

IN THE MATTER between **Char Development Limited**, Applicant, and **Corinne Kraft-Bailey and Todd Hurley**, 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, **Adelle Guigon**, Deputy Rental Officer, regarding a rental premises located within the **city of Yellowknife in the Northwest Territories**.

BETWEEN:

**CHAR DEVELOPMENT LIMITED**

Applicant/Landlord

- and -

**CORINNE KRAFT-BAILEY and TODD HURLEY**

Respondents/Tenants

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 62(2) of the *Residential Tenancies Act*, the respondents must compensate the applicant for loss of future rent in the amount of \$5,000.00 (five thousand dollars).

DATED at the City of Yellowknife in the Northwest Territories this 30th day of January 2015.

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Adelle Guigon  
Deputy Rental Officer

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BETWEEN:

**CHAR DEVELOPMENT LIMITED**

Applicant/Landlord

-and-

**CORINNE KRAFT-BAILEY and TODD HURLEY**

Respondents/Tenants

**REASONS FOR DECISION**

<b><u>Date of the Hearing:</u></b>	<b>January 28, 2015</b>
<b><u>Place of the Hearing:</u></b>	<b>Yellowknife, Northwest Territories</b>
<b><u>Appearances at Hearing:</u></b>	<b>Cindy Ashby, representing the applicant Corinne Kraft-Bailey, respondent</b>
<b><u>Date of Decision:</u></b>	<b>January 30, 2015</b>

**REASONS FOR DECISION**

An application to a rental officer made by Char Development Limited as the applicant/landlord against Corinne Kraft-Bailey and Todd Hurley as the respondents/tenants was filed by the Rental Office December 10, 2014. The application was made regarding a residential tenancy agreement for the rental premises known as 910 Williams Avenue in Yellowknife, Northwest Territories. The applicant served a copy of the filed application on the respondents by registered mail signed for December 24, 2014.

The applicant alleged the respondents had vacated the rental premises prior to the expiry of a fixed-term tenancy agreement and were liable for lost future rent. They sought an order for payment of lost future rent and electricity bills. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for January 28, 2015, in Yellowknife, Northwest Territories. Ms. Cindy Ashby appeared for the applicant. Ms. Corinne Kraft-Bailey appeared for the respondents.

The parties agreed that the respondents were joint tenants in a tenancy agreement for the rental premises known as 910 Williams Avenue in Yellowknife, Northwest Territories, for a fixed-term from November 15, 2013, to November 30, 2014. On June 28, 2014, Ms. Kraft-Bailey texted Ms. Ashby, notifying her of their intent to vacate the rental premises by September 1, 2014. Sometime after that but before July 25, 2014, Mr. Todd Hurley telephoned Ms. Ashby and told her they would not be leaving the rental premises. On July 25<sup>th</sup>, both Ms. Kraft-Bailey and Mr. Hurley sent text messages to Ms. Ashby confirming they did intend to vacate the rental premises by September 1, 2014.

Ms. Ashby began advertising the rental premises for prospective tenants on August 13, 2014. There were immediate responses to the advertisement, but no successful applicants or interest until new tenants took occupancy November 1, 2014. Ms. Ashby estimates she showed the premises half-a-dozen times since first advertising it. She further estimated it takes an average of two months before new tenants are found for any of her properties. The applicant is seeking an order for payment of lost future rent of \$5,000 and electricity bill costs of \$186.83 for the months of September and October 2014.

Ms. Kraft-Bailey argued that although they were breaking their lease agreement by leaving early they gave Ms. Ashby more than enough notice of their intention to leave the premises for her to be able to get new tenants earlier than November 1<sup>st</sup>. She questioned why advertising wasn't started until 19 days after their latest confirmation of intent to vacate, postulating that the additional 19 days of advertising would have resulted in a more successful re-renting of the premises. Ms. Kraft-Bailey also argued against the charging of electricity bills for the periods after they vacated the rental premises as the electricity bill is not rent.

Ms. Kraft-Bailey also questioned the appropriateness of the landlord's advertisement of rent \$100 higher than their tenancy agreement established. Ms. Ashby confirmed that in the initial advertisements they did state the rent was \$2,600 for a tenancy starting September 1, 2014, but that they ended up renting the premises as of November 1, 2014, for \$2,500 – the same amount the respondents were paying. Ms. Ashby further confirmed that the last rent increase for the rental premises occurred on September 1, 2013, to \$2,500.

