

IN THE MATTER between **AHMED EL SAIS**, Applicant, and **BRAD CANDOW AND JULIE CANDOW**, 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 **INUVIK, NT.**

BETWEEN:

AHMED EL SAIS

Applicant/Landlord

- and -

BRAD CANDOW AND JULIE CANDOW

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 42(3)(a) of the *Residential Tenancies Act*, the respondents shall remove the remains of their mobile home from the mobile home park lot and restore the lot to a reasonable condition.

DATED at the City of Yellowknife, in the Northwest Territories this 19th day of April, 2013.

Hal Logsdon
Rental Officer

IN THE MATTER between **AHMED EL SAIS**, Applicant, and **BRAD CANDOW
AND JULIE CANDOW**, 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:

AHMED EL SAIS

Applicant/ Landlord

-and-

BRAD CANDOW AND JULIE CANDOW

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: April 18, 2013

Place of the Hearing: Yellowknife, NT via teleconference

Appearances at Hearing: Rhonda Schnee, representing the applicant
Brad Candow, respondent
Julie Candow, respondent

Date of Decision: April 19, 2013

REASONS FOR DECISION

The premises consist of a lot for a mobile home. The applicant alleged the respondents had breached the tenancy agreement by failing to pay rent. The applicant sought an order requiring the respondents to pay the alleged rent arrears and to remove the mobile home from the lot.

The applicant stated that no rent had been paid since February 2012 and provided a receipt for that month's rent. The monthly rent for the premises is \$300. The applicant sought 13 months of rent arrears or \$3900. The applicant stated that the mobile home was damaged by fire and had not been occupied since February, 2012. The applicant also stated that the Town of Inuvik had ordered the mobile home removed from the lot.

The respondents stated that they had been renting the mobile home until it burned in February, 2012. They stated that it had not been occupied since that date and that they had no interest in the mobile home or continuing to rent the lot. They stated that they did not have the financial resources to remove the mobile home from the lot. They stated that no order had been issued by the Town of Inuvik.

Clearly, the respondents have abandoned the premises and the mobile home is abandoned personal property. In accordance with section 62(1) of the *Residential Tenancies Act*, the tenancy agreement was terminated in February, 2012.

- 62. (1) Where a tenant abandons a rental premises, the tenancy agreement is terminated on the date the rental premises were abandoned but the tenant remains liable, subject to section 5, to compensate the landlord for loss of future rent that would have been payable under the tenancy agreement.**

Section 5 of the Act sets out a landlords obligation to mitigate loss when premises are abandoned.

- 5. (1) Where a landlord or tenant is liable to the other for damages as a result of a breach of a tenancy agreement or this Act, the landlord or tenant entitled to claim damages shall mitigate his or her damages.**
- (2) Without limiting subsection (1), where a tenant terminates a tenancy agreement, contravenes a tenancy agreement, or vacates or abandons rental premises, other than in accordance with this Act or the tenancy agreement, the landlord shall rent the rental premises again as soon as is practicable and at a reasonable rent in order to mitigate the damages of the landlord.**

The applicant is not entitled to rent arrears because the tenancy agreement was terminated by abandonment and the rent was paid in full to the date of abandonment. I find no evidence that the landlord has taken any steps to mitigate the loss of rent. Therefore compensation for lost rent may not be considered.

It would appear that the parties are at loggerheads as to who will remove the remains of the mobile home from the lot. Neither party wishes to assume the costs of doing so, but the landlord cannot simply continue to charge rent or seek endless amounts of compensation for lost rent without taking steps to mitigate his losses.

It is the mobile home lot that is considered the premises. Like a rented apartment or house, the tenant is expected to repair any damages to the premises and leave them in a reasonably clean

state. Since the mobile home is damaged beyond repair and the respondents have no interest in the property, the removal of the remains of the mobile home should be considered in the same light as removing garbage or worthless items which have been left in an apartment after the tenant has moved out. Although it is the tenant's responsibility, a landlord may claim compensation for doing it if the tenant does not. Sections 42 and 45 of the Act provide remedies. In my opinion, it is the responsibility of the respondents to clean up the lot by removing the remains of the mobile home and restoring the lot to a reasonable condition. An order shall issue requiring them to do so.

If the respondents do not comply with the order, the applicant may file an application pursuant to Sections 42(3)(d) and 42(3)(e) seeking approval to restore the lot and ordering the respondents to compensate him for the costs. The applicant should be prepared to provide evidence with the application as to what those costs will be.

Hal Logsdon
Rental Officer