

IN THE MATTER between **WADE FRIESEN**, Landlord, and **IRENE CATHOLIQUE**,
Tenant;

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:

WADE FRIESEN

Landlord

- and -

IRENE CATHOLIQUE

Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 41(4)(a) and 45(4)(c) of the *Residential Tenancies Act*, the previous order (files #10-10685 and #10-10688, filed on February 13, 2009) shall be amended by,
 - a) rescinding part 1 of the order, and
 - b) ordering the tenant to pay the landlord rent arrears and utility costs in the amount of four thousand fifty eight dollars and ninety eight cents (\$4058.98).

DATED at the City of Yellowknife, in the Northwest Territories this 14th day of May,
2010.

Hal Logsdon
Rental Officer

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Landlord

-and-

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Tenant

REASONS FOR DECISION

Date of the Hearing: April 21, 2010

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Wade Friesen, applicant
Arlene Hache, representing the respondent

Date of Decision: May 14, 2010

REASONS FOR DECISION

This matter arises from an appeal of a rental officer decision (Files #10-10685 and #10-10688).

The appeal was allowed in part, referring three issues back to the rental officer for a new hearing and decision. The three issues were,

- 1) the tenant's claim for airfare for her children,
- 2) the tenant's claim for rent and
- 3) the landlord's claim for reimbursement for the power bill for the last two weeks of December, 2008.

The Tenant's Claim for Airfare for her Children

The tenant has three children, two daughters and a son. The tenant has not been able to produce any documentation of airfare expenses for any of the children which would show that she sent her son and youngest daughter to Lutselk'e or her oldest daughter to Fort Smith following her loss of possession of the rental premises. The landlord provided information obtained through conversation with the youngest daughter on a social networking website that indicated she had moved to Lutselk'e in November, 2008. Those conversations also confirmed that the oldest daughter was in school in Fort Smith and the son had been living with his grandfather in Lutselk'e for about a year.

As noted in the appeal decision, the affidavit filed by the tenant states that she had to board her oldest daughter with her niece in Fort Smith and send her youngest daughter to Lutselk'e to live with her father. There is no mention of the son in Lutselk'e.

An affidavit made by Ruth Nataway states that she stayed with the tenant for three weeks in late November and early December, 2008 and that during that time the tenant's son was living in Lutselk'e and the oldest daughter was at school in Fort Smith. The affidavit indicated that the tenant's youngest daughter moved to Lutselk'e on or about November 30, 2008.

The tenant's representative argued that although the youngest daughter may have been in Lutselk'e in November, 2008 she may have elected to return to Yellowknife with her mother after Christmas. If that was the case, the tenant would have had to pay airfare to send her back to Lutselk'e.

Based on the evidence before me now, it appears that the son had been living in Lutselk'e for some time before the tenant lost possession. There are no airfare receipts or other evidence to suggest he returned to live with his mother or required transportation from Yellowknife to Lutselk'e due to the tenant's loss of possession of the premises.

The evidence suggests that the oldest daughter has been in school in Fort Smith. There is no evidence that indicates she had to be transported to or from Fort Smith that is related to the tenant's loss of possession of the rental premises.

The evidence supports the fact that the youngest daughter had been living in Lutselk'e since November, 2008. While it could be that she returned to Yellowknife with her mother in January, 2009, it may also be the case that she did not. It is the tenant's case to prove on the balance of

probabilities and, in my opinion, without any documentation of the travel, the tenant's claim can not succeed.

In my opinion, the evidence provided at this hearing does not support the compensation of \$1488.80 previously considered.

The Tenant's Claim for Rent

The landlord's action deprived the tenant of possession of her rental premises which was a two bedroom mobile home. She elected to stay with a friend. There is no documented evidence that the tenant paid any monies for the right to stay with her friend but she testified that she paid room and board for herself in the amount of \$850/month. The tenant sought compensation for two months.

Reasonable compensation should put the tenant back into a position as if the breach did not occur. What she claims to have had to pay for the right to stay with her friend was significantly less than what she would have paid at the former premises (\$1150/month plus fuel, electricity and water) but she certainly did not enjoy the same level of accommodation sharing an apartment with a friend. At the former premises, a two bedroom mobile home, she enjoyed sole possession and tenure but enjoyed neither while sharing the one bedroom apartment with her friend.

There is no available data on average market rents for mobile homes but the average market rent for a two bedroom apartments in the Fall of 2008 was \$1411/month plus electricity. Having sole

possession of an average two bedroom apartment should be reasonably equivalent to the loss of the tenant's two bedroom mobile home. The difference in rent between the mobile home and an average two bedroom apartment was \$261/month. However, the added costs of fuel, electricity and water for the mobile home in January and February would make the mobile home more expensive. Although there may have been costs for room and board for the children, none of these would have been directly related to the eviction of the tenant. Therefore, in my opinion, there are no grounds to consider compensation for any additional costs the tenant had to pay or would have had to pay for rent following the loss of her possession.

The Landlord's Claim for Reimbursement for the Power Bill

The tenancy agreement between the parties obligated the tenant to pay for electricity during the term. The landlord provided an invoice for electricity from December 15, 2008 to January 15, 2009 for \$320.91 and argued that 50% of the cost should be borne by the tenant. The invoice included a connection fee of \$21 that the tenant's representative argued should be the landlord's responsibility. I agree, and find the tenant responsible for \$149.96 calculated as follows:

Total invoice	\$320.91
less connection fee	<u>21.00</u>
Balance	<u>\$299.91</u>
50% of balance	\$149.96

Adjusting the amounts outlined in the previous order to reflect the amounts now determined, I find an amount owing the landlord of \$4058.98.

Owing to the Landlord:

Rent arrears	\$3950.00
Fuel	615.51
Water	824.04
Security deposit/interest	(1244.53)
Electricity	<u>149.96</u>
Amount owing landlord	\$4294.98

Owing to the Tenant:

Pump repair	\$236.00
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Total owing to the landlord \$4058.98

The previous decision shall be amended to order the tenant to pay the landlord rent arrears and utility costs in the amount of \$4058.98.

Hal Logsdon
Rental Officer