tenancy ran from month to month. Section 2(4) of the *Residential Tenancies Act* sets out when a tenancy agreement begins.

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

From the evidence, I conclude that the verbal tenancy agreement commenced on December 1, 2008 and ran from month-to-month. The verbal tenancy agreement also appears to include the provision of satellite television for an extra charge of \$10/month payable to the landlord.

The tenant alleged that the landlord would not permit her to occupy the premises during the two week Christmas vacation and said she would turn off the heat if she stayed. She sought compensation of \$1887.01 for expenses related to the landlord's alleged disturbance of her possession. The tenant testified that she had planned to stay in Fort Smith over the holidays but went to Dallas, Texas and Toronto, Ontario instead because it was less expensive than staying in Fort Smith. She provided receipts for her expenses which included airfare, car rental, fuel and hotel costs.

The landlord denied prohibiting the tenant from occupying the premises stating that she understood that the tenant was also leaving town for the holidays. The landlord left on holidays and arranged for someone to check the house periodically while she and the tenant were away. The landlord stated that she had not done anything to prevent the tenant from coming and going as she pleased. I can find no evidence that the landlord prevented the tenant from occupying the premises during the Christmas holidays. The locks were not changed. The tenant continued to have a key to the premises. There is no evidence that the person checking the house was given any instructions pertaining to the tenant. Surely the landlord would not have turned off the heat to the unit and risked the certain damage that would have occurred. The tenant's request for compensation is denied.

The landlord served a notice on the tenant on January 8, 2008 seeking vacant possession of the premises on January 31, 2009 due to "irreconcilable differences" and the tenant vacated the premises on February 9, 2009. The landlord alleged that the tenant failed to pay any rent for

February, 2009 and sought the full month's rent of \$600. The landlord also alleged that the tenant had failed to pay the full amount of the \$20 monthly satellite television charges. The landlord also alleged that the tenant's room and the common areas were not left in a clean condition and sought \$100 compensation for cleaning costs. The landlord alleged that the tenant had taken the satellite television receiver worth \$179.99. A receipt for the receiver was provided in evidence.

There is no provision in the *Residential Tenancies Act* for a tenancy agreement of this type to be terminated by the landlord's notice. Therefore the landlord's notice was of no effect and the tenant continued to have the right of possession. Again, I find no evidence that the landlord took any action to interfere with the tenant's lawful possession. The locks were not changed and the tenant was free to come and go as she pleased. The landlord asked the tenant to leave due to conflicts in lifestyle and the tenant voluntarily left. There is no cause for compensation to the tenant. The landlord has no right to the full month's rent for February, 2009. The tenant is only liable for the rent for the days she occupied the premises, namely nine days or \$192.86.

The landlord alleged that the room and the common areas were not left in a clean condition. The tenant disputed the allegation, stating that the premises and the common areas were clean. The landlord has not provided sufficient evidence to conclude that the premises were not clean and her request for relief of \$100 is denied.

The landlord stated that she enriched the satellite television package and raised the monthly fee from \$10 to \$20 in January, 2009. The tenant paid only \$10 in January and nothing in February,

2009. "Rent" is defined in the Act as follows:

"rent" includes the amount of any consideration paid or required to be paid by a tenant to a landlord or his or her agent for the right to occupy rental premises and for any services and facilities, privilege, accommodation or thing that the landlord provides for the tenant in respect of his or her occupancy of the rental premises, whether or not a separate charge is made for the services and facilities, privilege, accommodation or thing.

"Services and facilities" includes the provision of television services and are therefore considered rent. Section 47 imposes restrictions on rent increases.

- 47(1) Notwithstanding a change in landlord, no landlord shall increase the rent in respect of a rental premises until 12 months have expired from**
- (a) the date the last increase in rent for the rental premises became effective; or**
 - (b) the date on which rent was first charged, where the rental premises have not been previously rented.**
- (2) The landlord shall give the tenant notice of the rent increase in writing at least three months before the date the rent increase is to be effective.**

The increase in the satellite television charges fails to comply with the provisions contained in section 47. The landlord's request for relief of \$30 is therefore denied.

The tenant stated that she paid for the cable installation of the satellite television which cost the same as the receiver. She acknowledged taking the receiver, stating that since she paid for the cable, she was entitled to the receiver. I disagree. The landlord should have paid for the cable installation since it was part of a service and facility provided to the tenant for a fee. However, the receiver is the property of the landlord and should have been left in the premises when the tenant vacated. Ideally, the landlord should pay the tenant for the cable installation and the tenant should return the receiver. However, in terms of compensation, none is warranted as the value of the cable installation offsets entirely the value of the receiver.

In summary, I find the tenant in breach of her obligation to pay nine days of rent in February, 2009. I find that amount to be \$192.86. An order shall issue requiring the tenant to pay the landlord rent arrears in the amount of \$192.86.



Hal Logsdon
Rental Officer