

IN THE MATTER between **Marci MacDougall and James Day**, Applicants, and  
**1809504 Alberta Ltd.**, 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, **Adelle Guigon**, Deputy Rental Officer,  
regarding a rental premises located within the **town of Inuvik in the Northwest  
Territories.**

BETWEEN:

**MARCI MACDOUGALL and JAMES DAY**

Applicants/Tenants

- and -

**1809504 ALBERTA LTD.**

Respondent/Landlord

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 18.1(b) of the *Residential Tenancies Act*, the respondent/landlord must return all of the security deposit to the applicants/tenants in the total amount of \$1,775.84 (one thousand seven hundred seventy-five dollars eighty-four cents).
2. Pursuant to section 62(2) of the *Residential Tenancies Act*, the applicants/tenants must compensate the respondent/landlord for lost future rent in the total amount of \$1,875.00 (one thousand eight hundred seventy-five dollars).

DATED at the City of Yellowknife in the Northwest Territories this 10th day of February  
2016.

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Adelle Guigon  
Deputy Rental Officer

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**REASONS FOR DECISION**

|                                       |                                                                                               |
|---------------------------------------|-----------------------------------------------------------------------------------------------|
| <b><u>Date of the Hearing:</u></b>    | <b>January 26, 2016</b>                                                                       |
| <b><u>Place of the Hearing:</u></b>   | <b>Inuvik, Northwest Territories, by teleconference</b>                                       |
| <b><u>Appearances at Hearing:</u></b> | <b>James Day, representing the applicants<br/>Mariam Mustafa, representing the respondent</b> |
| <b><u>Date of Decision:</u></b>       | <b>January 26, 2016</b>                                                                       |

### **REASONS FOR DECISION**

An application to a rental officer made by Marci MacDougall and James Day as the applicants/tenants against 1809504 Alberta Ltd. as the respondent/landlord was filed by the Rental Office December 1, 2015. The application was made regarding a residential tenancy agreement for the rental premises known as #104, 39 Wolverine Road, in Inuvik, Northwest Territories. The applicants served the respondent with a copy of the filed application by email deemed received December 10, 2015, pursuant to section 4(4) of the *Residential Tenancies Regulations* (the Regulations).

The applicants alleged the respondent had failed to return their security deposit in accordance with the *Residential Tenancies Act* (the Act) and requested an order for the return of their security deposit. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for January 26, 2016, in Inuvik, Northwest Territories. The rental officer appeared by telephone. Mr. James Day appeared as applicant and on behalf of Ms. Marci MacDougall. Ms. Mariam Mustafa appeared by telephone representing the respondent.

#### *Tenancy agreement*

The parties agreed and evidence was presented substantiating that a tenancy agreement was in place between the parties for the rental premises known as #104, 39 Wolverine Road, in Inuvik, Northwest Territories. The tenants were continuous occupants of the rental premises since April 1, 2014. Ownership of the premises changed hands to the current landlord during the tenants' tenancy. I am satisfied a valid tenancy agreement was in place between the parties in accordance with the Act.

*Notice of rent increase and termination of tenancy agreement*

On October 16, 2015, the landlord gave notice to the tenants of their intention to arbitrarily change the monthly rent from \$1,875 including gas to \$1,500 not including gas effective November 1, 2015. The tenants did not agree to this change, arguing that the monthly gas bills were of such amount that their rent would effectively be increasing. The landlord's testimony corroborated this would likely be the case, citing the company's rationale for changing the rent structure was based on their observations that the current rent amount was insufficient to offset the utility cost. The tenants felt they were unable to come to a satisfactory agreement with the landlord and informed them on October 26, 2015, that they would be vacating the rental premises on October 31, 2015, which they did.

Section 47 sets out the requirements for imposing rent increases. A landlord may increase the rent no less than 12 months since the last rent increase or the date rent was first charged for the rental premises but must give the tenant at least three months' written notice before the rent increase is effective.

"Rent" is defined in the Act as including utilities provided by the landlord, whether or not those utilities are charged separately.

