

IN THE MATTER between **THE MUNICIPAL CORPORATION OF THE TOWN OF FORT SMITH**, Applicant, and **HENRY BEAVER AND EILEEN BEAVER**, 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 SMITH, NT.**

BETWEEN:

THE MUNICIPAL CORPORATION OF THE TOWN OF FORT SMITH

Applicant/Landlord

- and -

HENRY BEAVER AND EILEEN BEAVER

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 fifty two thousand five hundred sixty five dollars (\$52,565.00).

DATED at the City of Yellowknife, in the Northwest Territories this 16th day of March, 2010.

Hal Logsdon
Rental Officer

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THE MUNICIPAL CORPORATION OF THE TOWN OF FORT SMITH

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-and-

HENRY BEAVER AND EILEEN BEAVER

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: March 12, 2010

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Eileen Blackmore, representing the applicant
Henry Beaver, respondent (by telephone)
Eileen Beaver, respondent (by telephone)

Date of Decision: March 16, 2010

REASONS FOR DECISION

The premises was originally owned by the respondents but in February, 1994 the applicant purchased the property through a tax sale and the respondents' interest in the land was extinguished. In October, 1994 the parties entered into a tenancy agreement for a five year term whereby the property would be transferred to the tenant at the end of the term provided all payments had been made. Although that tenancy agreement was never terminated in accordance with the *Residential Tenancies Act*, the respondents failed to make rental payments and the applicant notified the respondents in February, 1995 that the agreement was cancelled.

The parties entered into another tenancy agreement for the premises on September 24, 1996. The monthly rent for the premises was \$400. The monthly rent was to be allocated first to property taxes then to the respondents' debt to applicant which was set out at \$27,265.91. The term of the agreement would run until the debt was retired.

The applicant alleged that the respondents breached the 1996 tenancy agreement by failing to pay rent and sought an order requiring the respondents to pay the alleged rent arrears. The applicant sought no relief in conjunction with the earlier tenancy agreement. The applicant submitted that the respondents maintained possession of the premises from the commencement of the tenancy agreement to December 21, 2009 when the respondents gave up possession. The applicant seeks relief for 159 months of rent at \$400/month (\$63,600) less the total amount of rent paid by the respondents (\$9835) for a total of \$53,765.

The respondents suggested that not all of the payments outlined in the applicant's March 12, 2009 letter to the respondents had been accounted for in their application. My comparison of the payments noted in that letter with the applicant's record of payments contained in the application indicates that all payments have been accounted for.

The respondents submitted that the tenancy agreement was null and void when they defaulted on monthly rent payments. They argued that they were “squatters” from that date forward. They referred to the last provision in the tenancy agreement which reads,

BREACH OF LEASE

Should Henry & Eileen Beaver default on any of the monthly payments, this Lease shall be null and void.

The *Residential Tenancies Act* sets out a number of ways a tenancy agreement may be terminated. There is no provision in the Act or the Schedule that permits a tenancy agreement to be automatically terminated on the breach of an obligation by the tenant. Section 10 of the *Residential Tenancies Act* addresses inconsistent provisions contained in a tenancy agreement.

10.(1) A tenancy agreement shall be deemed to include the provisions of the residential tenancy agreement set out in the Schedule and any provision of the tenancy agreement that is inconsistent with the provisions of the residential tenancy agreement set out in the Schedule or this Act is of no effect.

In my opinion the BREACH OF LEASE provision contained in the tenancy agreement is of no effect and the tenancy agreement was not rendered null and void when the respondents failed to pay the required monthly rent.

The respondents argued that they did not live in the premises during the entire period from

September, 1996 to December, 2009. Ms Beaver stated that she did not reside in the premises while she attended university for a period of time and the respondents stated that they stayed for periods of time at another location. There was however no evidence that the respondents gave up possession of the premises as they always returned and their possessions remained in the unit.

There was some question as to when the respondents gave up possession of the premises. The respondents testified that they moved out on September 28, 2009 and told the mayor that they were vacating. They stated that they did not return the keys until November or December, 2009. The respondents stated that the primary source of heat for the premises was a wood stove and after they left the premises the plumbing froze, causing an escape of water that prevented them from removing all of their possessions. I also note that a previous application filed by the applicant seeking the termination of the tenancy agreement (file #10-11200, filed on November 16, 2009) was withdrawn on December 22, 2009 after the applicant discovered the premises vacant. In my opinion, based on the balance of probabilities, the respondents abandoned the premises in late September, 2009 and are not liable for rent in October, November or December, 2009.

When a landlord permits rents to accrue to this degree, the issue of mitigation of loss should be examined. From both the testimony of the applicant and the respondents, it is apparent that the respondents pursued several avenues to acquire the title to the property, including the investigation of financing through the NWT Housing Corporation, and various offers to purchase. The applicant appears to have been patient, preferring perhaps to be a vendor rather

than a landlord. Although other landlords would have undoubtedly taken more aggressive steps to curtail their losses, in my opinion, the applicant took reasonable action in this regard.

I find the respondents in breach of their obligation to pay rent and find the rent arrears to be \$52,565 calculated as follows:

Rent due (156 months @ \$400/month)	\$62,400
Rent paid by respondents	<u>(9,835)</u>
Amount due applicant	\$52,565

An order shall issue requiring the respondents to pay the applicants rent arrears in the amount of \$52,565.

Hal Logsdon
Rental Officer