

IN THE MATTER between **KYLE REID**, Applicant, and **IAIN LEISHMAN**,
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, **HAL LOGSDON**, Rental Officer,
regarding the rental premises at **HAY RIVER, NT**.

BETWEEN:

KYLE REID

Applicant/Landlord

- and -

IAIN LEISHMAN

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 42(3)(c) of the *Residential Tenancies Act*, the respondent shall pay the applicant costs of repair related to tenant damages to the rental premises in the amount of one thousand four hundred fifty two dollars and eight cents (\$1452.08).
2. Pursuant to section 45(4)(c) of the *Residential Tenancies Act*, the respondent shall pay the applicant compensation for the costs of water paid on behalf of the respondent in the amount of sixty seven dollars and seventy four cents (\$67.74).

DATED at the City of Yellowknife, in the Northwest Territories this 24th day of January,
2003.

Hal Logsdon
Rental Officer

IN THE MATTER between **KYLE REID**, Applicant, and **IAIN LEISHMAN**,
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BETWEEN:

KYLE REID

Applicant/Landlord

-and-

IAIN LEISHMAN

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: January 22, 2003

Place of the Hearing: Yellowknife, NT via teleconference

Appearances at Hearing: Kyle Reid, applicant

Date of Decision: January 22, 2003

REASONS FOR DECISION

The rental officer contacted the respondent by telephone on December 19, 2002 to arrange a time and date for a telephone hearing. The respondent indicated he would make himself available for a telephone hearing on January 22, 2003 at 9:30 AM and provided a contact telephone number.

The applicant also provided his postal address and was sent a Notice of Attendance by registered mail. On the date of the hearing, the telephone number was out of service. The Notice of Attendance was returned unclaimed. The filed application was also served by registered mail to the address provided to the applicant by the respondent and was returned unclaimed. The hearing was postponed until 10:30 AM to allow the respondent time to contact the rental officer. No contact was made and the hearing was held in the absence of the respondent. In my opinion, the respondent was adequately notified of the hearing pursuant to section 77 of the *Residential Tenancies Act* and it was not unfair to hold the hearing in his absence.

The applicant alleged that the respondent failed to repair damages to the premises which were the result of his negligence and failed to pay for the cost of water which was his obligation pursuant to the written tenancy agreement between the parties. The applicant indicated that the tenancy agreement between the parties was terminated on or about August 31, 2002 when the respondent vacated the premises. The applicant retained the security deposit and issued a statement of account which indicated a balance owing in the amount of \$1530.62. The applicant sought an order requiring the respondent to pay that amount.

The applicant testified that the respondent had mentioned to him that there was a problem with the floor sometime in July, 2002 but as the respondent was leaving town that day, was unable to gain entry to inspect the premises. The applicant did inspect the premises in August and discovered that the tiles and underlay had been damaged by water in the bathroom, bedroom and hallway. The applicant replaced the underlay and tiles in the damaged area and submitted invoices documenting the cost of repair. He claimed the repairs cost \$2063.88. The applicant also provided a letter from *I.O.W.A.T.A Realty Services and Appraisals* who expressed their opinion that the damage was caused by either “plumbing overflow or water bed breakage”. The letter also expressed the opinion that the problem would not have been due to condensation. The applicant testified that when the floor tiles were removed it was noted that the floor damage was confined to the floor area in and adjacent to the bathroom and that no damage was noted in other areas of the premises. The applicant also testified that there was no damage or problem with any of the plumbing fixtures or connections, hot water tank, washing machine or water holding tank. The applicant stated that the water holding tank was located under the premises and any overflow would have drained on the ground, not within the structure of the premises. The applicant also provided photographic evidence of the damages.

The applicant testified that after the tenancy was terminated there remained unpaid water charges which were applied to property taxes in the amount of \$67.74 and that the water charges were for water consumed during the tenancy. A copy of the tenancy agreement was provided in evidence which indicated that the respondent was obligated to pay for utilities during the term of the tenancy.

The applicant also testified that one cheque was returned for insufficient funds and an NSF cheque fee of \$25 was applied to the rent account.

In my opinion, given the evidence before me, the damages were clearly the result of a flood. Any condensation damage would have been apparent in other areas of the premises. There does not appear to be any indication that the flood was caused by any failure of the plumbing system or overflow of the water holding tank. By process of elimination, the only other explanation would be an overflow of the toilet, bathtub, sink or washing machine caused by negligence of the respondent. I find the repair costs reasonable and the respondent responsible for the repairs.

I also find the respondent responsible to pay compensation to the applicant for water charges which have been or will be paid on his behalf by the applicant. I find that amount to be \$67.74.

I note that the applicant has failed to account for interest on the security deposit. I find that interest to be \$11.80.

Taking into account the retained security deposit and interest, I find the amount owing by the respondent to the applicant to be \$1519.82 calculated as follows:

Security Deposit	\$625.00
Interest on deposit	11.80
Less repair cost	(2063.88)
Less NSF charges	<u>(25.00)</u>
Balance of repair costs owing	\$1452.08
Plus water charges	<u>67.74</u>
Total amount owing	\$1519.82

An order shall be issued for the respondent to pay the applicant costs related to the repair of tenant damages in the amount of \$1452.08 and compensation for water costs paid on his behalf of \$67.74.

Hal Logsdon
Rental Officer