

IN THE MATTER between **STEVEN J. SHELTON**, Applicant, and **LINDSAY J. MCINTYRE**, 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 **FORT SMITH, NT.**

BETWEEN:

STEVEN J. SHELTON

Applicant/Landlord

- and -

LINDSAY J. MCINTYRE

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 four hundred ninety seven dollars and sixty eight cents (\$497.68).
2. Pursuant to section 42(3)(e) of the *Residential Tenancies Act* the respondent shall pay the applicant costs of yard cleaning in the amount of one hundred twenty three dollars (\$123.00).
3. Pursuant to section 45(4)(d) of the *Residential Tenancies Act*, the applicant is authorized to pay the outstanding balance of the respondent's water account and the respondent shall

pay compensation to the applicant in the amount of two hundred eighteen dollars and seventy five cents (\$218.75).

4. Pursuant to section 62(2) of the *Residential Tenancies Act*, the respondent shall pay the applicant compensation for lost rent in the amount of nine hundred dollars (\$900.00).

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

Hal Logsdon
Rental Officer

File #**10-12971**

IN THE MATTER between **STEVEN J. SHELTON**, Applicant, and **LINDSAY J. MCINTYRE**, 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:

STEVEN J. SHELTON

Applicant/Landlord

-and-

LINDSAY J. MCINTYRE

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: September 13, 2012

Place of the Hearing: Yellowknife, NT via teleconference

Appearances at Hearing: Steven J. Shelton, applicant
Jennifer Langevin, witness for the applicant

Date of Decision: September 24, 2012

REASONS FOR DECISION

The respondent was served with a Notice of Attendance sent by registered mail and confirmed delivered. The respondent failed to appear at the hearing and the hearing was held in her absence.

The tenancy agreement between the parties was made for a term ending on June 27, 2012. The applicant stated that the respondent moved out of the premises on March 16, 2012. The respondent retained the security deposit (\$900) and accrued interest (\$0.32) applying it to unpaid March, 2012 rent (\$900), a late payment penalty (\$100), cleaning costs (\$393) and the repair of a light fixture (\$40) leaving a balance of rent arrears owing to the applicant of \$532.68. The applicant sought an order requiring the respondent to pay that amount plus the following additional relief:

Costs to clean up the yard	\$123.00
An outstanding water bill	\$218.75
Compensation for lost rent	\$1800.00

Correspondence from the respondent, provided by the applicant in evidence suggests that she paid the March, 2012 rent via an email transfer of \$900 to the applicant on March 8, 2012. The tenancy agreement specifies that the rent is to be paid by direct deposit to a numbered bank account held by the applicant. The applicant denied receiving the payment and provided statements of the bank account for January, February and March, 2012. The January and

February statements clearly show the email money transfers of \$900 to the account but there is no transfer indicated on the March, 2012 statement. In my opinion the evidence supports the applicant's testimony that the March, 2012 rent was not received.

The penalties for late rent are set out in the regulations to the *Residential Tenancies Act*.

- 3. For the purposes of subsection 41(2) of the Act, a late payment penalty respecting the rent due under a tenancy agreement must not exceed \$5 plus \$1 for each day after the due date that the rent is late, to a maximum of \$65.**

The penalty applied by the applicant is in excess of the maximum. The relief requested shall be reduced to \$65.

The applicant provided photographs of the premises and an invoice for cleaning charges. I find the cleaning necessary and the charges of \$393 reasonable.

The applicant provided a photograph of the broken light fixture. I find the repair necessary and the repair cost of \$40 reasonable.

Prior to the hearing I confirmed with the Town of Fort Smith that water bill of \$218.17 remains outstanding. As the arrears will be transferred to the applicant's tax bill at year-end and the respondent does seem inclined to pay the bill, in my opinion, it is reasonable to authorize the

applicant to pay the debt and order the respondent to provide compensation of \$218.75.

The applicant provided photographs of the yard and an invoice for clean-up of the property. I find the yard clean up to be necessary and the cost of \$123 to be reasonable.

The respondent did not give proper notice to terminate the tenancy agreement and is therefore liable to pay the applicant loss of future rent subject to the applicant's efforts to mitigate that loss. The applicant stated that this neighbour wanted to rent the premises commencing on May 1, 2012 but later decided not to start the tenancy until June 1, 2012. The parties did not enter into a tenancy agreement until just prior to June 1, 2012. Therefore, the applicant was not legally committed to give possession to his neighbour and might have been able to rent to another party prior to June 1, 2012. I find that the efforts to mitigate loss entitle the applicant to only one month of lost rent.

Applying the retained security deposit and interest first to cleaning and repair costs, I find rent arrears of \$497.68 calculated as follows:

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Security deposit	(\$900.00)
Interest	(0.32)
March rent arrears	900.00
Late pmt penalty	65.00
Cleaning	393.00
Light fixture	<u>40.00</u>
Net rent arrears	\$497.68

An order shall issue requiring the respondent to pay the applicant rent arrears of \$497.68, yard cleaning costs of \$123 and compensation for lost rent of \$900. The applicant is also authorized to pay the respondent's outstanding waster bill and the respondent is ordered to pay the applicant compensation of \$218.75.

Hal Logsdon
Rental Officer