

IN THE MATTER between **MICHAEL R. FATT**, Applicant, and **NWT HOUSING CORPORATION**, 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 **LUTSEL K'E, NT**.

BETWEEN:

**MICHAEL R. FATT**

Applicant/Tenant

- and -

**NWT HOUSING CORPORATION**

Respondent/Landlord

**ORDER**

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 20th day of May, 2009.

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Hal Logsdon  
Rental Officer

IN THE MATTER between **MICHAEL R. FATT**, Applicant, and **NWT HOUSING CORPORATION**, Respondent.

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

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BETWEEN:

**MICHAEL R. FATT**

Applicant/Tenant

-and-

**NWT HOUSING CORPORATION**

Respondent/Landlord

**REASONS FOR DECISION**

**Date of the Hearing:** May 19, 2009

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

**Appearances at Hearing:** Michael R. Fatt, applicant  
Michael Keohane, representing the respondent  
Agatha Laboucan, representing the respondent

**Date of Decision:** May 20, 2009

### **REASONS FOR DECISION**

The applicant alleges that after he returned to Lutsel K'e after an absence of over one month, he discovered that the locks had been changed to his rental premises and the landlord prohibited him from occupying the unit, claiming that it had been abandoned. The applicant sought an order requiring the landlord to give him access to the rental premises. The applicant sought no compensation.

The applicant stated that he had not occupied the rental premises from approximately November 15, 2008 to December 22, 2008. He stated that he had left the premises vacant but had arranged with someone to look after the unit periodically. The applicant stated that he did not notify the landlord that he would be leaving the premises vacant but did take precautions against freezing by draining the water system and arranging for fuel delivery. The applicant stated that when he returned to the community, the locks to the premises had been changed and he was told he abandoned the premises and was prohibited from possession. The applicant returned to Yellowknife where he claims he has been homeless and residing at the Salvation Army shelter.

The applicant also expressed concern and confusion concerning the tenancy agreement. He was unsure of who the landlord was or whether the unit was rented to him or had been sold to him and mortgaged. The applicant expressed concern that the NWT Housing Corporation was still sending him documents demanding monthly payments even though he had been prohibited from entering the premises since December, 2008.

The respondent stated that the unit was rented to the applicant under the NWT Housing Corporation Supported Lease Program and provided copies of the tenancy agreement and the program agreement in evidence. The premises are clearly rental premises although the statements sent to the applicant refer to the monthly payments as "mortgage payments". The rent for the premises is set at \$681/month although a provision in the tenancy agreement permits the rent to be adjusted to changes in the tenant's income. It appears from the evidence that the respondent continues to apply the monthly rent to the present day.

The respondent served a notice on the applicant dated January 8, 2009 seeking vacant possession on December 1, 2008 due to abandonment and non-payment of rent. The respondent acknowledged that the notice was unusual in form and did not conform with the *Residential Tenancies Act* but stated that it's intention was to notify the tenant that they considered the premises abandoned on December 1, 2008. The respondent stated that the applicant had not paid any rent since January 14, 2008 when a payment of \$3104.77 brought the balance of rent owing to \$1010.35.

The respondent also stated that a low temperature warning light had been installed in the premises in December, 2008 to warn the landlord of possible freezing conditions in the unit. The respondent also noted that a load limiter had been installed by the electrical supplier due to non-payment of electricity. The tenancy agreement obligates the tenant to pay for all utilities during the term of the agreement.

The respondent stated that the premises ran out of fuel and were severely damaged by freezing although it is unclear exactly when this occurred. The applicant stated that on his return to Lutsel K'e he entered the premises through a broken window and discovered that the water system had been filled and the heat on.

Article 18 of the tenancy agreement obligates the tenant to not leave the premises unoccupied unless the tenant provides notice to the landlord.

**18. Premises Unoccupied**

The Tenant promises not to leave the premises unoccupied longer than:

- a) Seven (7) days during the period from May 1st to September 30th each year, without prior written notice to the Corporation; and
- b) Twenty-four (24) hours during the period from October 1st to April 30 of each year, without prior written notice to the Corporation.

Section 1(3) of the *Residential Tenancies Act* sets out the definition of abandonment.

- 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.**

Did the landlord have reasonable grounds to consider the premises abandoned and take possession? In my opinion, yes. The tenant had not occupied the premises for at least a month and had not given the landlord any indication that he would be away for an extended period of time or intended on returning. No rent had been paid for almost a year. The electrical account

was in arrears and the supply had been limited by the supplier for non-payment. Any reasonable person could have concluded that the applicant no longer lived in the premises. In my opinion, the respondent is not in breach of their obligations set out in sections 25 or 34 of the *Residential Tenancies Act* and the application must be dismissed.

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Hal Logsdon  
Rental Officer