

IN THE MATTER between **BRIDGET MCKAY AND ANTHONY MCKAY**,
Applicants, and **NERINA BERTON**, 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 **FORT SMITH, NT.**

BETWEEN:

BRIDGET MCKAY AND ANTHONY MCKAY

Applicants/Tenants

- and -

NERINA BERTON

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18(5) of the *Residential Tenancies Act*, the respondent shall return the security deposit and retained interest to the applicants in the amount of seven hundred ninety six dollars and sixty one cents (\$796.61).

DATED at the City of Yellowknife, in the Northwest Territories this 22nd day of June,
2010.

Hal Logsdon
Rental Officer

IN THE MATTER between **BRIGET MCKAY AND ANTHONY MCKAY**,
Applicants, and **NERINA BERTON**, 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:

BRIGET MCKAY AND ANTHONY MCKAY

Applicants/Tenants

-and-

NERINA BERTON

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: **June 22, 2010**

Place of the Hearing: **Fort Smith, NT via teleconference**

Appearances at Hearing: **Bridget McKay, applicant**
 Armando Berton, representing the respondent

Date of Decision: **June 22, 2010**

REASONS FOR DECISION

This application named Nerina Berton and Armando Berton as respondents, however the tenancy agreement between the parties names only Nerina Berton as landlord. Armando Berton, who appeared at the hearing, stated that Ms Berton was the representative of 902906 NWT Ltd. and asked that any order name the company as respondent. In my opinion, the order must follow the style of the tenancy agreement. If the tenancy agreement was intended to be between the applicants and the company, it surely would have been constructed in that manner. The style of cause of the order shall reflect the parties as named on the tenancy agreement.

This tenancy agreement was terminated in March, 2010. The applicants alleged that the respondent retained the entire security deposit but did not provide a statement of the deductions or any notice outlining why the security deposit was retained. The applicants stated that the security deposit was provided by the *Income Security Program* on their behalf but were not sure if the program provided the entire required amount of \$1060.

Prior to the hearing, I contacted the officer who processed the security deposit payments. She confirmed that two payments totalling \$795 were made directly to the landlord. Receipts provided by the applicants confirm that a payment of \$530 was made on December 3, 2009 and a payment of \$265 was made on January 1, 2010. The final payment of \$265 was not made.

The respondent did not dispute that the \$795 had not been retained. He stated several reasons

why he should be able to retain the deposit.

1. The full security deposit required by the tenancy agreement had not been paid.
2. The tenant did not give proper notice to terminate the tenancy agreement.
3. The former tenants, who also received support from the *Income Security Program*, had rent arrears and caused damages to the premises.

Following the termination of the tenancy agreement the security deposit must be returned or a statement of deductions issued. There is no provision in the *Residential Tenancies Act* permitting a landlord to retain a security deposit after a tenancy agreement is terminated until the full amount of the required security deposit is paid.

Regardless of whether the tenant gave sufficient notice or not, there is no provision in the Act permitting a landlord to retain a security deposit due to insufficient notice. A landlord may make an application for compensation for lost rent, if there was a loss of rent due to insufficient notice, but that compensation may not be deducted from the security deposit.

A security deposit from one tenancy agreement may not be used to offset rent arrears or repair costs from another tenancy agreement simply because both tenants received income support from the same government program.

I find no grounds for the retention of the security deposit. I find the accrued interest to be \$1.61.

An order shall issue requiring the respondent to return the security deposit and accrued interest in the amount of \$796.61 to the applicants.

Hal Logsdon
Rental Officer