

IN THE MATTER between **MATTHEW OUILLETTE AND JOSH OUILLETTE**,  
Applicants, and **ERNIE CHASSIE AND MIMI KENNEDY**, 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 **YELLOWKNIFE, NT.**

BETWEEN:

**MATTHEW OUILLETTE AND JOSH OUILLETTE**

Applicants/Landlords

- and -

**ERNIE CHASSIE AND MIMI KENNEDY**

Respondents/Tenants

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to sections 62(2) and 83(2) of the *Residential Tenancies Act*, the respondents shall pay the applicants compensation for lost rent in the amount of one thousand seven hundred dollars (\$1700.00). Ms Kennedy may elect to apply any unpaid balance owing to her from a previous order (file #10-10586, filed on February 5, 2009) to the satisfaction of this order.

DATED at the City of Yellowknife, in the Northwest Territories this 21st day of May,  
2009.

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Hal Logsdon  
Rental Officer

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Respondents/Tenants

**REASONS FOR DECISION**

**Date of the Hearing:** May 13, 2009

**Place of the Hearing:** Yellowknife, NT

**Appearances at Hearing:** Melissa Ouillette, representing the applicants  
Matthew Ouillette, applicant  
Josh Ouillette, applicant  
Mimi Kennedy, respondent

**Date of Decision:** May 21, 2009

### **REASONS FOR DECISION**

The applicants alleged that the respondents had failed to give adequate notice to terminate the tenancy agreement resulting in a loss of future rent. The applicants sought an order requiring the respondents to pay compensation for the loss of one months rent.

The tenancy agreement between the parties ran month-to-month. The respondents gave notice on or about October 5, 2008 to terminate the tenancy agreement on October 31, 2008 and vacated the premises on that date.

The applicants placed an ad in the local newspaper on October 11, 2008 offering the premises for rent. The newspaper failed to publish the ad until October 27, 2008. The newspaper acknowledged their error in an e-mail to the applicants and ran the ad for an additional two weeks without charge. The applicants stated that they showed the premises to prospective tenants and re-rented the premises on December 1, 2008. The applicants sought compensation for the November rent in the amount of \$1700.

Clearly the respondent's notice was insufficient, regardless of how long the tenancy agreement had been in place. Section 52 of the *Residential Tenancies Act* sets out the notice requirements for periodic tenancy agreements.

**52.(1) Where a tenancy agreement does not specify a date for the termination of the tenancy agreement, the tenant may terminate the tenancy on the last day of a period of the tenancy by giving the landlord a notice of**

**termination,**

- (a) in the case of a weekly tenancy, at least seven days before the termination date stated in the notice of termination;**
- (b) in the case of a monthly tenancy that has continued for less than 12 months, at least 30 days before the termination date stated in the notice of termination; or**
- (c) in the case of a monthly tenancy that has continued for 12 months or more, at least 60 days before the termination date stated in the notice of termination.**

The principle of mitigation of damages applies to claims made for compensation for lost rent.

Section 5 of the Act sets out the obligation of the landlord to mitigate the loss of rent.

- 5.(1) Where a landlord or tenant is liable to the other for damages as a result of a breach of a tenancy agreement or this Act, the landlord or tenant entitled to claim damages shall mitigate his or her damages.**
- (2) Without limiting subsection (1), where a tenant terminates a tenancy agreement, contravenes a tenancy agreement, or vacates or abandons rental premises, other than in accordance with this Act or the tenancy agreement, the landlord shall rent the rental premises again as soon as is practicable and at a reasonable rent in order to mitigate the damages of the landlord.**

The respondent argued that the applicants failed to take reasonable steps to mitigate loss. She noted that the applicants had failed to pay for the ad when it was placed, resulting in the ad not being published. However, the applicants noted that they inquired how the cost of the ad should be remitted to the newspaper and received no answer. The applicants stated that they assumed they would be billed. The newspaper accepted responsibility for the ad not being published on time. In an e-mail sent to the respondents, the ad representative writes, "I'll run it for 2 weeks at no charge [due] to my mistake. I'm sorry for any inconvenience".

The respondent also noted that a later version of the ad increased the rent from \$1700 to \$1850. In my opinion, this still is a reasonable rent. It would appear that the landlords were entitled to raise the rent.

The respondent also noted that the premises were not shown until October 31, 2008. This is understandable as the newspaper ad only appeared several days earlier.

Should the applicants' request for compensation for lost rent be denied if they took reasonable efforts to re-rent the premises for November 1, 2008 but failed to do so because the newspaper failed to promptly run their advertisement? In my opinion, no. I find that the applicants took reasonable steps to mitigate damages and that the respondents are liable for the loss of the November, 2008 rent of \$1700.

An order shall issue requiring the respondents to pay the applicants compensation for lost rent in the amount of \$1700. Ms Kennedy may elect to apply any unpaid balance owing to her from a previous order (file #10-10586, filed on February 5, 2009) to the satisfaction of this order.

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Hal Logsdon  
Rental Officer