

IN THE MATTER between **5655 NWT LTD.**, Landlord, and **JESAHIEL BOIVIN-DUCHESNE**, Tenant;

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:

**5655 NWT LTD.**

Landlord

- and -

**JESAHIEL BOIVIN-DUCHESNE**

Tenant

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the tenant shall pay the landlord rent arrears in the amount of two hundred nineteen dollars and sixty one cents (\$219.61).

DATED at the City of Yellowknife, in the Northwest Territories this 9th day of March, 2016.

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Hal Logsdon  
Rental Officer

IN THE MATTER between **5655 NWT LTD.**, Landlord, and **JESAHIEL BOIVIN-DUCHESNE**, Tenant.

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:

**5655 NWT LTD.**

Landlord

-and-

**JESAHIEL BOIVIN-DUCHESNE**

Tenant

**REASONS FOR DECISION**

**Date of the Hearing:** February 18, 2016

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

**Appearances at Hearing:** Lynn Elkin, representing the landlord  
Jesahiel Boivin-Duchesne, tenant

**Date of Decision:** March 8, 2016

**REASONS FOR DECISION**

The landlord's application was filed on January 7, 2016 and the tenant's application was filed on January 8, 2016. Both applications are related to the same tenancy agreement and the same rental premises. With the consent of both parties, both applications were heard at a common hearing.

The landlord's application contains an incorrect spelling of the tenant's name. The style of cause of this order reflects the tenant's proper name.

The landlord alleged that the tenant had breached the tenancy agreement by failing to pay rent and by failing to pay for electricity during the term of the tenancy. The landlord sought an order requiring the tenant to pay the alleged rent arrears and compensation for electricity costs paid on behalf of the tenant. The landlord also sought an order terminating the tenancy agreement and an eviction order. On March 7, 2016 before this decision was issued, the landlord confirmed that the tenant had vacated the premises and withdrew their request for termination and eviction.

The tenant alleged that the rental premises were not in a state of good repair and that the landlord had entered into a contract with him to make certain repairs but had not paid him for all of the work or credited his rent account for the full value of the work he had performed. The tenant sought an order requiring the landlord to credit him for the full value of the work performed, compensation for loss of full enjoyment of the rental premises and other damages.

The landlord provided a copy of a tenancy agreement in evidence. The tenancy agreement was made for a term beginning on October 15, 2015 and ending on July 31, 2016 and was executed by the parties on October 6, 2015. The monthly rent was set out as \$1950 with a prorated rent of \$750 payable for the partial month of October. The rent included heat and water and the tenant was responsible for electricity. A security deposit of \$1975 was required and a pet deposit of \$975 was due upon the introduction of a pet in the premises.

The landlord referred to another agreement between the parties for repair work to be done on the premises. The landlord did not provide a copy of this agreement in evidence but referred to it as separate and apart from the tenancy agreement.

The landlord provided a statement in evidence which indicated the following transactions resulting in a balance of rent alleged owing of \$3900. The tenant provided a receipt in evidence confirming an additional rent payment on October 20, 2015 of \$500. The landlord acknowledged the receipt as accurate and amended their figure of the rent arrears to \$3400.

October/15 rent	\$750
November/15 - February/16 rent @ \$1950/month	7800
October 15/15 pmt	(1000)
November 1/15 discount	(450)
November 5 rent credit	(1250)
December 1/15 discount	(450)
December 2/15 discount	(500)
December 2 pmt	(1000)
Acknowledged payment on October 20/16	<u>(500)</u>
Amended alleged rent arrears	\$3400

The tenant's accounting of payments differs from that of the landlord, including one payment of \$1000 on October 16, 2015 and another payment of \$500 on October 17, 2015. The tenant did not produce any receipts for the alleged payments. The landlord testified that they applied \$250 of a \$1250 payment received on October 15, 2016 to the required security deposit and \$1000 to rent. This testimony contradicts the information contained in the landlord's application which states that no security deposit has been received.

The landlord alleged that the charges for electricity continued to be billed to them because the tenant had failed to establish an account with the supplier. Three bills for electricity were noted on the landlord's statement totalling \$921.27. The landlord stated that the current bill had not been received. No copies of the invoices were provided at the hearing. The landlord was directed to provide invoices for the electricity to the rental officer. Four invoices totalling \$1148.64 were filed with the rental office on February 25, 2016 and provided to the tenant for response. The tenant did not submit any response.

The tenant produced another agreement, previously referred to by the landlord and hereafter referred to as the *agreement*, in evidence. The *agreement* is titled simply "Agreement" and was executed by the parties on October 15, 2015. The tenant alleged that the landlord had not paid him for the repair work to the premises that was contained in the *agreement*. The landlord submitted that the *agreement* was a contract for services and was separate and apart from the tenancy agreement although the *agreement* itself states that "This agreement forms part of the lease signed by both parties on this date."

