File #10-10942

IN THE MATTER between **WADE FRIESEN**, Applicant, and **IRENE CATHOLIQUE**, Respondent;

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

Applicant/Landlord

- and -

IRENE CATHOLIQUE

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

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

Hal Logsdon
Rental Officer

File #**10-10942**

IN THE MATTER between **WADE FRIESEN**, Applicant, and **IRENE CATHOLIQUE**, Respondent.

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.

BETWEEN:

WADE FRIESEN

Applicant/Landlord

-and-

IRENE CATHOLIQUE

Respondent/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:	**April 21, 2010**

REASONS FOR DECISION

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay the full amount of rent. The applicant stated that the respondent had provided a cheque for rent in the amount of $600 in October, 2008 and later stopped payment on the cheque. The applicant sought an order requiring the respondent to pay the alleged rent arrears of $600 plus the $7 bank charge. A copy of the cheque and advice from the bank were presented in evidence.

The applicant filed an application (file #10-10688) on January 26, 2009 alleging, among other things, non-payment of rent. The matter was heard on February 10, 2009 and the rent arrears were determined to be $3950. The evidence regarding the October 2008 cheque was not presented by the applicant at that hearing although it is clear that the returned cheque and advice from the bank were provided to the applicant in early November, 2008. The applicant stated that he had only come across the returned cheque in June, 2009.

The principle of *res judicata* applies to this situation. The principle is outlined in The Law of Evidence in Canada by Sopinka, Lederman and Bryant at p. 997.

> . . . a plaintiff asserting a cause of action must claim all possible relief in respect thereto and prevents any second attempt to evoke the aid of the courts in the same cause. It is sometimes called "merger" because the plaintiff's cause of action becomes "merged" in the judgment. The judgment actually operates as a comprehensive declaration of the rights of all parties in respect of the matters in issue. As a result the rule applies equally to a defendant who must put forward all defenses which will defeat the plaintiff's action and the defendant who does not will be debarred from raising them subsequently. This principle prevents the fragmentation of litigation by prohibiting the litigation of matters that were never actually addressed in the previous litigation but which properly belonged to it.

The issue of rent was determined following the hearing of the applicant's previous application. He can not come back claiming additional relief when the evidence of the returned cheque was available to him at the last hearing. Consequently the application is dismissed.

Hal Logsdon
Rental Officer