

IN THE MATTER between **CHERYL CLI AND MORRIS NORWEGIAN**,  
Applicants, and **BERNICE HARDISTY AND GORDON ISAIAH**, 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 **FORT SIMPSON, NT.**

BETWEEN:

**CHERYL CLI AND MORRIS NORWEGIAN**

Applicants/Landlords

- and -

**BERNICE HARDISTY AND GORDON ISAIAH**

Respondents/Tenants

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondents shall pay the applicants rent arrears in the amount of seven hundred forty eight dollars and thirty eight cents (\$748.38)

DATED at the City of Yellowknife, in the Northwest Territories this 19th day of  
February, 2010.

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Hal Logsdon  
Rental Officer

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Applicants/Landlords

-and-

**BERNICE HARDISTY AND GORDON ISAIAH**

Respondents/Tenants

**REASONS FOR DECISION**

**Date of the Hearing:** February 16, 2010

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

**Appearances at Hearing:** Cheryl Cli, applicant  
Gordon Isaiah, respondent

**Date of Decision:** February 19, 2010

**REASONS FOR DECISION**

The applicants 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 tenancy agreement between the parties has been terminated.

The parties agreed that the rent for the premises was \$1200/month. The applicant stated that rent was paid in full every month except for the months of November and December, 2009. She stated that she received only \$800 for November, 2009 and received no payment in December, 2009 bringing the balance owing to \$1600.

There was no written tenancy agreement between the parties. There does not appear to be any agreement on when the respondents were entitled to, or actually did, take possession. The applicant, who does not live in community where the premises are located, stated that she wanted to inspect the premises before permitting occupancy but the respondent stated that he understood that they could move in as soon as the former tenants moved out. The respondent stated that they moved in on August 10, 2008. There was no security deposit required.

The tenancy agreement was terminated in December, 2009 when the respondents left the premises. Both parties had expressed their desire verbally to end the tenancy agreement but there is no evidence of any written notice given by the respondents or a written mutual agreement to terminate the agreement. The respondent stated that they left the premises on December 18, 2009. I accept that date as the date of termination. Whether the premises were abandoned or

terminated by notice or mutual agreement is, in my opinion, irrelevant, since the landlord appears to have made little or no timely effort to re-rent the property and can not therefore claim lost rent after the tenants left the premises.

The respondent stated that he assumed the monthly rent period was from the 15th day of the month to the 15th day of the month following. The applicant stated that her understanding of the rent period was from the first day of the month to the last day. The respondents' notion of the rent period is a novel one but by no means the norm in residential tenancies. Had the period been expressed in that fashion in a written agreement I might consider it, but in the absence of any written tenancy agreement I shall consider the period to be the conventional calendar month, from the first day to the last day.

The respondent acknowledged that he did not pay the full rent in November, 2009. He stated that there were numerous problems with the house that the applicant had not addressed. He stated that he felt the amount of rent he paid was reasonable given the condition of the house and his interpretation of the rent period.

The applicant is entitled to rent for the time the tenant was in possession of the premises. Using the commencement and termination dates provided by the applicant, I calculate this amount to be \$19,548.38. The rent paid during the term of the tenancy agreement was \$18,800, leaving a balance of rent owing the landlord of \$748.38. I calculate these amounts as follows:

August/08 rent (22 days)	\$851.61
Sept.1/08 to Dec.31/08 rent (4 months x \$1200)	4800.00
Jan.1/09 to Nov.30/09 rent (11 x \$1200)	13,200.00
December/09 rent (18 days)	<u>696.77</u>
Subtotal	\$19,548.38
Less rent paid (Aug./08 to Oct./09)	
15 months x \$1200	(18,000.00)
Less rent paid Nov./09	<u>(800.00)</u>
Rent arrears	\$748.38

I can not accept the defence of the respondents for the non-payment of rent based on the alleged breach by the landlord to maintain the premises. A tenant is not entitled to withhold rent because of the landlord's failure to perform their obligations. The tenant's remedy is to seek an order from a rental officer through an application.

I find the respondents in breach of their obligation to pay the full amount of the rent during the term of the tenancy agreement. An order shall issue requiring the respondents to pay the applicants rent arrears of \$748.38

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Hal Logsdon  
Rental Officer