

IN THE MATTER between **IDA TOWNEND**, Applicant, and **RICHARD HAMILTON AND MARTHA LENOIR**, 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 **HAY RIVER, NT**.

BETWEEN:

IDA TOWNEND

Applicant/Landlord

- and -

RICHARD HAMILTON AND MARTHA LENOIR

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 2nd day of September, 2009.

Hal Logsdon
Rental Officer

IN THE MATTER between **IDA TOWNEND**, Applicant, and **RICHARD HAMILTON AND MARTHA LENOIR**, Respondents.

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:

IDA TOWNEND

Applicant/Landlord

-and-

RICHARD HAMILTON AND MARTHA LENOIR

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: August 20, 2009

Place of the Hearing: Hay River, NT via teleconference

Appearances at Hearing: Ida Townend, applicant
Martha Lenoir, respondent

Date of Decision: September 2, 2009

REASONS FOR DECISION

The tenancy agreement between the parties was terminated on August 17, 2009 when the respondents vacated the premises. The applicant holds a security deposit of \$400 plus accrued interest on the deposit but was not required to issue any statement of the deposit or deductions at the time of the hearing as the tenancy agreement had been terminated only three days earlier.

The applicant alleged that the respondents had breached the tenancy agreement by failing to pay rent and sought an order requiring the respondents to pay the alleged rent arrears. The applicant stated that no rent had been paid in July or August, 2009 and stated that the monthly rent for the premises was \$800. The tenancy agreement between the parties was verbal.

The respondent disputed that the applicant was the landlord, stating that the original agreement was made with the applicant's former husband. However, the respondent acknowledged that they were directed to pay rent to the applicant and had done so during the term of the agreement.

The respondent did not dispute that no rent had been paid for July or August, 2009 but stated that the applicant did not give proper notice of a rent increase that took effect in June, 2008. The respondent testified that the applicant gave only verbal notice in March, 2008 that the rent would increase from \$700 to \$800 effective in June, 2008. The respondent stated that she had paid the increased amount until July, 2009.

The respondent also stated that the verbal tenancy agreement contained a provision whereby the landlord agreed to compensate the tenants for their labour to improve or repair the premises.

The applicant denied that the verbal tenancy agreement contained any provision regarding compensation for labour.

The applicant acknowledged that the notice of rent increase had been verbal but later stated that she thought she might have followed it with a letter. The respondent testified that there was only the verbal notification of the rent increase.

“Landlord” is defined in the *Residential Tenancies Act* in section 1(1):

"landlord" includes the owner, or other person permitting occupancy of rental premises, and his or her heirs, assigns, personal representatives and successors in title and a person, other than a tenant occupying rental premises, who is entitled to possession of a residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent.

I am satisfied that the applicant is entitled to file an application either as landlord or agent of the landlord and seek relief pursuant to the *Residential Tenancies Act*.

The evidence does not support the respondent's claim that the tenancy agreement contained a provision requiring the landlord to compensate the tenant for labour. The tenant carries the burden of proof in this matter and has not provided, on the balance of probabilities sufficient evidence.

Section 47(2) of the *Residential Tenancies Act* sets out the provisions for notices of rent increase.

47.(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 evidence suggests that the notice was not provided in writing which is a specific requirement pursuant to section 47. Therefore I find that the rent increase was not effective and the lawful rent for the premises remained at \$700/month until the end of the tenancy. The respondent has therefore overpaid rent by \$1300 which I calculate as follows:

June, 2008 to June, 2009	
13 months @ \$100/month	\$1300

The respondent owes rent of \$1084, calculated as follows:

July, 2009 rent	\$700
August 1-17 rent	<u>384</u>
Total	\$1084

I must dismiss the application as I find no rent owing.

There is no provision in the *Residential Tenancies Act* that permits a rental officer to issue an order requiring a landlord to return pre-paid rent to a tenant.

The applicant must issue statements of the security deposit and deductions as necessary pursuant to section 18 of the *Residential Tenancies Act* but should not consider any deductions for rent arrears.

Hal Logsdon
Rental Officer