

IN THE MATTER between **KRISTIN PRENDERGAST**, Applicant, and **ESTHER NYE**, 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, regarding the rental premises at **YELLOWKNIFE, NT**.

BETWEEN:

KRISTIN PRENDERGAST

Applicant/Landlord

- and -

ESTHER NYE

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 62(2) of the *Residential Tenancies Act*, the respondent shall pay the applicant compensation for lost rent in the amount of five hundred thirty dollars and nineteen cents (\$530.19).

DATED at the City of Yellowknife, in the Northwest Territories this 23rd day of January, 2014.

Hal Logsdon
Rental Officer

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BETWEEN:

KRISTIN PRENDERGAST

Applicant/Landlord

-and-

ESTHER NYE

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: December 13, 2013

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Kristin Prendergast, applicant
Esther Nye, respondent

Date of Decision: January 23, 2014

REASONS FOR DECISION

The rental premises consisted of a suite in the home of the landlord. The tenancy agreement between the parties was oral in nature. The parties agreed that the tenancy commenced on August 24, 2013. The monthly rent was agreed to be \$800 and the required security deposit was also \$800. The parties agreed that \$400 of the required security deposit had been paid in August, prior to the commencement of the tenancy. The remaining \$400 was not paid, nor did it come due prior to the end of the tenancy. The applicant alleged that the respondent had abandoned the premises in early November. The applicant stated that she had retained the security deposit but acknowledged that she had not prepared an itemized statement of the deposit and deductions as required pursuant to section 18 of the *Residential Tenancies Act*.

The applicant alleged that the respondent had failed to pay the full amount of the rent during the term of the agreement and sought an order requiring the respondent to pay the alleged rent arrears and penalties for late rent. The applicant provided a written narrative of financial transactions between the parties and email correspondence between the parties in evidence but did not provide any form of ledger or statement showing the transactions or the balance owing. The applicant alleged that the respondent owed her \$541.24 and sought an order requiring the respondent to pay that amount. Following the applicant's written narrative and testimony, that figure is arrived at as follows:

Retained security deposit	(\$400.00)
August rent arrears	206.24
November rent arrears	800.00
Pmt., November 8/13	(100.00)
Late rent penalties	<u>35.00</u>
Total	\$541.24

Prior to any decision, I required the applicant to submit a conventional statement of account indicating the balance of \$541.24. The applicant provided such a statement on December 13, 2013 but it varied from the testimony and narrative which was provided at the hearing that same day in the following respects:

1. The prorated rent for August, 2013 was calculated at \$206.48 rather than the \$206.24 presented at the hearing and contained in the application.
2. The penalties for late rent were calculated at \$52 rather than the \$35 presented at the hearing.
3. The statement contains an additional payment of \$11 on November 8 that was not presented at the hearing.
4. The total relief sought totals \$547.48 rather than the \$541.24 presented at the hearing.

In my opinion, both of the calculated rents for August are incorrect. I calculate the rent as \$206.45 as follows; $\$800/31 \times 8 = \206.45 . Notwithstanding the inaccurate calculation, it appears that \$206.24 was the rent demanded by the landlord for August. I shall accept that number as the lawful rent for that month.

The regulations to the Act prohibit the collection of penalties for late rent that exceed those set out in the regulation. The landlord demanded \$35 in her application and at the hearing. I find that amount to be within the regulations. It is not reasonable to recalculate that number now. I accept the penalties of \$35.

It appears that the applicant has acknowledged an \$11 payment which was made on November 8 but not contained in her initial request for relief. I shall recognize that payment.

The respondent acknowledged that she had not given proper notice to terminate the tenancy agreement but disputed that she had occupied the premises in November, 2013. She stated that she had vacated the premises prior to November 1, had notified the landlord and left the keys in the apartment. The respondent also acknowledged that prorated August rent had not been paid nor had any rent been paid for November.

The date on which the respondent surrendered possession is important only to establish whether the \$800 sought for November is arrears of rent or compensation for lost rent. Given that the monthly rent was due in advance, had the respondent abandoned the premises on or before October 31, the tenancy agreement would have been terminated by reason of abandonment in October and no rent would have come due for November. The respondent would be liable for any loss of rent in November, subject to the landlord's efforts to mitigate the loss. On the other hand if the respondent did not abandon the premises until November 1 or later, the tenancy agreement would not have terminated until November and the November rent would have come due.

Abandonment is defined in section 1(3) of the *Residential Tenancies Act*.

- 1.(3) For the purposes of this Act, a tenant has abandoned the rental premises and the residential complex where the tenancy has not been terminated in accordance with this Act and**
- (a) the landlord has reasonable grounds to believe that the tenant has left the rental premises; or**
 - (b) the tenant does not ordinarily live in the rental premises, has not expressed an intention to resume living in the rental premises, and the rent the tenant has paid is no longer sufficient to meet the tenant's obligation to pay rent.**

In my opinion, there were reasonable grounds on October 31, 2013 to believe that the respondent had left the rental premises. The email correspondence between the parties on October 31 suggests that the tenant was no longer living in the rental premises on that date.

From the respondent:	"I understand what you are saying [about the non-payment of rent] But it is not because I paid rent somewhere else. As of today I have no where to live."
From the respondent:	"Can I come tomorrow for the rest of my stuff?"
From the applicant:	" I'm not allowed to hold it as collateral. So I guess so."
From the respondent:	"Thanks, and I'll leave keys on dresser."
From the respondent:	"I've been sick so unable to get to your place again today. I will try for tomorrow day time."

On the abandonment of rental premises, a tenant is liable for loss of rent subject to the landlord's efforts to mitigate loss. The applicant stated that she advertised the premises for rent on November 15, showed the premises to one prospective tenant and entered into a tenancy agreement commencing on December 1, 2013. In my opinion, given the fact that most tenants are required to give at least 30 days notice to terminate a tenancy agreement, the applicant took reasonable steps to mitigate the loss of rent. It would have been unlikely, notwithstanding the landlord's failure to advertise the premises immediately after the abandonment, that the premises

would be rented before December 1, 2013. In my opinion compensation of \$800 representing the loss of the November, 2013 rent is reasonable.

SUMMARY

I find the rent arrears and penalties for late rent to be \$130.24 calculated as follows:

August rent	\$206.24
Pmt., Nov 08	(100.00)
Pmt Nov 13	(11.00)
Late penalties	<u>35.00</u>
Total rent arrears	\$130.24

Taking into consideration the retained security deposit and accrued interest and the compensation for lost rent I find an amount owing to the applicant of \$530.19 calculated as follows:

Security deposit	(\$400.00)
Interest	(0.05)
Rent arrears	<u>\$130.24</u>
Subtotal	(\$269.81)
Compensation for lost rent	<u>\$800.00</u>
Total owing applicant	\$530.19

An order shall issue requiring the respondent to pay the applicant compensation for lost rent in the amount of \$530.19.

Hal Logsdon
Rental Officer