*Significance of the “agreement”*

Clearly, the parties did not execute the *agreement* and the tenancy agreement on the same date.

To what extent then, do the elements contained in the *agreement* serve to amend the tenancy agreement which was executed previously?

There are elements in the *agreement* which simply echo the previously executed tenancy agreement and would have no amending effect on the tenancy agreement , specifically:

- "Starting from October 15, 2015 5655 shall provide accommodations to Jez at 304 Bellanca Avenue while this contract is being performed."
- "The rental rate for this unit is \$1950 which includes heat and water but NOT electricity."

Other elements in the *agreement* appear to add to the rights or obligations of the parties contained in the earlier tenancy agreement, specifically:

- “A discount of \$450 monthly, as well as to the security deposit required, shall be applied to the time this contract is being performed.”
- “Should Jez choose to stay in 304 Bellanca Avenue after this agreement is completed the attached lease shall remain in effect.”
- “The \$450 additional deposit shall be required at that time.”
- “The pet deposit shall only be required after this agreement is complete. A new walkthrough shall be completed at that time."

*Monthly rent*

In my opinion the *agreement* serves to amend the tenancy agreement by reducing the monthly rent for the premises by \$450 for each month the *agreement* was in effect. November 30, 2015 is the anticipated termination date for the *agreement* with adjustments to that date by mutual agreement. The landlord submitted that the *agreement* ended in “early December”. This is consistent with the time sheets provided by the tenant in evidence which indicates work done only to December 9, 2015 and the tenant’s testimony that the landlord ordered him to stop working on or about that date. The landlord’s statement indicates that the October, 2015 rent (\$975) was reduced by 50% of the discount (\$225) resulting in a rent of \$750. In both November and December, 2015 the discount (\$450) was applied to the rent (\$1950) resulting in a net rent of \$1500. The landlord’s statement also indicates an additional December rent reduction of \$500.

Without receipts or other evidence to support the additional payments alleged by the tenant, I accept the following accounting of the rent owing:

	gross rent	discount	net rent	pmts/credits	balance
October	\$975	\$225	\$750	\$1,500	-\$750
November	\$1,950	\$450	\$1,500	\$1,250	-\$500
December	\$1,950	\$950	\$1,000	\$1,000	-\$500
January	\$1,950	\$0	\$1,950	\$0	\$1,450
February	\$1,950	\$0	\$1,950	\$0	\$3,400

*Term of the tenancy agreement*

In my opinion, the *agreement* does not change the term of the tenancy agreement nor does it terminate the tenancy agreement in accordance with the Act. It can not constitute a

mutual agreement to terminate the term agreement as it does not name a date for termination. If the tenant were to give up possession after the completion of the *agreement*, the premises would be considered to be abandoned.

### *Security deposit*

The parties do not share the same interpretation of the rather muddled wording in the *agreement* concerning the security deposit. The tenancy agreement requires a security deposit equivalent to one months rent (\$1950) and section 14 of the *Residential Tenancies Act* permits the tenant to pay 50% of the security deposit at the commencement of the tenancy agreement and the remainder within three months. In a text message sent to the tenant by the landlord at the commencement of the tenancy the landlord demanded the full amount of the security deposit which was determined to be \$1500.

Clearly, the landlord intended to reduce the amount of the security deposit required at the commencement of the tenancy agreement but is it a reduction of the required security deposit or a deferment of the full amount of the deposit until the *agreement* expired? The landlord stated that it was a deferment. The tenant's understanding was that no security deposit was required. The term "discount" implies a reduction, not a deferment. In my opinion, the agreement serves to amend the amount of the security deposit required to \$1500. Another interpretation, which I do not consider reasonable, is that the discount (\$450) was to be applied monthly during the term of the agreement, resulting in a total discount of \$1125 and a required security deposit of \$825. I accept the following



accounting of the security deposit:

	S/D	discount	net S/D	pmts/credits	balance
October	\$975	\$450	\$525	\$250	\$275
November		\$0	\$0	\$0	\$275
December		\$0	\$0	\$0	\$275
January	\$975	\$0	\$975	\$0	\$1,250
February		\$0	\$0	\$0	\$1,250

Since the tenancy agreement has now been terminated, the amount of security deposit and pet deposit owing is moot. I accept that the landlord continues to hold a security deposit of \$250 in trust.

#### *Pet Deposit*

The tenancy agreement requires a pet deposit of \$975 upon the introduction of a pet to the premises. The agreement acts to amend the tenancy agreement by deferring the due date of the pet deposit until the *agreement* has been completed and a pet has been introduced to the premises.

In my opinion, the *agreement* serves to amend the tenancy agreement only as outlined above. In other respects the *agreement* is separate from the tenancy agreement. It is a separate contract for labour provided and is outside the application of the *Residential Tenancies Act* and my jurisdiction as rental officer.

