

IN THE MATTER between **ROSALIE COCKNEY**, Applicant, and **MCKENZIE MANAGEMENT**, Respondent;

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

AND IN THE MATTER of a Hearing before, **HAL LOGSDON**, Rental Officer, regarding the rental premises at **FORT SIMPSON, NT**.

BETWEEN:

**ROSALIE COCKNEY**

Applicant/Tenant

- and -

**MCKENZIE MANAGEMENT**

Respondent/Landlord

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 30(4)(d) of the *Residential Tenancies Act*, the respondent shall pay the applicant compensation for loss of full enjoyment of the rental premises in the amount of five hundred dollars (\$500.00).

DATED at the City of Yellowknife, in the Northwest Territories this 4th day of September, 2014.

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Hal Logsdon  
Rental Officer

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BETWEEN:

**ROSALIE COCKNEY**

Applicant/Tenant

-and-

**MCKENZIE MANAGEMENT**

Respondent/Landlord

**REASONS FOR DECISION**

**Date of the Hearing:**                      **July 25, 2014**

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

**Appearances at Hearing:**                      **Rosalie Cockney, applicant**

**Date of Decision:**                      **August 31, 2014**

### **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 their absence.

The applicant alleged that the respondent had breached the tenancy agreement by failing to provide an adequate supply of heat and hot water during the term of the tenancy. The applicant sought monetary compensation for loss of full enjoyment of the premises.

The applicant stated that she had complained to the landlord about the heat and hot water problems on numerous occasions but the landlord had not taken any action to resolve the problems. She stated however that there had been an adequate supply of heat and hot water in the apartment since July 14, 2014.

The applicant provided a number of photographs of the thermostat in her apartment indicating the setting and the temperature. All of the photographs were taken in June, 2014 except for two which were taken in February, 2014. In each June photograph the thermostat was set above 20C but the thermometer indicated a temperature between 16-18C. The applicant testified that regardless of the setting, the heating plant in the building was unable to establish a temperature in her apartment of 20-21C which she considered to be a comfortable level. In the two February photographs, the temperature was recorded between 16-18C despite a higher thermostat setting.

The applicant also provided a list of dates where there was an inadequate supply of hot water. She stated that she had to run the water for long periods of time before it was even lukewarm and that the hot water was still too cold to take a shower or wash dishes.

The respondent served a notice of early termination on the applicant dated June 6, 2014 seeking vacant possession on July 6, 2014 pursuant to section 54(1)(e) of the *Residential Tenancies Act*. Clearly, the tenancy agreement has not been frustrated and no order would be made on those grounds. However, the applicant stated that she intended to move out at the end of July, 2014.

The applicant filed a previous application against the respondent (file #10-14015, filed on March 4, 2014) citing the same allegations. The matter was set for hearing on May 21 but the applicant withdrew the application on May 5 and the hearing was cancelled.

The apartment temperatures recorded by the applicant suggest that the boiler for the residential complex was likely shut down for the season by June 5. If the heating system was able to keep the apartment temperature at 16-18C in February as evidenced by the applicant's recorded temperatures, it could have surely kept the apartment warm in June when the mean outside temperature was 16.8C. If that is the case, then in my opinion, the heating system was shut down somewhat prematurely as the mean daily outside temperature did not consistently rise above 18C every day until June 17, 2014. Historical temperatures in June suggest that heating should be maintained until mid-June when outside mean temperature usually remains at or above 18C.\*

The applicant's recorded dates and times of insufficient hot water in February, March, April and June, 2014 indicate that the shortages most frequently occur during peak demand times; early in the morning and early evening. This would suggest that the system which generates hot water for the residential complex is not adequate to meet the demand or is not operating as it should.

Although the applicant alleged that the landlord turns off the hot water at night and during the day to save money, there is no evidence to support this allegation.

The applicant sought compensation of \$16,200 an amount she stated was equivalent to 12 months rent. In my opinion, compensation in this amount is totally unreasonable. Reasonable compensation should reflect the degree to which the applicant suffered loss of full enjoyment of the premises. The quantum of compensation requested by the applicant would reflect the complete loss of the apartment for 12 months. This is hardly the case.

The applicant has only provided evidence of what she considers a lack of sufficient heat for 5 days in June, 2014 and the temperatures recorded by the applicant were only 1-2C below 18C, the temperature below which heating is considered to be necessary. In my opinion, the loss of enjoyment the applicant suffered in June, 2014 is minimal.

There are only two temperature readings in February both of which are between 16C and 18C. I cannot infer from so little evidence that the heating system was incapable of maintaining a reasonable temperature for the entire winter season although clearly the heat was insufficient for these two days.

The reported lack of sufficient hot water is more reasonably documented and suggests a more pervasive problem but it hardly represents a loss of enjoyment of the magnitude suggested by the applicant.

In my opinion, the shortages of hot water and heat represent only a small loss of full enjoyment of the premises. I am satisfied that the respondent has breached section 30 of the Act by failing to maintain the hot water and heating system in a state of good repair. I find reasonable compensation to be \$500.

An order shall issue requiring the respondent to compensate the applicant for loss of full enjoyment of the rental premises in the amount of \$500. The compensation may be claimed as a rent credit or a cash payment by the applicant.

\* The historical weather data for Fort Simpson as recorded by Environment Canada has been referenced for this analysis.

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Hal Logsdon  
Rental Officer