

IN THE MATTER between **TERRIE NOKADLAK AND KIRBY NOKADLAK**,
Tenants, and **PERMA DEVELOPMENTS**, Landlord;

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,
regarding the rental premises at **INUVIK, NT**.

BETWEEN:

TERRIE NOKADLAK AND KIRBY NOKADLAK

Tenants

- and -

PERMA DEVELOPMENTS

Landlord

ORDER

IT IS HEREBY ORDERED:

1. The tenant's request for an order requiring the landlord to repair the rental premises is denied.
2. The tenant's request for an order requiring the landlord to pay compensation for loss is denied.
3. The landlord's request for an order terminating the tenancy agreement between the parties is denied.

DATED at the City of Yellowknife, in the Northwest Territories this 26th day of June,
2002.

Hal Logsdon
Rental Officer

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BETWEEN:

TERRIE NOKADLAK AND KIRBY NOKADLAK

Tenants

-and-

PERMA DEVELOPMENTS

Landlord

REASONS FOR DECISION

Date of the Hearing: June 25, 2002

Place of the Hearing: Inuvik, NT via videoconference

Appearances at Hearing: Terrie Nokadlak, Tenant
Kirby Nokadlak, Tenant
David Tyler, representing the landlord
Doris Tyler, representing the landlord

Date of Decision: June 25, 2002

REASONS FOR DECISION

The tenants filed an application on May 15, 2002, alleging that the landlord had breached the tenancy agreement by failing to maintain the rental premises in a state of good repair and sought an order requiring the landlord to repair certain items and to compensate the tenants for loss. The landlord filed an application on June 13, 2002, alleging that the tenants had failed to pay rent on the days it was due and sought an order terminating the tenancy agreement between the parties. Both applications were served on the respondents. With the agreement of both parties, the two matters were heard at a common hearing.

The tenants produced an inspection report which detailed a number of items which the tenants alleged had never been repaired. Among the items were the following:

1. The drawer on the cooking range does not operate properly.
2. The kick plate on the refrigerator is broken
3. The caulking around the tub is in poor condition.
4. There is a hole in the wall behind the bathroom vanity.
5. The bifold doors in the bedrooms are missing.
6. The carpets have stains and burn marks.

The tenants indicated that some repairs had been completed such as the leaky sink, the missing light fixture covers and the window problems. The tenants also indicated that the range drawer had been repaired but was broken again. The tenants suggested that the rent be reduced by \$200/month until the repairs were completed.

The landlord indicated that the inspection report was intended only as a report outlining the condition of the premises at the commencement of the tenancy agreement, not as a commitment to undertake repairs or acknowledgment that repairs were necessary. The landlord indicated that he had completed the repairs that he felt were required to maintain the rental premises in a good state of repair but did not feel that eliminating each item noted on the inspection report was necessary to fulfill that obligation. The landlord also noted that he was unaware that the range drawer repair had failed as the tenant had not informed him that it had again become a problem. The landlord also testified that in his opinion, the carpets were not damaged to the point where they required replacement, nor was the tub surround in need of further repair. He testified that the bifold doors had been removed from most suites as they continually cracked. He noted that the closet interiors had been painted to match the wall colour and that, in his opinion, this was acceptable. He also noted that the hole behind the vanity was for access to the water supply shut offs and was not damage. In summary, he stated that although some of the repairs had taken more time than usual, he believed he had fulfilled the obligation to repair and that the inspection report was merely to comply with the provisions of the *Residential Tenancies Act* and to protect the tenant from unjustified charges against the security deposit at the termination of the tenancy agreement.

The landlord noted that an order had been filed by a rental officer on December 17, 2001, ordering the tenant to pay future rent on time. He produced a list of all rent payment dates from March 14, 2000 to present. The landlord indicated that since the order was issued, the tenants had failed to pay rent on time on two occasions. He alleged that on the first occasion, the tenants

failed to pay rent due on April 1, 2002 until April 13, 2002. The landlord testified that on that occasion, the tenants notified him of a family emergency, requiring them to leave town. He noted that he had served them with a notice of early termination but sympathised with the tenants and took no further action. The landlord testified that on the second occasion the tenants failed to pay rent due on June 1, 2002 until June 6, 2002. At that time the landlord served another notice of early termination and filed an application to a rental officer.

