

IN THE MATTER between **LIRIC CONSTRUCTION LTD.**, Applicant, and **EDITH MACK**, 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 **YELLOWKNIFE, NT.**

BETWEEN:

LIRIC CONSTRUCTION LTD.

Applicant/Landlord

- and -

EDITH MACK

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant rent arrears in the amount of nine hundred thirty nine dollars and ninety four cents (\$939.94).

DATED at the City of Yellowknife, in the Northwest Territories this 19th day of September, 2011.

Hal Logsdon
Rental Officer

IN THE MATTER between **LIRIC CONSTRUCTION LTD.**, Applicant, and **EDITH MACK**, 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:

LIRIC CONSTRUCTION LTD.

Applicant/Landlord

-and-

EDITH MACK

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: September 9, 2011

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Arie Keppel, representing the applicant

Date of Decision: September 19, 2011

REASONS FOR DECISION

The respondent was sent a Notice of Attendance by registered mail. Although I do not have confirmation that it was received, the applicant testified that he personally provided the respondent with the notice card after she vacated the premises. The notice card was left at the premises while the respondent was still in possession. Given the circumstances, I believe it is reasonable to deem service pursuant to section 71(5). The matter was heard in the absence of the respondent.

The tenancy agreement was terminated on August 29, 2011 when the respondent moved out. The applicant retained the security deposit (\$650) applying it to the August, 2011 rent (\$1550), rent for September, 2011 (\$1850) and late rent penalties for August (\$40) and September (\$40) leaving a balance owing to the applicant of \$2830. No interest on the security deposit was calculated. A statement dated September 9, 2011 was provided in evidence.

The application, filed on August 4, 2011 seeks only rent arrears. It has not been amended to include compensation for the loss of the September, 2011 rent. The respondent stated that the apartment has not been re-rented but he assumed that a tenant would not be found before October 1, 2011.

There is some ambiguity as to the monthly rent for the premises. The rent of \$1650 noted on the written tenancy agreement has been amended to \$1950 and initialled by the landlord but not the

tenant. The statement provided with the application sets out the monthly rent as \$1850 as does a notice sent to the respondent dated August 10, 2011. The statement also indicates that the applicant accepted \$1850 as full payment for the July, 2011 rent. The notice indicates that the required security deposit was also \$1850. The applicant also provided a classified order form in evidence, advertising the apartment for rent commencing September 1, 2011 at a rent of \$1850. On the balance of probabilities, it appears that, notwithstanding the altered tenancy agreement, the applicant has been demanding only \$1850/month for the premises and has considered that amount to be the rent. In my opinion, that has been the rent for the premises.

The applicant can not claim compensation for lost rent that has not yet been lost. Because the premises have not been re-rented, in my opinion, it is best to consider lost rent when the total losses are known. For that reason, I shall consider relief only for the rent arrears and late rent penalty. The applicant may file for compensation for lost rent when the losses are known.

I find the rent arrears to be \$1550 calculated as follows:

August, 2011 rent	\$1850
September 3 payment	<u>(300)</u>
Rent arrears	\$1550

Although the late fee has not been calculated in accordance with the regulation, it is within the permitted maximum for the August, 2011 rent. Although the August 10, 2011 notice waived the \$40 penalty for late rent due to "special circumstances" I assume that those circumstances no longer apply and the penalty has been reinstated. I shall allow it.

Applying the security deposit and accrued interest to the rent arrears and late rent penalty, I find

\$939.94 to be owing to the applicant, calculated as follows:

Security deposit	\$650.00
Interest	0.06
Rent arrears	(1550.00)
Late rent penalty	<u>(40.00)</u>
Total	\$939.94

An order requiring the respondent to pay the applicant rent arrears and late rent penalties totalling

\$939.94 shall be issued.

Hal Logsdon
Rental Officer