#### *Electricity*

The tenancy agreement clearly obligates the tenant to pay for electricity during the term. The

landlord testified that the tenant had failed to establish an account for electrical service with the supplier and that as a result the landlord had continued to be billed for electricity. The landlord provided four electricity bills in evidence which documented electricity costs from October 14, 2015 to February 12, 2016 totalling \$1148.64. I find the tenant in breach of his obligation to pay these costs and compensation to the landlord for paying these costs on behalf of the tenant is reasonable.

*Summary of Landlord's Application*

With regard to the landlord's application, I find the tenant in breach of his obligation to pay rent and find the rent arrears to be \$3400. I also find the tenant in breach of his obligation to pay for electricity and find compensation of \$1148.64 to be reasonable, representing electricity paid by the landlord on behalf of the tenant.

The tenant submitted that the premises were not fit for habitation. He alleged that parts of the house were infested with mould and mildew and that the electrical wiring posed a hazzard. He alleged that none of the doors could be locked and that the underside of the house was rotting and coming apart. The walls in several rooms were cracked and full of holes which the tenant was contracted to repair. The unit was not level. The tenant stated that the water lines frequently froze and that the water was rusty.

The landlord stated that some of the unit was in satisfactory condition at the commencement of the tenancy agreement but acknowledged that there were areas, namely the hall and a bedroom,

where renovations were in progress. The landlord stated, “the tenant was living in a camper and was happy to move inside despite the unit needed some work.” The tenant took occupancy on or about October 15, 2015 after signing the tenancy agreement.

Section 30 of the tenancy agreement obligates a landlord to provide rental premises in a good state of repair notwithstanding that the tenant was aware of any state of non-repair prior to entering into the tenancy agreement.

There was no inspection report completed at the commencement of the tenancy agreement. The tenant provided a number of photographs of the premises in evidence which illustrate the condition in some areas of the premises at various dates between October 26, 2015 and February 18, 2016. The photographs indicate that the premises had shifted significantly, causing separations between walls and ceilings and walls and flooring. There was significant damage to flooring, walls and ceilings and mould throughout the premises. The bathroom floor had failed and the toilet was unsecured. The breaches in the structure permitted cold air infiltration sufficient to freeze water on the floor in areas and the tenant stated that the water lines were often frozen between the end of December and present. A video submitted in evidence by the tenant demonstrated that no there was no water in the premises on the day of the hearing. The photographs show that significant wall repairs had been undertaken by the tenant creating large amounts of dust and rendering certain areas of the house uninhabitable. The photographs do not provide any information as to the condition of some areas of the house which the landlord claims were habitable and there is no inspection report to provide any additional evidence in this regard.

The tenant submitted that compensation should be provided equivalent to the total net rent which I have calculated to be \$7150. I disagree. Although, in my opinion, it would have been prudent for the landlord to delay renting the unit until the repairs had been completed, the premises were not entirely unsuitable for occupation. They did, however, deprive the tenant of full enjoyment of the premises to a very large degree. The tenant has been living in a construction zone for over four months, subjected to dust, frozen pipes and deprived of the use of a significant portion of the house. The house appears to be structurally unsound resulting in deficient heating and no water. The landlord has provided a degree of compensation through the discounts of monthly rent through December, 2015. However this reduction in the gross rent amount to only 19%. In my opinion, this should have been 65% of the gross rents or \$5704 calculated as follows:

	gross rent	discount
October	\$975	\$634
November	\$1,950	\$1,268
December	\$1,950	\$1,268
January	\$1,950	\$1,268
February	<u>\$1,950</u>	<u>\$1,268</u>
Totals	\$8,775	\$5,704

Since the landlord has already provided a rent discount of \$1625, in my opinion additional compensation of \$4079 for loss of full enjoyment of the rental premises should be ordered.

Total compensation required	\$5704
Compensation already applied	<u>(1625)</u>
Additional compensation	\$4079

#### *Summary of Tenant's Application*

With regard to the tenant's application, I find the landlord in breach of their obligation to provide rental premises in a good state of repair and find reasonable compensation for loss of full

enjoyment of the premises to be \$4079. The remaining requests for damages for physical and emotional suffering and loss of income are denied. Other claims for wages/contract amounts alleged unpaid by the landlord are denied as they are not within the jurisdiction of the *Residential Tenancies Act*.

*Decision*

Applying the compensation first to the costs of electricity and considering the security deposit and accrued interest, I find rent arrears of \$219.61 calculated as follows:

Rent arrears	\$3400.00
Electricity	1148.64
Compensation	(4079.00)
Security deposit	(250.00)
Interest on deposit	<u>(0.03)</u>
Amount due landlord	\$219.61

An order shall issue requiring the tenant to pay the landlord rent arrears in the amount of \$219.61.

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Hal Logsdon  
Rental Officer