

IN THE MATTER between **ERIC BERTRAND**, Applicant, and **FREDA BERREAULT AND BERT TIMBRE**, 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:

ERIC BERTRAND

Applicant/Landlord

- and -

FREDA BERREAULT AND BERT TIMBRE

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondents shall pay the applicant rent arrears in the amount of four thousand five hundred seventy five dollars and seven cents (\$4575.07).
2. Pursuant to sections 41(4)(c) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Lot 229, Birch Road, Fort Liard, NT shall be terminated on April 15, 2010 and the respondents shall vacate the premises on that date, unless the rent arrears in the amount of four thousand five hundred seventy five dollars and seven cents (\$4575.07) are paid in full.

DATED at the City of Yellowknife, in the Northwest Territories this 12th day of March, 2010.

Hal Logsdon
Rental Officer

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ERIC BERTRAND

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-and-

FREDA BERREAULT AND BERT TIMBRE

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: March 10, 2010

Place of the Hearing: Yellowknife, NT via teleconference

Appearances at Hearing: Eric Bertrand, applicant
Tammy Neal, representing the applicant
Bert Timbre, respondent
Freda Berreault, respondent

Date of Decision: March 12, 2010

REASONS FOR DECISION

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 and terminating the tenancy agreement.

The respondents were initially permitted to stay in the premises for free but an oral tenancy agreement was formed on October 1, 2008. The parties agree that the monthly rent for the premises is \$750 which includes water and electricity. The tenants are obligated to pay for fuel.

The applicant provided a statement of the rent account and receipts in evidence which indicated a balance of rent owing as at December 7, 2009 of \$3122. The applicant stated that although a receipt was issued for the November, 2008 rent and it does not appear as outstanding on the statement, he did not believe it had been paid. The applicant stated that no rent payments had been received since December 7, 2009 and the January, February and March, 2010 rents had come due and had not been paid. The applicant sought an order requiring the payment of \$6122 calculated as follows:

Balance as per statement	\$3122
November/08 rent	750
January/09 rent	750
February/10 rent	750
March/10 rent	<u>750</u>
Total	\$6122

The respondents stated that they had paid for electricity and water on several occasions because

service was about to be discontinued due to non-payment. The respondents provided the following receipts indicating payments they made for electricity and water:

Electricity	\$607.89
Electricity	200.00
Electricity	200.00
Water	300.00
Water	<u>87.47</u>
Total	\$1395.36

The respondents did not dispute that they had failed to pay the full amount of the rent but stated that their payments of utilities should be deducted from the rent owing.

The respondents filed a number of photographs with the rental officer but failed to provide these to the applicant. I have not considered this evidence for that reason. In any case, the condition of the premises can not be used as a defence for the non-payment of rent.

The applicant is obligated to provide electricity and water. There are considered "vital services" pursuant to section 33 of the *Residential Tenancies Act* and landlords are specifically prohibited from withholding or causing the withholding of these services.

- 33.(1) In this section, "vital service" includes heat, fuel, electricity, gas, hot and cold water and any other public utility.**
- (2) No landlord shall, until the date the tenant vacates or abandons the rental premises,**
- (a) withhold or cause to be withheld the reasonable supply of a vital service that the landlord is obligated to supply under the tenancy agreement; or**
 - (b) deliberately interfere with the supply of a vital service, whether or not the landlord is obligated to supply that service under the tenancy agreement.**

Fortunately the services were not interrupted but the expenses the respondents incurred on behalf

of the landlord should certainly be deducted from the rent owing.

I can not accept the applicant's claim that the November, 2008 rent was not paid. A receipt for the full amount of the rent was issued by the applicant. It is not reasonable to now require the respondents to provide further proof of payment. Relief for the November, 2008 rent is therefore denied.

After a careful review of the statement and the receipts provided by the applicant, I find that the applicant has credited some, but not all, of the electricity and water charges that have been paid by the respondents but has made several arithmetic errors in doing so. The receipts indicate that no rent was paid in May, 2009 but a receipt dated May 21, 2009 indicates that a credit was provided of \$628.09 for electricity and water. The corresponding credit on the statement, although dated incorrectly, credits the account \$628.00. The actual amounts paid in May, 2009 by the respondents were \$607.89 for electricity and \$29.57 for water, a difference of \$9.46. Therefore the bill for electricity paid for by the respondents in May, 2009 was credited to their account. I find the credit due to the respondents for electricity and water paid on behalf of the landlord to be \$796.93 calculated as follows:

Electricity	\$200.00
Electricity	200.00
Water	300.00
Water	87.47
Cr. not applied	<u>9.46</u>
Total	\$796.93

Deducting the credits for utilities paid on behalf of the landlord from the outstanding rent, I find rent arrears of \$4575.07, calculated as follows:

$$\begin{array}{r} \$5372.00 \\ \underline{(796.93)} \\ \$4575.07 \end{array}$$

In my opinion, there are sufficient grounds to terminate the tenancy agreement unless these arrears are promptly paid. The rent is six months in arrears and no payments have been made since December, 2009.

An order shall issue requiring the respondents to pay the applicant rent arrears in the amount of \$4575.07 and terminating the tenancy agreement on April 15, 2010 unless those arrears are paid in full.

Hal Logsdon
Rental Officer