

IN THE MATTER between **Therese Jean Fordy**, Applicant, and **Gene Hachey**,
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**, Rental Officer, regarding a
rental premises located within the **town of Hay River in the Northwest Territories**.

BETWEEN:

THERESE JEAN FORDY

Applicant/Tenant

- and -

GENE HACHEY

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. The application is denied.

DATED at the City of Yellowknife in the Northwest Territories this 26th day of April
2016.

Adelle Guigon
Rental Officer

IN THE MATTER between **Therese Jean Fordy**, Applicant, and **Gene Hachey**,
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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,

BETWEEN:

THERESE JEAN FORDY

Applicant/Tenant

-and-

GENE HACHEY

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: April 20, 2016

Place of the Hearing: Hay River, Northwest Territories, by teleconference

Appearances at Hearing: Therese Jean Fordy, applicant
Gene Hachey, respondent

Date of Decision: April 20, 2016

REASONS FOR DECISION

An application to a rental officer made by Therese Jean Fordy as the applicant/tenant against Gene Hachey as the respondent/landlord was filed by the Rental Office February 2, 2016. The application was made regarding a residential tenancy agreement for a rental premises located in Hay River, Northwest Territories. The applicant served a copy of the filed application on the respondent by registered mail signed for March 16, 2016.

The applicant alleged the respondent had improperly retained the security deposit upon her vacating the rental premises and sought an order for the return of the security deposit.

A hearing was scheduled for April 20, 2016, in Hay River, Northwest Territories. The rental officer appeared by telephone. Ms. Therese Jean Fordy appeared as applicant/tenant. Mr. Gene Hachey appeared as respondent/landlord.

Tenancy agreement

The parties agreed they were parties to a tenancy agreement for the rental premises known as 4C Gaetz in Hay River, Northwest Territories. The tenancy commenced September 1, 2015, and ended when the tenant vacated the premises October 28, 2015. The rent was set at \$1,100 and a security deposit for \$1,100 had been paid. I am satisfied a valid tenancy agreement was in place between the parties in accordance with the *Residential Tenancies Act* (the Act).

Issues

Based on the evidence and testimony presented, I make the following determinations:

- The tenancy commenced September 1, 2015.
- The tenant notified the landlord on October 26, 2015, of her intention to vacate the rental premises on October 28th.

- The tenant requested the return of her security deposit. When the landlord advised that he would return the security deposit if he was able to get a new tenant right away, she demanded the return of her security deposit in full by October 31st. The landlord refused and told her he would be retaining her security deposit against the rent for November.
- The landlord was unable to secure a new tenant for the rental premises until mid-December 2015.

Section 52(1)(b) specifies a tenant may terminate a month-to-month tenancy agreement by giving 30 days written notice to the landlord for the last day of a period of the tenancy. In other words, the 30 days written notice for October 31st would have to have been given to the landlord no later than October 1st.

Sections 71(5) of the Act and section 4 of the *Residential Tenancies Regulations* (the Regulations) specify that written notice may only be served either by personal service, registered mail, fax, or email. Text messages are not recognized as emails.

The tenant in this case neither gave the landlord proper written notice of her intention to vacate nor did she serve him with notice in accordance with the Act and Regulations. The tenant vacated the rental premises on or before October 31st, but responsibility for the tenancy agreement did not end until November 30th. Because the landlord was unable to secure a new tenant for November 1st, the tenant is liable for the rent for November.

Section 18 of the Act sets out the manner in which security deposits are to be dealt with at the end of a tenancy, specifically that the landlord may retain the security deposit against rental arrears. Additionally, the landlord is required to provide the tenant with an itemized statement of account detailing why any part of the rent is retained within 10 days of the day the tenant vacates the rental premise. Although the landlord retained the security deposit against rental arrears that had not accumulated as of the day the tenant vacated, and the tenant was made aware of his intention to do so, technically the landlord did not comply with his obligations under section 18 of the Act. For that alone I could find grounds to order the landlord to return the security deposit to the respondent.

However, in this case both parties made technical errors in how they managed their respective obligations which effectively balance out the accounts. Because the landlord was not entitled to retain the security deposit against rent that was not owed at the time the tenant vacated the rental premises, the landlord is liable to return the security deposit of \$1,100. Because the tenant did not give proper notice to terminate her tenancy and the landlord was unable to secure new tenants before November 30th, the tenant is liable for the rent for the month of November in the amount of \$1,100. The account between the parties is effectively nullified and, as such, I am denying the tenant's application for the return of her security deposit.

Adelle Guigon
Rental Officer