

IN THE MATTER between **5655 NWT LTD.**, Applicant, and **ROBIN POYOTOK AND CHRISTIAN ROUSSELLE**, Respondents;

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:

5655 NWT LTD.

Applicant/Landlord

- and -

ROBIN POYOTOK AND CHRISTIAN ROUSSELLE

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondents shall pay the applicant rent arrears in the amount of one thousand one hundred thirty two dollars and seventy one cents (\$1132.71).
2. Pursuant to section 62(2) of the *Residential Tenancies Act*, the respondents shall pay the applicant compensation for lost rent in the amount of two hundred thirty eight dollars and seventy one cents (\$238.71).

DATED at the City of Yellowknife, in the Northwest Territories this 12th day of July, 2012.

Hal Logsdon
Rental Officer

IN THE MATTER between **5655 NWT LTD.**, Applicant, and **ROBIN POYOTOK AND CHRISTIAN ROUSSELLE**, Respondents.

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:

5655 NWT LTD.

Applicant/Landlord

-and-

ROBIN POYOTOK AND CHRISTIAN ROUSSELLE

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: **July 4, 2012**

Place of the Hearing: **Yellowknife, NT**

Appearances at Hearing: **Lynn Elkin, representing the applicant**
 Robin Poyotok, respondent
 Christian Rousselle, respondent

Date of Decision: **July 11, 2012**

REASONS FOR DECISION

The tenancy agreement between the parties was terminated on June 23, 2012 when the respondents vacated the premises. The applicant retained the security deposit (\$1850) and accrued interest (\$1.29) applying it to rent arrears (\$4727) and carpet cleaning (\$150) resulting in a balance owing to the applicant of \$3025.71. The applicant completed a statement of the security deposit in accordance with the *Residential Tenancies Act* and sought an order requiring the respondents to pay the balance owing.

The tenancy agreement was made for a term commencing on February 1, 2011 and ending on June 30, 2012. The applicant stated that the respondents gave verbal notice on June 7, 2012 to terminate the tenancy agreement at the end of the term. The applicant stated that the premises have been advertised and shown to prospective tenants but had not yet been rented.

The applicant provided a statement of the rent account in evidence showing a balance of rent owing of \$4727. The statement includes a charge for the full month's rent for July, 2012 as well as an additional charge of \$34 which I assume is a late payment charge. The rent statement contains what I assume is a typographical error for the November, 2011 rent which is entered as \$1859 rather than \$1850. The applicant also provided a copy of the inspection reports for check-in and check-out.

The respondents disputed the charges for July, 2012 and the carpet cleaning charges. They stated

that the carpets were steam cleaned on June 16 or 17, 2012. The respondents also stated that the furnace failed on May 5, 2012 and when they called the applicant, he stated that he would be over in the afternoon. The respondents stated that they did not think that response was adequate and called a serviceman and had the furnace repaired at their expense. The respondents produced the invoice for the repair (replacing a nozzle and one hour of labour) for \$173.25. The respondents acknowledged that the applicant did respond to their call and arrived at the premises within one hour but the repair had already been done. The applicant has refused to pay for the repair and submitted that the response time was reasonable given the reasonably warm weather conditions.

The respondents also noted article 6(5) of the written tenancy agreement which obligates the landlord to rebate \$50/month at the end of the tenancy agreement provided the rent was paid by post-dated cheques and the respondents did not breach any obligation contained in the tenancy agreement throughout the term. The respondents noted that no rebate had been made.

The applicant cannot charge rent for July, 2012 as the tenants terminated the tenancy agreement by leaving before the July, 2012 rent became due. Penalties for July, 2012 are denied. Penalties may only be charged for late rent. Because of their improper notice, the respondents are liable for any July, 2012 rent that the landlord loses, subject to reasonable efforts to mitigate loss, but at the time of the hearing only four days of rent had been lost.

In my opinion, the respondents' failure to pay rent is not justified by any failure of the landlord to

respond to the furnace problem. I believe the landlord acted promptly given that the minimum outside temperature that day was 3.8 C. In one hour, I doubt that the inside temperature would have dropped significantly. I find no breach on the part of the landlord. In my opinion, the landlord is not liable for the furnace servicing contracted by the respondents.

The statement of the rent account clearly indicates that the respondents have breached the tenancy agreement by failing to pay the full amount of rent. There is no obligation to rebate any rent in accordance with article 6(5) of the tenancy agreement.

Despite the respondents' claim that the carpets were steam cleaned, the inspection report indicates that they were not clean. The inspection was done on June 23, 2012 the day the tenants vacated. In my opinion, the carpets were not clean and the cleaning costs are reasonable.

Taking into consideration the typographical error and applying the retained security deposit and interest first to the carpet cleaning costs, I find rent arrears to be \$1132.71 calculated as follows:

Rent to June 30/12 as per statement	\$2843.00
less error November/11	(9.00)
Carpet cleaning	150.00
Security deposit	(1850.00)
Interest	<u>(1.29)</u>
Rent arrears due applicant	\$1132.71

I find that the applicant has taken reasonable steps to mitigate the loss of rent in July and find lost rent to the date of the hearing to be \$238.71 calculated as follows:

$$(4 \text{ days}/31 \text{ days}) \times \$1850 = \$238.71.$$

An order shall issue requiring the respondents to pay the applicant rent arrears in the amount of \$1132.71 and compensation for lost rent in the amount of \$238.71

Hal Logsdon
Rental Officer