

IN THE MATTER between **David Haogak and Shelley Elanik**, Applicants, and **Brad Jones**, 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, **Adelle Guigon**, Deputy Rental Officer, regarding a rental premises within **the town of Inuvik in the Northwest Territories**.

BETWEEN:

DAVID HAOGAK and SHELLEY ELANIK

Applicants/Tenants

- and -

BRAD JONES

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18.1 of the *Residential Tenancies Act*, the respondent/landlord must return to the applicants/tenants the security deposit in the amount of \$1,601.06 (one thousand six hundred one dollars six cents).

DATED at the City of Yellowknife in the Northwest Territories this 7th day of April 2014.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **David Haogak and Shelley Elanik**, Applicants, and **Brad Jones**, Respondent.

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

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BETWEEN:

DAVID HAOGAK and SHELLEY ELANIK

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Respondent/Landlord

REASONS FOR DECISION

<u>Date of the Hearing:</u>	March 20, 2014
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories, via teleconference
<u>Appearances at Hearing:</u>	David Haogak, applicant Shelley Elanik, applicant
<u>Date of Decision:</u>	March 20, 2014

REASONS FOR DECISION

An application to a rental officer made by David Haogak and Shelley Elanik as the applicants/tenants against Brad Jones as the respondent/landlord was filed by the Rental Office December 2, 2013. The application was made regarding a residential tenancy agreement for the rental premises known as 29 Dolphin Street in Inuvik, Northwest Territories. The applicants served a copy of the filed application on the respondent by e-mail deemed served February 17, 2014, pursuant to section 4(4) of the *Residential Tenancies Act* (the Act).

The applicants alleged the respondent had failed to return their security deposit in accordance with the Act. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for March 20, 2014. Mr. David Haogak and Ms. Shelley Elanik appeared at hearing as the applicants/tenants. Mr. Brad Jones was served a notice of attendance by registered mail sent February 25, 2014, which was deemed served March 4, 2014, pursuant to section 71(5) of the Act. A courtesy e-mail was also sent to Mr. Jones by me March 19, 2014, with the notice attached confirming the hearing. Mr. Jones did not appear at hearing, nor did anyone appear to represent him. The hearing proceeded in his absence.

The applicants testified they had entered into a tenancy agreement with Mr. Jones for a fixed-term of September 1, 2012, to August 31, 2013. They gave verbal notice to Mr. Jones in August 2013 of their intention to move out by November 1, 2013. Offers to them by Mr. Jones to reduce the rent if they stayed were refused, primarily due to the unacceptable condition of the rental premises. An entry inspection was performed when the applicants took possession of the premises, but was not written. No exit inspection was conducted with the applicants. The applicants moved out October 31st and returned the keys to Mr. Jones' sister November 1st; new tenants moved in the afternoon of November 1st.

The applicants testified they had no rental arrears at the end of their tenancy. The rental unit was cleaned prior to vacating it and there were no damages to the rental premises; in fact, the applicants testified that the unit was in better shape when they left than when they moved in.

The applicants testified they had paid a security deposit of \$1,600 on July 7, 2012, prior to signing the tenancy agreement, and they provided a copy of Mr. Jones' acceptance of the Interac e-transfer. They have not received a written accounting of Mr. Jones' reasons for retaining the security deposit, nor do they believe he has reasons to retain the security deposit in accordance with the Act. They are requesting an order for the return of their security deposit.

Tenancy agreement and termination of the agreement

The residential tenancy agreement entered into evidence was signed August 14, 2012, and is between the parties for the rental premises known as 29 Dolphin Street for a fixed-term tenancy from September 1, 2012, to August 31, 2013. I am satisfied a valid tenancy agreement was in place.

The tenants testified they gave the landlord approximately two months' verbal notice to the landlord of their intention to vacate. Although verbal notice is not in accordance with the Act, the landlord was able to find new tenants to take occupancy of the rental premises for when the applicants vacated it. Therefore, the landlord experienced no lost rent.

Security deposit

The Interac e-transfer receipt entered into evidence confirms Mr. Jones' acceptance of a \$1,600 payment from David Haogak. Mr. Haogak testified this transfer was effected July 7, 2012, as a security deposit, which he was told at the time was required to hold the rental premises. I am satisfied a security deposit of \$1,600 was paid by the applicants to the respondent.

There being no written entry and exit inspection reports done for the rental premises, the landlord is not in a position to unilaterally retain the security deposit for damages. Were there any damages to the premises for which the landlord wished to be compensated, in this instance the landlord would be required to file an application to a rental officer to have the matter determined.

The applicants testified they had no rental arrears at the end of their tenancy, to which I have no disputing evidence. The landlord in this instance is not in a position to retain the security deposit for rental arrears because there were no rental arrears.

I find the landlord has breached section 18 of the Act by failing to return the security deposit to the tenants or provide a written accounting to the tenants of his reasons for retaining the security deposit. An order will issue for Mr. Jones to pay the security deposit (including interest) to the applicants/tenants in the amount of \$1,601.06.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

Exhibit 1: Residential tenancy agreement signed August 14, 2012

Exhibit 2: Screen shots of Facebook conversation between the tenants and Tammy Rogers from October 30, 2013, to November 1, 2013

Exhibit 3: Interac e-transfer receipt confirming Brad's acceptance of a \$1,600 transfer from David Haogak