

IN THE MATTER between **EMILY ATKINSON**, Applicant, and **JANE TETLICH**,
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:

EMILY ATKINSON

Applicant/Landlord

- and -

JANE TETLICH

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 ten thousand two hundred dollars (\$10,200.00).

DATED at the City of Yellowknife, in the Northwest Territories this 7th day of
December, 2011.

Hal Logsdon
Rental Officer

IN THE MATTER between **EMILY ATKINSON**, Applicant, and **JANE TETLICH**,
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:

EMILY ATKINSON

Applicant/Landlord

-and-

JANE TETLICH

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: November 17, 2011

Place of the Hearing: Inuvik, NT via teleconference

Appearances at Hearing: Emily Atkinson, applicant
Jane Tetlich, respondent

Date of Decision: December 7, 2011

REASONS FOR DECISION

The respondent's family name is incorrectly spelled on the application. The style of cause of the order has been amended to reflect the correct spelling of her name.

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay rent and sought an order requiring the respondent to pay the alleged rent arrears and terminating the tenancy agreement.

The applicant stated that the respondent took possession on September 18, 2010. Although it appears that a written tenancy agreement may have been prepared, there was no evidence that a written tenancy agreement was executed by the parties. The parties agreed that the monthly rent was \$1700.

The applicant provided a statement of the rent account which indicated a balance of rent owing as at August 31, 2011 in the amount of \$18,400. The applicant stated that since that date, the September, October and November, 2011 rents had come due and no payments had been received bringing the balance owing to \$23,500. The applicant noted that the September, 2010 rent was reduced to \$1550 to reflect the days the respondent was in possession.

The applicant provided two receipts made out to Jane Charlie. The first receipt is dated September 17, 2010 for a payment of \$1000. The applicant stated that the notations on the receipt

indicated that \$850 was allocated to the required security deposit of \$1700 and the remaining \$150 to rent. However this does not coincide with the \$700 balance owing on the rent statement provided by the applicant. The applicant stated that she must have made a mistake.

The second receipt is dated October 1, 2010 for a payment of \$1700. The applicant stated that only \$1000 was actually paid and that the notation on the receipt indicates that \$700 of the rent was not paid. This coincides with the rent statement which indicates a payment of \$1000 and a monthly balance owing of \$700.

The applicant also provided two notices addressed to the respondent dated March 26, 2011. One notice asks the respondent to vacate the premises on April 30, 2011 due to non-payment of rent and states that there is outstanding rent for February, 2011 of \$700. This does not coincide with the rent statement or the receipts which indicate that no rent was paid in February, 2011.

The other notice asks the respondent to vacate the premises on May 4, 2011 and states that there are arrears of \$9850. This balance is not consistent with the rent statement which indicates a balance owing as at March 26, 2011 of \$9900 or the receipts which suggest a balance as at that date of \$10,600.

The respondent stated that she did not take possession of the premises until October 4, 2010. She stated that the premises were not clean when she moved in and that she spent \$200 to have the carpets cleaned at the commencement of the tenancy.

The respondent stated that in November, 2010 the unit froze and the pipes burst. She stated that she was forced to live elsewhere for 6 days until repairs were made. The respondent stated that there had been no heat in February and March, 2011 and that there had been not heat or hot water since May, 2011. The respondent stated that she and her children had moved out and that she was removing the last few possessions from the premises.

The applicant acknowledged the problems she had supplying heat and hot water but stated that she could not afford to pay for utilities and repairs when the respondent refused to pay any rent.

The respondent stated that she had not been given the receipts which were presented in evidence. She noted that they were not made out in her name but acknowledged that the payments were made by her. The respondent also stated that she had paid the full monthly rent of \$1700 for October, November and December, 2010 but acknowledged that she had paid nothing since. The respondent offered no receipts or other physical evidence of rent payments. She stated that she had not been given receipts by the applicant for the remainder of the October, 2010 rent or rents paid in November and December, 2010.

The respondent stated that she had repeatedly asked the applicant to negotiate some form of rent reduction with her in consideration of the applicant's failure to maintain the premises and provide utilities but the applicant had not responded.

In an undated handwritten note from the respondent to the applicant provided in evidence, the

respondent enclosed a page from her 2010 income tax return showing a refund of \$7593.60. In the note she refers to this amount and states, "This is to prove that I shall receive this amount that is highlighted. I will be paying the amount I owe you at that time." The respondent stated that she provided the note to the landlord in March, 2011.

The evidence provided by the applicant concerning rent serves primarily to demonstrate her unreliable accounting. The respondent's testimony regarding rent paid without receipts is equally as questionable as receipts for previous payments appear to have been produced. Neither party took any action to resolve this dispute until the consequences became so severe that the tenant could no longer live in the premises and the landlord faced foreclosure. Both parties have unrealistic expectations for compensation given their failure to mitigate loss. The respondent expects a huge abatement of rent and the applicant expects full value for rent she has done little to pursue for over a year for premises and services she has failed to maintain.

I usually consider a breach of the obligation to pay rent to be on-going and not subject to the six month limitation imposed by section 68(1) of the *Residential Tenancies Act* until the tenancy agreement is terminated. In this matter, however, I believe it is appropriate to consider only the rent arrears that have accrued in the last six months without offset or abatement. I find that amount to be \$1700 x 6 months or \$10,200.

Given the testimony of the respondent, it is clear, in my opinion, that she has left the rental premises and the tenancy agreement has been terminated by reason of abandonment. There is no

need to terminate the tenancy agreement by order. The applicant may rightfully take possession of the premises, changing the locks if necessary. She must store, inventory and return or dispose of any abandoned personal property in accordance with sections 64 and 65 of the Act. The applicant shall also complete a statement of the security deposit, accrued interest and deductions in accordance with section 18 of the Act.

An order shall issue requiring the respondent to pay the applicant rent arrears in the amount of \$10, 200.

Hal Logsdon
Rental Officer