

IN THE MATTER between **NIHJAA PROPERTIES LTD.**, Landlord, and **VALERIE TOWNSEND AND HOWARD TOWNSEND**, Tenants;

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:

NIHJAA PROPERTIES LTD.

Landlord

- and -

VALERIE TOWNSEND AND HOWARD TOWNSEND

Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 34(2)(c) and 84(2) of the *Residential Tenancies Act*, the landlord shall pay compensation to the tenants related to disturbance of the tenant's enjoyment of the rental premises and residential complex in the amount of two thousand forty three dollars and ninety three cents (\$2043.93). The compensation shall be paid to the tenant in the form of a rent credit.
2. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the tenants shall pay the landlord the remaining arrears of rent after application of the rent credit in the amount of three thousand one hundred eighty seven dollars and eighty five cents (\$3187.85).

DATED at the City of Yellowknife, in the Northwest Territories this 1st day of December, 2002.

Hal Logsdon
Rental Officer

IN THE MATTER between **NIHJAA PROPERTIES LTD.**, Landlord, and **VALERIE TOWNSEND AND HOWARD TOWNSEND**, Tenants.

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:

NIHJAA PROPERTIES LTD.

Landlord

-and-

VALERIE TOWNSEND AND HOWARD TOWNSEND

Tenants

REASONS FOR DECISION

Date of the Hearing: November 25, 2002

Place of the Hearing: Inuvik, NT

Appearances at Hearing: Howard Townsend, tenant
Valerie Townsend, tenant
Sam Kassem, representing the landlord

Date of Decision: December 1, 2002

REASONS FOR DECISION

The landlord's application was filed on October 2, 2002 and the tenants' application was filed on October 3, 2002. As both applications pertain to the same rental premises and tenancy agreement, with the consent of both parties, the matters were heard at a common hearing.

The landlord undertook major renovations to an apartment complex. The landlord did not seek termination of the existing tenancy agreements, permitting tenants to remain in possession during the construction if they wished. The landlord gave notice to tenants of a rent increase to be effective September 1, 2002. The new rental rate was named as \$1400/month for one-bedroom apartments but current tenants would enjoy a reduced rent of \$1300/month. On June 14, 2002 the landlord requested tenants to pack their belongings to be moved to another apartment while their apartment was being renovated. The notice also outlined the landlord's offer to waive one month's rent, to be applied to either July or August.

The tenant outlined the inconveniences of living in the building during extensive renovation and sought an abatement of rent as compensation for her loss of quiet enjoyment of the premises and residential complex. The tenant indicated that she and other tenants had attempted to negotiate further reductions in rent, given the magnitude of disruption, but had not been successful.

The landlord alleged that the tenant had failed to pay rent and indicated that in his opinion, there was no tenancy agreement between the parties. He provided a statement of rent which indicated a

balance of rent due in the amount of \$5239.65 as at November 1, 2002. The landlord sought an order requiring the tenant to pay the alleged rent arrears and possession of the premises.

The landlord indicated that he believed the work in the common areas of the complex would be substantially complete by December 31, 2002 but that he may not complete the renovations on all apartments. He also indicated that he could not agree to the tenants' position that rent should be reduced until the renovations to the building are complete.

The tenant disputed the allegation pertaining to rent arrears pointing out that the landlord's statement did not include the free month's rent or the rent reduction to \$1300/month. The tenant also produced a notice of termination from the landlord dated October 28, 2002 stating that four months of rent are due in the amount of \$3600.

The rental officer walked through the residential complex but did not enter the premises of the tenant. The condition of the common areas of the building is accurately represented by the testimony of the tenant. I also noted significant construction activity in a number of apartments which created a significant amount of noise.

Section 59 of the *Residential Tenancies Act* permits a rental officer to terminate a tenancy agreement where a landlord requires possession in order to make extensive repairs which require vacant possession. The renovations of this complex clearly fall into that category. Instead of making application to terminate the existing tenancy agreements, the landlord elected to allow

tenants to maintain possession during the renovation work. Just how the landlord planned to undertake the work to the apartments still occupied is unclear. Had the work on the tenant's premises and residential complex been completed in a reasonable period of time, the compensation of one month's rent would have most likely been deemed reasonable. However, the work on the tenant's premises and the remainder of the complex is still ongoing five months later. In my opinion, the landlord has breached the tenancy agreement by disturbing the tenant's quiet enjoyment of the premises and residential complex and compensation is a reasonable remedy.

The landlord's position that there is no tenancy agreement is without basis. The tenant is in possession and the tenancy agreement has not been terminated in accordance with the Act. The notice of rent increase dated June 1, 2002 appears to be in order and clearly indicates a rent of \$1300/month for current tenants, effective September 1, 2002. The notice of termination appears to calculate rent for August onward at \$900/month but there is no evidence that the landlord rescinded the June 1, 2002 notice of rent increase. The landlord explained the notices as part of "negotiations". Notwithstanding any consideration of rent abatement, I find the rent owing to be \$5231.78, including rent for December which has now come due. No interest has been calculated from December 1, 2002 and the interest calculations of the landlord have been adjusted to conform with the *Residential Tenancies Act*.

July rent	\$900.00
Payment - rent	(900.00)
August rent	900.00
credit for renovations	(900.00)
September rent	1300.00

interest - September	2.24
October rent	1300.00
interest - October	9.12
November rent	1300.00
interest - November	20.42
December rent	<u>1300.00</u>
TOTAL	\$5231.78

In my opinion reasonable compensation for loss of enjoyment is one third of the rent payable from the commencement of the renovations to December 31, 2002. I calculate the compensation and remainder of rent payable as follows:

Rent (July 1- Dec 31, 2002)	\$6131.78
Compensation	(2043.93)
Rent arrears as at Dec 01/02	\$5231.78
Less compensation	(2043.93)
Remaining rent owing	\$3187.85

An order shall be issued requiring the landlord to pay compensation to the tenant in the amount of \$2043.93 in the form of a rent credit. The order shall require the tenant to pay the remaining balance of the rent arrears to the landlord in the amount of \$3187.85.

The landlord's application for termination of the tenancy agreement is denied. Should the tenant fail to pay the remaining balance of the rent, the landlord may make seek further remedy through an application to a rental officer. Similarly, should the disruption of the tenant's enjoyment of the premises continue past December 31, 2002, the tenant may seek further remedy.

Hal Logsdon
Rental Officer