

IN THE MATTER between **JEFF BLAKE AND MARTHA BLAKE**, Applicants, and
J&J CONSTRUCTION, 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:

JEFF BLAKE AND MARTHA BLAKE

Applicants/Tenants

- and -

J&J CONSTRUCTION

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18.1(b) of the *Residential Tenancies Act*, the respondent shall return the retained portion of the security deposit and the accrued interest in the amount of seven hundred fifty dollars and twenty one cents (\$750.21) to the applicants.

DATED at the City of Yellowknife, in the Northwest Territories this 24th day of
February, 2012.

Hal Logsdon
Rental Officer

IN THE MATTER between **JEFF BLAKE AND MARTHA BLAKE**, Applicant, and
J&J CONSTRUCTION, 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:

JEFF BLAKE AND MARTHA BLAKE

Applicants/Tenants

-and-

J&J CONSTRUCTION

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: February 24, 2012

Place of the Hearing: Yellowknife, NT via teleconference

Appearances at Hearing: Martha Blake, applicant
Victor Parnell, representing the respondent

Date of Decision: February 24, 2012

REASONS FOR DECISION

This tenancy agreement was terminated on January 25, 2012 when the applicants moved out of the premises. The respondent held a security deposit for \$1500. The respondent returned \$750 of the deposit to the applicants and retained the remainder. There is no evidence that a statement of the security deposit or the deductions was produced by the respondent. The applicants sought an order requiring the respondent to return the balance of the security deposit and the accrued interest.

On or about January 10, 2012 the residential complex froze and sewage backed up into the applicant's premises. On January 19, 2012 an Environmental Health Officer inspected the premises, ordered some remedial work regarding the sewage spill and ordered that the premises be vacated until the work was completed. The applicants moved out on January 25, 2012.

The parties agreed that the rent had been paid in full to January 31, 2012 and that the full security deposit of \$1500 had been paid although neither party was certain as to the date(s) the deposit was paid. I shall assume the 50% was paid at the commencement of the tenancy agreement and the remainder three months later.

The respondent testified that the applicants agreed to the retention of 50% of the security deposit in exchange for termination of the tenancy agreement without the required thirty day notice. The respondent provided a memo dated January 19, 2012 from Ms Blake agreeing to the retention of

50% of the security deposit in lieu of notice and expressing her intention to vacate the premises on or before January 31, 2012.

Section 18(4) of the *Residential Tenancies Act* permits a landlord to retain all or part of a security deposit for arrears of rent and/or repairs of damages.

18(4) A landlord may, in accordance with this section, retain all or a part of a security deposit, a pet security deposit or both for arrears of rent owing from a tenant to the landlord in respect of the rental premises, and for repairs of damage to the premises caused by the tenant or a person permitted on the premises by the tenant.

The applicants had paid the rent in full and there is no evidence that there were any damages to the premises that were caused by the applicants. Therefore, notwithstanding the applicant's prior agreement to permit the landlord to retain 50% of the deposit, there are no legal grounds for the landlord to do so.

The failure of a tenant to give the required notice to terminate a tenancy agreement does not incur a penalty. A landlord who suffers a loss of rent due to a tenant's improper notice may seek compensation for lost rent through an *Application to a Rental Officer*. Compensation for lost rent is not arrears of rent and may not be deducted from a security deposit.

An order shall issue requiring the respondent to return the retained principal of the security deposit (\$750.00) and the accrued interest (\$0.21) to the applicants.

Hal Logsdon
Rental Officer