#### *Tenancy agreement*

The lease agreement entered into evidence establishes – as agreed by the parties – that a fixed-term tenancy was in place from November 15, 2013, to November 30, 2014. The rent was set at \$2,500 per month and the tenant was responsible for the electricity, telephone, and cable. I am satisfied a valid tenancy agreement was in place in accordance with the *Residential Tenancies Act* (the Act).

#### *Abandonment of rental premises*

A fixed-term tenancy agreement specifies the beginning and end dates of a tenancy. Section 51 of the Act specifies a tenant may only terminate a fixed-term tenancy by giving 30 days' written notice to the landlord to end the tenancy on the date specified in the tenancy agreement.

Meaning, in this case, that if the tenants wished to legally end their tenancy agreement they could only do so by giving 30 days' written notice to end it on November 30, 2014. Anything earlier than that constitutes abandonment of the rental premises, whether the landlord was notified of the tenants' intention to vacate or not. As such, I find the respondents abandoned (vacated) the rental premises August 30, 2014.

*Mitigation of losses*

Section 5(2) of the Act specifies that where a rental premises has been abandoned the landlord must rent the rental premises again as soon as is practicable and at a reasonable rent in order to mitigate their damages (losses).

The notice twice given and once revoked by the respondents in this case could reasonably be acknowledged with caution by the applicant. Regardless of intention, the notice did not end the tenancy in accordance with the Act and the respondents could just as easily have remained in the rental premises as their lease would have continued until they did vacate the rental premises; the landlord would have no recourse. Why should a landlord be expected to advertise a rental premise for rent that the existing tenancy agreement has not been terminated in accordance with the Act for or has not yet been abandoned? In this case, the landlord waited 19 days before placing an advertisement for the rental premises, which was still 18 days before the earliest day the rental premises might have been available. The landlord continued advertising the rental premises as available until new tenants could be secured. In my opinion, the applicant has made reasonable efforts to mitigate their losses.

*Loss of future rent*

Section 62(1) of the Act specifies that a tenancy is terminated on the date the rental premises were abandoned but the tenant remains liable to compensate the landlord for loss of future rent that would have been payable under the tenancy agreement. Having established that the tenancy agreement in this instance was a fixed-term tenancy ending November 30, 2014, the tenants would remain liable for the rent either until the end of the tenancy or until the landlord successfully re-rents the rental premises, whichever comes first. In this case, the applicant was unable to re-rent the premises until November 1, 2014. Having established that the rental premises was abandoned on August 30, 2014, and that the applicant took reasonable steps to mitigate their losses by advertising the rental premises for rent, I find the respondents liable for lost future rent for the months of September and October 2014 in the total amount of \$5,000.

*Electricity bills*

The applicant has requested compensation for utility bills for the rental premises after the respondents left. Section 8 of the tenancy agreement specifies the electricity is not included in the monthly rent and the tenant is solely responsible for it. The respondents did have the electricity account in their names throughout the tenancy until they vacated the rental premises; the account returned to the landlord's name as of September 2, 2014.

In the Act, rent is defined as including utilities that the landlord provides for the tenant in respect of his or her occupancy of the rental premises. The electricity was not provided by the landlord in this case and therefore cannot be defined as rent. Section 62(1) of the Act provides for the compensation of lost future rent, nothing else. The applicant's claim for electricity bills for the months of September and October is denied.

An order will issue requiring Ms. Corinne Kraft-Bailey and Todd Hurley to pay compensation for lost future rent in the amount of \$5,000.

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Adelle Guigon  
Deputy Rental Officer

APPENDIX A

Exhibits

Exhibit 1: Lease agreement dated October 19, 2013

Exhibit 2: Northland Utilities electricity bills for September 2 to October 31, 2014

Exhibit 3: YKTrader.com sales receipts for real estate listings from August 13 to October 11, 2014

Exhibit 4: Email conversation between Cindy Ashby and Corinne Carlson dated August 20-25, 2014

Exhibit 5: Respondent's submission at hearing

Exhibit 6: Email from Cindy Ashby dated January 29, 2015