

IN THE MATTER between **JOHN DOUGHERTY**, Applicant, and **STAN KUKOVICA**, 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 **FORT SMITH, NT**.

BETWEEN:

**JOHN DOUGHERTY**

Applicant/Landlord

- and -

**STAN KUKOVICA**

Respondent/Tenant

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant rent arrears in the amount of four thousand dollars (\$4000.00).
2. Pursuant to section 84(2) of the *Residential Tenancies Act*, the respondent may pay the rent arrears in two equal instalments of two thousand dollars (\$2000.00), the first installment due on May 1, 2004 and the final installment due on June 1, 2004.
3. Pursuant to section 41(4)(b) of the *Residential Tenancies Act*, the respondent shall pay future rent on time.

DATED at the City of Yellowknife, in the Northwest Territories this 28th day of March, 2004.

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Hal Logsdon  
Rental Officer

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**STAN KUKOVICA**

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**REASONS FOR DECISION**

<b><u>Date of the Hearing:</u></b>	<b>March 26, 2004</b>
<b><u>Place of the Hearing:</u></b>	<b>Yellowknife, NT via teleconference</b>
<b><u>Appearances at Hearing:</u></b>	<b>James Condit, representing the applicant John Dougherty, applicant Stan Kukovica, respondent</b>
<b><u>Date of Decision:</u></b>	<b>March 28, 2004</b>

**REASONS FOR DECISION**

The applicant alleged that the respondent breached the tenancy agreement by failing to pay rent and sought an order requiring the respondent to pay the alleged rent arrears and terminating the tenancy agreement between the parties.

The applicant/landlord lives outside Canada and has appointed an agent in Fort Smith to manage the rental premises. The tenancy agreement between the parties is oral in nature. The parties agree that the rent for the premises is \$500/month and that the landlord is responsible for maintaining the premises. The parties also agree that the respondent was authorized to replace the windows in the premises and apply the costs to rent payable. The applicant testified that he agreed to the offset so long as it did not exceed \$5000.

In an affidavit provided by the applicant, the applicant states that the rent arrears as at January 31, 2004 were \$9000. Taking into consideration the monthly rent of \$500 and the offset of \$5000, the applicant sought an order requiring the respondent to pay arrears in the amount of \$5000 calculated as follows:

Rent arrears as at January 31, 2004	\$9000
February and March/04 rent	1000
Less offset for windows	<u>(5000)</u>
Total	\$5000

The respondent claimed that he had done additional repairs to the premises and sought a set off of \$8350. The respondent submitted photos of the work done and invoices supporting the

expenditures. The respondent testified that the agreed upon offset for the window replacement was \$6000 and submitted a letter from his legal counsel to the applicant dated November 21, 2002 and a letter from his legal counsel to himself dated December 19, 2002 in evidence. The respondent also provided photos of the premises and invoices for material purchases and work done in evidence.

The respondent testified that he had not sought the approval of the landlord or the landlord's agent to undertake repairs other than the window replacement. The respondent testified that the landlord's agent had indicated to him that he wasn't interested in making any repairs to the premises. The respondent stated that he proceeded to make repairs as he saw fit.

The applicant testified that throughout the tenancy agreement he had compensated his agent to perform his duties.

In an undated document, the applicant's agent offered to sell the property to the respondent for \$30,000 to close on July 31, 2002. The offer is conditional on the approval of the owner. The applicant testified that he did not give his approval for the sale.

Section 30(1) sets out a landlords obligation to repair.

**30. (1) A landlord shall**

- (a) provide and maintain the rental premises, the residential complex and all services and facilities provided by the landlord, whether or not included in a written tenancy agreement, 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.**

Section 30(5) obligates the tenant to give notice to the landlord of any substantial breach of the obligation to repair.

- 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.**

Section 31 permits the parties to a tenancy agreement to oblige the tenant to perform the obligations set out in section 30. The parties agreed that the oral tenancy agreement did not include this provision.

- 31. (1) Notwithstanding section 30, where a residential complex is composed of one rental premises, a landlord and tenant may agree that any or all of the obligations set out in subsection 30(1) may be performed by the tenant except for repairs required as a result of reasonable wear and tear or as a result of fire, water, tempest or other act of God.**

From the evidence presented it is clear that the respondent proceeded to make repairs/improvements to the premises without approval of the landlord except for the replacement of the windows and without notifying the landlord or his agent of any breach of the landlord's obligation to repair. Furthermore, in my opinion, much of the work undertaken by the respondent were improvements to the property and not repairs or maintenance in accordance with section 30. In my opinion, a tenant can not simply make improvements to premises without the approval of the landlord and expect an automatic offset against rent payable.

If a tenant informs a landlord of required maintenance in accordance with section 30(5) and the landlord fails to perform the required maintenance, a tenant's remedy is to make application to a

rental officer in accordance with section 30(4)

- 30. (4) Where, on the application of a tenant, a rental officer determines that the landlord has breached an obligation imposed by this section, the rental officer may make an order**
- (a) requiring the landlord to comply with the landlord's obligation;**
  - (b) requiring the landlord to not breach the landlord's obligation again;**
  - (c) authorizing any repair or other action to be taken by the tenant to remedy the effects of the landlord's breach and requiring the landlord to pay any reasonable expenses associated with the repair or action;**
  - (d) requiring the landlord to compensate the tenant for loss that has been or will be suffered as a direct result of the breach; or**
  - (e) terminating the tenancy on a date specified in the order and ordering the tenant to vacate the rental premises on that date.**

From the evidence, the applicant proceeded with the work, with the exception of the window replacement, without notifying the landlord or his agent. In my opinion, it is not reasonable for a tenant to proceed with repairs without notifying the landlord or obtaining an order to proceed from a rental officer.

In the matter of the offset for the window replacement, the evidence suggests that the window replacement was authorized and the offset was negotiable. In the letter of December 19, 2002 from David MacDonald to the respondent, the writer indicates that the applicant would like to have material invoices for the windows. Evidence submitted by the respondent to the rental officer indicates that the material cost alone for the windows was \$4175. In my opinion, the installation cost would have brought the total cost to at least \$6000. In my opinion a reasonable offset is for the windows is \$6000.

In the matter of termination of the tenancy agreement, the circumstances of non-payment of rent must be considered. The respondent was of the opinion that he might be able to purchase the premises. Not wanting to have to pay for improvements made to the premises, he sought to have the cost of improvements deducted from the rent payable. The letter of August 15, 2003 seeking an offset of \$8350 appears to have gone unanswered. In my opinion, the circumstances surrounding the non-payment of rent do not justify an order to terminate the tenancy agreement by order, particularly when the landlord may apparently exercise his right to terminate the tenancy agreement by notice in accordance with section 52(2).

I find the respondent breached his obligation to pay rent. I find the applicant liable to compensate the respondent for repairs undertaken on behalf of the applicant. I find the rent arrears to be \$10,000 and the compensation due to the respondent to be \$6000. An order shall be issued for the respondent to pay the applicant the net amount of \$4000. The request to terminate the tenancy agreement by order is denied. The order shall permit the respondent to pay the rent arrears in monthly installments of \$2000, the first installment due on May 1, 2004 and the final installment due on June 1, 2004. The order shall also require the respondent to pay the monthly rent on time.

Should the respondent fail to pay the monthly rent on time or pay the rent arrears in accordance with this order, the applicant may file a future application seeking the lump sum payment of any balance owing and/or termination of the tenancy agreement by order.

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Hal Logsdon  
Rental Officer