

IN THE MATTER between **DANIEL AUGER**, Applicant, and **TANYA LEE MCLEOD**, 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 **YELLOWKNIFE, NT.**

BETWEEN:

DANIEL AUGER

Applicant/Landlord

- and -

TANYA LEE MCLEOD

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 62(2) of the *Residential Tenancies Act*, the respondent shall pay the applicant compensation for lost rent in the amount of one thousand three hundred twenty five dollars (\$1325.00).

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

Hal Logsdon
Rental Officer

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BETWEEN:

DANIEL AUGER

Applicant/Landlord

-and-

TANYA LEE MCLEOD

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: May 13, 2009

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Daniel Auger, representing the applicant
Tanya Lee McLeod, respondent

Date of Decision: May 21, 2009

REASONS FOR DECISION

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

The tenancy agreement between the parties ran month-to month and was in effect for more than 12 months. The respondent gave notice on January 9, 2009 to terminate the tenancy agreement on January 31, 2009 and vacated the premises on that date. 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.**

Therefore section 52(1)(c) would apply to this tenancy agreement.

Section 55 sets out the required contents of a termination notice including the requirement that it be made in writing.

- 55.(1) A notice of termination by a tenant or a landlord shall be in writing and must**
- (a) be signed by the tenant or the landlord or an agent of the tenant or the landlord;**
 - (b) identify the rental premises to which the notice applies;**
 - (c) state the date on which the tenancy is to terminate; and**
 - (d) state the reason for the termination of the tenancy.**

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

Section 5 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 applicant stated that he was out of the country from January 23 to February 3, 2009 and unable to advertise or show the premises until his return. He stated that his efforts to re-rent the premises were further delayed because the tenant had changed the locks to the premises preventing him from inspecting the premises until a number of days after he had returned to Canada. The applicant stated that he did advertise the premises sometime after February 3, 2009 and entered into a tenancy agreement February 20, 2009 to commence on April 1, 2009.

The respondent stated that she had indicated her intention to terminate the tenancy agreement in December, 2008 when the applicant sought an order terminating the tenancy agreement however

there was no written notice provided. The respondent also stated that she had referred several prospective tenants but had not sought the applicant's permission to assign the tenancy agreement. The applicant stated that the respondent had not given him any specific names or contact information for prospective tenants although he did have several inquiries after the premises had already been rented.

In my opinion, the applicant did not take steps to re-rent the premises as soon as practicable. The tenant's notice was given two weeks before the applicant left the country, about the same amount of time it took to find a tenant in February after he placed an advertisement and started showing the premises. Had the applicant acted swiftly in January to advertise and show the premises, it is likely that they could have been rented commencing March 1, 2009 even considering the notice that many prospective tenants would be obliged to give their current landlords. The Yellowknife vacancy rate is currently less than 1%.

If the respondent did change the locks (an allegation that was disputed by the respondent) it should not have impeded the applicant's ability to show the premises. He could have done so during the last two weeks of the respondent's possession or engaged a locksmith to gain entry after she gave up possession.

In my opinion, the applicant could have significantly decreased the chance of losing the March, 2009 rent if he had acted more promptly to advertise and show the premises as soon as he received the respondent's notice to terminate. I find compensation for the February, 2009 rent to

be reasonable in the amount of \$1325 but deny the applicant's request for compensation for the March, 2009 rent.

An order shall issue requiring the respondent to pay the applicant compensation for lost rent in the amount of \$1325.

Hal Logsdon
Rental Officer