In contract law, the terms of a written agreement cannot be changed without the mutual written consent of all parties. The Act specifies under what circumstances changes can be made without mutual consent. Rent changes are one such circumstance, as long as notice is given in accordance with the Act.

In this case, the alteration of the tenancy agreement regarding inclusion of utilities in the rent to exclude the utilities was not a change to the contract which was mutually agreed to by all parties and therefore had no effect. If we accept the change of rent structure to \$1,500 plus gas and accept that the gas bills would result in total monthly rent greater than \$1,875, then that would still be a rent increase requiring three months' written notice to take effect, in which case the change in rent structure proposed by the landlord in their October 16, 2015 notice would not take effect until February 1, 2016.

Section 47(4) of the Act gives a tenant who has received a notice of rent increase the option to elect to treat the notice as a notice of termination of the tenancy effective the day immediately preceding the day on which the rent increase is to be effective. If the tenant elects to exercise this option, they must inform the landlord in writing of their intent. I would note this section speaks to termination of the tenancy on a specific date, regardless of when the tenant gives notice of their intent to exercise their right to accept the rent increase notice as a notice to terminate the tenancy. In this case, the termination date would have been January 31, 2016.

Section 47(4) of the Act does not preclude a tenant from exercising their right to terminate their tenancy agreement in accordance with sections 50, 51, or 52 of the Act, as applicable. In this case, the tenant could have given the landlord at least 30 days' written notice to terminate their tenancy pursuant to section 51(1)(b).

The tenants in this case did give the landlord written notice of their intent to vacate the premises on October 31, 2015, but they only gave the landlord five days' written notice. In both circumstances contemplated here, this is insufficient notice to terminate a tenancy. The landlord did not have fair opportunity to mitigate their losses by securing new tenants for November 1, 2015, and in fact have only just secured new tenants to commence February 1, 2016. As such, I find the tenants liable for lost future rent for the month of November 2015 in the amount of \$1,875.

#### *Security deposit*

Having established, by agreement from both parties, that the tenants did vacate the rental premises on October 31, 2015, the question of handling of the security deposit must be addressed, which is the reason this application was filed.

Section 18 of the Act speaks to the return and retention of security deposits. It requires under section 18(3) that a landlord return the security deposit with an itemized statement of account to the tenant within 10 days of the tenant vacating the premises. It permits under section 18(4) a landlord to retain the security deposit against rental arrears and repairs of damages. However, section 18(5) clarifies that the security deposit may only be retained against repairs of damages if the landlord has completed both an entry and exit inspection report.

The tenants claimed they have neither received their security deposit nor a statement of account indicating what, if anything, it was retained for. The landlord's representative confirmed this was the case, citing instructions from her corporate head office not to return the security deposit because the tenants had not given proper notice to vacate. Neither a written entry or exit inspection report was completed. I find the landlord has failed to comply with their obligations under section 18 of the Act respecting the return of the security deposit and will order the landlord to return the security deposit to the tenants.

Evidence was presented establishing a security deposit of \$1,775 was paid by the tenant by cheque on March 23, 2014. Interest on the security deposit to October 31, 2015, calculated in accordance with the Act amounts to \$0.84. The total security deposit payable by the landlord is \$1,775.84.

Emphasis was made to the landlord's representative of the importance of compliance with the Act.

*Order*

An order will issue for the landlord to return to the tenants the total security deposit amount of \$1,775.84.

An order will also issue for the tenants to compensate the landlord for lost future rent in the amount of \$1,875.

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Adelle Guigon  
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Residential tenancy agreement signed March 7, 2014
- Exhibit 2: Indemnity agreement made March 7, 2014
- Exhibit 3: Photocopy of cleared cheque number 002 from Marci MacDougall to Millenium Construction
- Exhibit 4: Email conversation between Marci MacDougall and Mariam Mustafa dated from October 26 to November 10, 2015
- Exhibit 5: Correspondence from Northern Management and Development Limited to Marci MacDougall and James Day dated October 16, 2015
- Exhibit 6: Correspondence from Inuvik Gas Ltd. to Marci MacDougall and James Day dated October 27, 2015
- Exhibit 7: Set of 21 photographs