

IN THE MATTER between **CHERYL KIRBY AND SCOTT LUNDRIGAN**,  
Applicants, and **EMILY ATKINSON**, Respondent;

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter  
R-5 (the "Act") and amendments thereto;

AND IN THE MATTER of a Hearing before, **HAL LOGSDON**, Rental Officer,  
regarding the rental premises at **INUVIK, NT.**

BETWEEN:

**CHERYL KIRBY AND SCOTT LUNDRIGAN**

Applicants/Tenants

- and -

**EMILY ATKINSON**

Respondent/Landlord

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 18.1(a) of the *Residential Tenancies Act*, the respondent shall return the retained security deposit and accrued interest of seven hundred seventy nine dollars and thirty seven cents (\$779.37) to the applicant.
2. Pursuant to section 33(3)(c) of the *Residential Tenancies Act*, the respondent shall pay compensation to the applicant in the amount of five hundred twenty five dollars (\$525.00) for failing to supply heat and hot water.

DATED at the City of Yellowknife, in the Northwest Territories this 9th day of  
November, 2010.

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Hal Logsdon  
Rental Officer

IN THE MATTER between **CHERYL KIRBY AND SCOTT LUNDRIGAN**,  
Applicants, and **EMILY ATKINSON**, 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:

**CHERYL KIRBY AND SCOTT LUNDRIGAN**

Applicants/Tenants

-and-

**EMILY ATKINSON**

Respondent/Landlord

**REASONS FOR DECISION**

**Date of the Hearing:** November 9, 2010

**Place of the Hearing:** Inuvik, NT via teleconference

**Appearances at Hearing:** Cheryl Kirby, applicant  
Emily Atkinson, respondent

**Date of Decision:** November 9, 2010

### **REASONS FOR DECISION**

The tenancy agreement between the parties was terminated on September 17, 2010 when the applicants abandoned the premises. The respondent retained the security deposit of \$750 but did not provide any notice to the applicants outlining the reason why the deposit was retained or an itemized statement of the deposit and deductions. The applicants sought an order requiring the respondent to return the security deposit and accrued interest. The applicants also alleged that the respondent had failed to supply any hot water or heat to the premises in June, July and August, 2010 and sought compensation of a 50% abatement of rent for those months. The monthly rent for the premises was \$1750.

The respondent acknowledged that the security deposit had not been returned and that no notice or statement had been issued. The respondent stated that the applicants failed to give any written notice to terminate the tenancy agreement and failed to leave the premises in a clean state. The respondent stated that the carpets were dirty and there was a hole in the wall.

The respondent acknowledged that there was no heat or hot water provided in June, July or August, 2010. She stated that she failed to pay the gas bills and the service was discontinued. The respondent stated that the heat and hot water were restored in the first week of September.

The applicant disputed the testimony of the respondent stating that the premises were cleaned prior to giving up possession. The applicant acknowledged the failure to give any notice but

stated that they were unable to continue living in the premises without heat or hot water.

Section 18(7) of the *Residential Tenancies Act* obligate a landlord to issue a notice to the tenant when all or part of a security deposit is retained.

- 18.(7) A landlord who intends to withhold all or a portion of a security deposit, a pet security deposit or both shall, within 10 days after the day a tenant vacates or abandons the rental premises,**
- (a) give written notice to the tenant of that intention; and**
  - (b) subject to subsection (9), return the balance of the deposit or deposits to the tenant.**

Clearly, the respondent has failed to meet this requirement. Regardless of whether or not cleaning or repairs were required, a matter I need not consider, the landlord is not entitled to retain any part of the deposit without issuing the required notice nor are they permitted to deduct any compensation for lost rent due to abandonment from a security deposit.

Section 33 of the *Residential Tenancies Act* sets out both heat and hot water as “vital services” and prohibits the landlord from withholding or causing to be withheld the supply of any 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.**

By failing to pay for fuel for the generation of both heat and hot water, the respondent caused the cessation of these vital services in breach of section 33. The applicant seeks a 50% abatement of rent for the three months that heat and hot water were not provided, amounting to compensation of \$2625. In my opinion, this is not reasonable, particularly when the requirement for heat during this period was very limited. In my opinion, a 10% abatement of rent for three months or \$525 more closely reflects the loss of hot water over that period.

An order shall issue requiring the respondent to return the security deposit and accrued interest to the applicants in the amount of \$779.37 and to pay compensation to the applicants in the amount of \$525 for interfering with the supply of heat and hot water. I calculate these amounts as follows:

Security deposit	\$750.00
Interest on deposit	<u>(29.37)</u>
Total	\$779.37

$10\% \times \$1750 \times 3 \text{ months} = \$525$

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Hal Logsdon  
Rental Officer