At the commencement of a tenancy agreement when a security deposit is required, the landlord and tenant must sign a document that sets out the condition of the rental premises. This document is intended to assist with the resolution of the security deposit at the end of the tenancy agreement. It is not necessarily a list of repairs the landlord is obligated to undertake. Section 30 of the *Residential Tenancies Act* sets out a landlord's obligation to repair and a tenant's obligation to report required repairs.

30. (1) A landlord shall
 - (a) provide and maintain the rental premises, the residential complex and all services and facilities provided by the landlord in a good state of repair and fit for habitation during the tenancy; and
 - (b) ensure that the rental premises, the residential complex and all services and facilities provided by the landlord comply with all health, safety and maintenance and occupancy standards required by law.

30. (5) A tenant shall give reasonable notice to the landlord of any substantial breach of the obligation imposed by subsection (1) that comes to the attention of the tenant.

In my opinion, there is no evidence to support the tenants' allegations that further repairs are required in order to maintain the premises in a state of good repair, with the exception of the stove drawer. It appears that the landlord was unaware that his previous repair of the drawer did

not completely solve the problem. It is the tenants' responsibility to make the landlord aware of the problem. I believe the landlord's willingness to attend to the repair makes an order unnecessary. The tenants' request for an order requiring the landlord to repair the items stated in the application is denied. In my opinion, there are no grounds for compensation. The tenants' request for compensation is also denied.

In the matter of rent, I note the previous order required the tenants to pay rent on time. The written tenancy agreement between the parties requires that the rent be paid in advance on the first day of each month. The tenants did not dispute that the rent was late in April and again in June. The tenants' failure to pay rent on time, despite an order to do so is a breach of the tenancy agreement and the *Residential Tenancies Act* permits a rental officer to consider several remedies.

- 41(1) A tenant shall pay to the landlord, the rent lawfully required by the tenancy agreement on the dates specified by the tenancy agreement.

- 41. (4) Where on the application of a landlord, a rental officer determines that a tenant has failed to pay rent in accordance with subsection (1), the rental officer may make an order
 - (a) requiring the tenant to pay the rent owing and any penalty for late payment.
 - (b) requiring the tenant to pay his or her rent on time in the future; or
 - (c) terminating the tenancy on the date specified in the order and ordering the tenant to vacate the rental premises on that date.

Clearly, a rental officer may exercise discretion in determining the remedy. It is apparent from the history of rent payment that the tenants repeatedly paid the rent late from February, 2001 to November, 2001. The landlord appears to have ignored the late payments until October, 2001 when the rent exceeded 30 days in arrears and a notice of early termination was served on the tenants. An application was filed on November 8, 2001 seeking payment of rent arrears and

termination of the tenancy agreement. When the hearing was held on December 13, 2001 the tenants had paid the arrears and prepaid the January rent and the landlord sought only an order to pay future rent on time. After the order was issued requiring the tenant to pay future rent on time, the tenant paid February and March rent in advance but failed to pay April rent until April 13, 2002. The landlord appears to have accepted the late payment to some degree, understanding the nature of the family emergency. The May rent was paid in advance but the June rent was not paid until June 6, 2002.

Although I again find the tenants in breach of their obligation to pay rent on the days it is due, in my opinion, the severity of the breach does not justify termination of the tenancy agreement, particularly when the landlord has repeatedly demonstrated some tolerance for late payment in the past. I note that the previous order to pay rent on time is still in effect and remind the tenants that continued breaches of this obligation can not be tolerated. The landlord's request for an order terminating the tenancy agreement is denied.

Hal Logsdon
Rental Officer