

IN THE MATTER between **GRANT RICE**, Applicant, and **ESTATE OF LEW WHALEN**, 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 **YELLOWKNIFE, NT**.

BETWEEN:

**GRANT RICE**

Applicant/Landlord

- and -

**ESTATE OF LEW WHALEN**

Respondent/Tenant

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant rent arrears and penalties for late rent in the amount of three thousand four hundred sixty five dollars (\$3465.00).
2. Pursuant to section 45(4)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant compensation for utilities paid on behalf of the tenant in the amount of eight hundred eleven dollars and three cents (\$811.03).
3. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondent shall pay the applicant costs of a lock change and cleaning costs in the amount of five hundred eighty

four dollars and forty cents (\$584.40).

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

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Hal Logsdon  
Rental Officer

IN THE MATTER between **GRANT RICE**, Applicant, and **ESTATE OF LEW WHALEN**, 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.

BETWEEN:

**GRANT RICE**

Applicant/Landlord

-and-

**ESTATE OF LEW WHALEN**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:** August 12, 2015

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

**Appearances at Hearing:** Grant Rice, applicant  
Trish DaCorte, witness for the applicant

**Date of Decision:** September 20, 2015

### **REASONS FOR DECISION**

A written tenancy agreement was executed between Grant Rice, the landlord, and Lew Whalen on January 12, 1999. At the time Coldwell Banker was the property manager for Mr. Rice. Mr. Whalen died on April 2, 2010. Mr. Whalen died intestate but his ex-wife, Debbie Whalen arrived in Yellowknife and began cleaning the premises and removing Mr. Whalen's possessions until Uronka Whalen (Mr. Whalen's daughter) ordered her, through her legal counsel, to cease and desist. Ms. Uronka paid the April rent. The premises continued to be entered and on the advice of legal counsel, the property manager changed the locks and denied entry to anyone. No further rent was paid.

The application was filed on October 14, 2010 seeking possession of the property. The applicant eventually considered the premises abandoned by the heirs and took possession in November, 2010. Repairs to the premises were undertaken and the premises were re-rented on December 20, 2010. The court has now appointed an administrator for the estate of Mr. Whalen and Mr. Garth Wallbridge advised that he represents the administrator of the estate and was authorized to accept service. Mr. Wallbridge was served with a Notice of Attendance but no one appeared on behalf of the administrator. The hearing proceeded in their absence. The style of cause of this proceeding has been amended to "Grant Rice and Estate of Lew Whalen".

The applicant now seeks an order requiring the estate to pay rent arrears and penalties for late rent, compensation for unpaid utility costs which have been paid on behalf of the tenant, costs of

a lock change and cleaning costs, costs for removing personal items from the premises and management fees incurred by the applicant.

Termination of the Tenancy Agreement

A tenancy agreement does not automatically terminate on the death of the tenant. A tenant as defined in section 1(1) of the *Residential Tenancies Act* includes an heir to a deceased tenant.

**"tenant" means a person who pays rent in return for the right to occupy rental premises and his or her heirs, assigns and personal representatives.**

Section 53 of the Act sets out a provision whereby an heir to a deceased tenant may terminate the tenancy agreement by notice.

- 53. (1) Notwithstanding any other provision of this Act,**
- (a) where a tenant dies or the health and physical condition of the tenant deteriorates and the tenant is unable to pay the rent, or**
  - (b) where a spouse of a tenant dies and the income of the surviving spouse is insufficient to pay the rent, the tenant, his or her heirs, assigns or legal or personal representative may terminate the tenancy agreement by giving notice, in accordance with section 55.**

In this matter an heir of the tenant expressed her intention to maintain possession of the premises, at least until the issue of personal property was resolved. It would not have been prudent or reasonable in these circumstances, for the landlord to take possession of the premises immediately after the death of Mr. Whalen. In my opinion, the changing of the locks by the applicant was not an indication of his possession but rather a reasonable effort to protect his property and that of the deceased tenant.

By November, 2010 however, it was obvious that none of the heirs intended on taking possession

and although none had taken the initiative to terminate the tenancy agreement, I consider the tenancy agreement to have been abandoned on October 31, 2010. The applicant took possession of the premises in November, completed repairs and cleaning and re-rented the premises in December, 2010.

It has taken considerable time for the administration of the estate to be resolved but now that an administrator has been appointed by the court, it is appropriate to consider an order for the rent arrears and other costs claimed by the applicant.

Rent Arrears

I find the monthly rent of \$1025 became due but was not paid from May 1, 2010 to October 31, 2010 a total of 6 months. The *Residential Tenancy Act* regulations permit penalties for late payment of rent.

**For the purposes of subsection 41(2) of the Act, a late payment penalty respecting the rent due under a tenancy agreement must not exceed \$5 plus \$1 for each day after the due date that the rent is late, to a maximum of \$65.**

I find rent arrears and appropriate penalties to be \$6540 calculated as follows:

Rent arrears (May - October, 6 x \$1025)	\$6150
Penalties (6 months @ \$65)	<u>390</u>
Total	\$6540

Compensation for Utilities

The tenancy agreement between the parties obligated the tenant to pay for water and fuel during the term of the agreement. The applicant testified that the fuel tank was full at the

commencement of the tenancy agreement. The tank was filled on August 12, 2010 at a cost of \$581.29. The applicant testified that the water charges were in arrears in the amount of \$229.74 and that amount was added to his property taxes and was paid by him. I find compensation for the payment of these utilities on behalf of the tenant in the amount of \$811.03 to be reasonable.

Lock Change and Cleaning Costs

The applicant provided an invoice for changing the locks to the premises for \$134.40 and testified that cleaning required 10 hours @ \$45/hour. I find the lock change and cleaning charges totalling \$584.40 to be reasonable.

Removal of Personal Property

Compensation for the removal and storage of abandoned personal property can be claimed from the tenant (or the heir) prior to the release of the property. If the property is not claimed, the property may be sold, with the permission of a rental officer and the proceeds applied to the removal and storage costs. There is no provision for compensation for these costs through an application to a rental officer. The compensation is therefore denied.

Management Fees

In my opinion, a landlord who elects to fulfil their obligations through the appointment of an agent or property manager should assume the costs associated with these services. The applicant's request for compensation for these fees is therefore denied.

In summary, I find the estate liable to pay the applicant the following amounts:

Rent arrears (May - October, 6 x \$1025)	\$6150.00
Fuel bill	581.29
Water	229.74
Change locks	134.40
Cleaning	450.00
Penalties (6 months @ \$65)	<u>390.00</u>
Total	\$7935.43

An order shall issue requiring the estate to pay the applicant rent arrears and penalties of \$6540, compensation for utilities of \$811.03 and cost of a lock change and cleaning of \$584.40.

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Hal Logsdon  
Rental Officer