

IN THE MATTER between **NIRRIE KISTAN**, Applicant, and **CARL FALSNES**,
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:

NIRRIE KISTAN

Applicant/Tenant

- and -

CARL FALSNES

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 47(3.1) of the *Residential Tenancies Act*, the respondent shall return to the applicant a portion of the rent collected from the applicant in the amount of one thousand three hundred ninety six dollars and one cent (\$1396.01).

DATED at the City of Yellowknife, in the Northwest Territories this 16th day of June,
2011.

Hal Logsdon
Rental Officer

IN THE MATTER between **NIRRIE KISTAN**, Applicant, and **CARL FALSNES**,
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:

NIRRIE KISTAN

Applicant/Tenant

-and-

CARL FALSNES

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: June 8, 2011

Place of the Hearing: Inuvik, NT

Appearances at Hearing: Nirrie Kistan, applicant
Olav Falsnes, representing the respondent

Date of Decision: June 16, 2011

REASONS FOR DECISION

The application was filed naming the respondent as Olif Falseness. The tenancy agreement was, in fact, made between the applicant and Carl Falsnes but names Olav as "authorized to accept service on Owner's behalf". The applicant stated that throughout the term of the agreement she dealt with Olav Falsnes exclusively and so considered him to be the correct respondent. The style of cause of this order shall reflect the actual landlord (Carl Falsnes) and the correct spelling of his family name.

The applicant alleged that the respondent had raised the rent for the premises without providing any notice. She stated that when the landlord discovered that two other persons were living with her, the rent was increased by \$200 (\$100 for each additional occupant). She stated that she received no notice of the rent increase whatsoever. The applicant stated that the increase was in effect for seven months. She sought an order requiring the respondent to return \$1400. Copies of the applicant's Visa charges, showing rent paid were provided in evidence.

The applicant also alleged that the heat supplied to the premises was insufficient and she was forced to supplement the heat supplied by the landlord with heat from electric heaters. She claimed that this increased her electricity bill for four months and sought compensation of \$183.34. The applicant determined the relief sought by comparing electrical charges for November and December, 2010 and January and February, 2011 with previous charges. Copies of electrical bills were provided in evidence.

The respondent's representative stated that they had always charged an additional \$100 for each occupant that was not listed on the tenancy agreement. He acknowledged that no notice of the increase had been provided to the applicant but noted that the tenancy agreement permitted only Ms Kistan to occupy the premises.

The respondent acknowledged that the heating system for the residential complex had not been working properly during the winter of 2010/2011 but did not think that compensation was reasonable. He stated that the electronic components of the system were damaged by power outages and that he had difficulty locating parts. The respondent provided a maintenance log for the boiler showing inspections and work performed on the boiler from November, 2010 to March, 2011.

THE RENT ISSUE

The written tenancy agreement between the parties sets out a monthly rent of "\$1300-57/100". The respondent stated that the rent was set at \$1300.57 so that direct deposits to the landlord's account would be easily distinguished from those of other tenants. There is no provision in the tenancy agreement for rent increases based on the number of occupants.

Section 47 of the *Residential Tenancies Act* sets out provisions regarding rent increases.

- 47. (1) Notwithstanding a change in landlord, no landlord shall increase the rent in respect of a rental premises until 12 months have expired from**
- (a) the date the last increase in rent for the rental premises became effective; or**
 - (b) the date on which rent was first charged, where the**

- rental premises have not been previously rented.**
- (2) The landlord shall give the tenant notice of the rent increase in writing at least three months before the date the rent increase is to be effective.**
 - (3) An increase in rent by a landlord is not effective until three months have expired from the date of the notice of the rent increase.**

Notwithstanding that the tenancy agreement has no provision to increase the monthly rent based on the number of persons in the premises, such a provision would have no effect unless the provisions of section 47 were met. Therefore, the rent increase from \$1300.57 to \$1500 was not in accordance with the Act and the landlord must return the increase which was collected for January through July, 2010. I find that amount to be \$1396.01 calculated as follows:

Rent due, January-July, 2010 (1300.57 x 7)	\$9103.99
Rent paid, January-July, 2010 (1500 x 7)	<u>10,500.00</u>
Overpayment	\$1396.01

THE COMPENSATION FOR INADEQUATE HEAT ISSUE

By his own admission, the respondent's representative had considerable difficulty maintaining the heating system in good running order. However, the residential complex was sold on April 1, 2011 and as such the maintenance and repair of the residential complex falls to the new landlord leaving compensation for loss of a vital service the only reasonable remedy available from the respondent.

In my opinion, the evidence provided by the applicant fails to demonstrate that she suffered financial loss. The applicant has not provided any record of the temperature in the premises to determine if the supply of heat was inadequate. The applicant compared the electrical charges for

November and December, 2010 and January and February, 2011 with charges for previous months but she fails to compare the same months or take into consideration the differing rates. Looking at the bills for electricity, I note that the supplier provides a bar chart on each bill that shows the consumption for the current month compared to the previous twelve months. By analysis of the charts, one is able to compare November 2010 with November 2009, December 2010 with December 2009 and so on. Using that methodology, the difference in consumption for the months in question is only about 263 KWH more than in the same months the year before. However, the consumption in November, 2009 appears to be an anomaly at 344 KWH as the consumption in November, 2008 was 550 KWH and in November, 2010 was about 515 KWH. Taking that into consideration, the difference in consumption is reduced to 57 KWH which in my opinion is insignificant and represents less than \$15 in cost. For these reasons, I do not accept that the operation of the auxiliary heater caused any significant financial loss to the applicant and her request for relief is denied.

An order shall issue requiring the respondent to return a portion of the rent in the amount of \$1396.01 shall issue.

Hal Logsdon
Rental Officer