

IN THE MATTER between **LIRIC CONSTRUCTION LTD.**, Applicant, and **WAYNE POLUK**, 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 **YELLOWKNIFE, NT**.

BETWEEN:

LIRIC CONSTRUCTION LTD.

Applicant/Landlord

- and -

WAYNE POLUK

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 rental arrears in the amount of one thousand nine hundred dollars (\$1,900.00).
2. Pursuant to sections 42(3)(d) and 42(3)(e) of the *Residential Tenancies Act*, the applicant is authorized to make necessary repairs to the whirlpool tub and garage ceiling and the respondent shall pay compensation for the repairs to the applicant in the amount of six hundred eighty-five dollars (\$685.00).
3. Pursuant to sections 41(4)(c) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Room #1, 4 Braathen Avenue, Yellowknife, NT shall be terminated on February 29, 2004 and the respondent shall vacate the premises on that date, unless the rental arrears in the amount of one thousand nine hundred dollars (\$1,900.00) are paid in full.

4. Pursuant to sections 42(3)(f) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Room #1, 4 Braathen Avenue, Yellowknife, NT shall be terminated on March 15, 2004 and the respondent shall vacate the premises on that date, unless the repair costs in the amount of six hundred eighty-five dollars (\$685.00) are paid in full.

DATED at the City of Yellowknife in the Northwest Territories this 16th day of February 2004.

Hal Logsdon
Rental Officer

IN THE MATTER between **LIRIC CONSTRUCTION LTD.**, Applicant, and **WAYNE POLUK**, 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.

BETWEEN:

LIRIC CONSTRUCTION LTD.

Applicant/Landlord

-and-

WAYNE POLUK

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: February 11, 2004

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Arie Keppel, representing the applicant
Wayne Poluk, respondent

Date of Decision: February 11, 2004

REASONS FOR DECISION

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay rent, failing to repair damages to the premises and residential complex which were the result of his negligence, and disturbing other tenants' quiet enjoyment of the premises. The applicant sought an order requiring the respondent to pay for the alleged rental arrears, repair of the alleged damages, and termination of the tenancy agreement.

The applicant provided a statement of the rent which indicated a balance owing in the amount of \$1,679.31. The February rent had been prorated to February 21, 2004, presumably in expectation that the tenancy would be terminated on that date. The parties agreed that the rent for the premises was \$800 per month and the tenancy agreement between the parties required payment in advance on the first day of each month.

The applicant provided photographs of the premises and testified that the whirlpool tub motor had failed. He believed it had seized because the tenant had permitted it to run without water. He also testified that the overflow on the tub had been broken causing water to escape from the tub, damaging the ceiling and an electrical outlet in the garage below the premises.

The applicant also testified that on January 1, 2004 he had entered the premises following complaints from other tenants and found a noisy party in progress.

The respondent did not dispute the allegations pertaining to the rental arrears.

The respondent stated that he had only used the whirlpool tub several times as he had only moved into the room recently and speculated that the motor could have failed through normal wear and tear. He stated that he wasn't sure how it failed, but had agreed with the landlord at one time that he thought the motor could have been damaged due to lack of water.

The respondent stated that he did not know how the overflow had been damaged, but felt that the repair costs for the ceiling and tub surround were excessive.

The respondent disputed that the January 1, 2004 incident was disturbing to other tenants. He stated that it was a "mellow" gathering of friends in the afternoon.

There is no dispute regarding the rental arrears, which I find to be \$1,900 calculated as follows:

December 2003 rent	\$300.00
January 2004 rent	\$800.00
February 2004 rent	<u>\$800.00</u>
Total	<u>\$1,900.00</u>

In my opinion, the evidence does not support that the whirlpool motor was damaged by the tenant's negligence. Neither party appears to have direct knowledge of the failure and despite the tenant's agreement with the landlord that the failure could have been caused by a lack of water, this is simply speculation. In my opinion, the failure could have just as easily been the result of normal wear and tear. The compensation of \$300 requested by the applicant is denied.

Although the respondent claims to have no direct knowledge of how the tub overflow was damaged, I must conclude that it is not the result of normal wear and tear. Such items simply do not fail in that manner. I must also conclude that the damage was done by the respondent or persons permitted in the premises as there was no evidence of forced entry or other unauthorized entry.

As to the repair costs, in my opinion, they are somewhat excessive. The overflow repair should be reasonably easy to repair from the garage and should not entail the disassembly of the tub surround. The parts required are inexpensive. In my opinion, the overflow mechanism can be repaired for \$100. The estimate for ceiling repair of \$585 is, in my opinion, reasonable. The estimated \$95 repair costs for the electrical outlet are, in my opinion, unnecessary. There is no evidence of any damage to the outlet or box and this item should not sustain any significant damage by water. In summary, I find reasonable repair costs for the ceiling and tub overflow to be \$685.

The landlord stated that he attended the premises on January 1, 2004, but did not find the respondent at the premises. He states that other tenants complained of noise. The landlord states that on his arrival there were about a dozen people in the room and drinking was evident. In my opinion, there was some degree of disturbance, but the disturbance alone was not serious enough to warrant termination of the tenancy.

I find the respondent breached the tenancy agreement by failing to pay rent, by failing to repair damages that were the result of his negligence and by disturbing other tenants. I find the rental arrears to be \$1,900. I find reasonable repair costs to be \$685. In my opinion, the landlord should be authorized to repair the premises and the tenant ordered to pay compensation for the repairs. In my opinion, there are sufficient grounds to terminate the tenancy agreement unless the respondent pays the applicant the rental arrears and repair costs promptly.

An order shall issue requiring the respondent to pay the applicant rental arrears in the amount of \$1,900 and repair costs in the amount of \$685. The tenancy agreement shall be terminated on February 29, 2004 unless the rental arrears are paid in full and the tenancy agreement shall be terminated on March 15, 2004 unless the repair costs are paid by that date.

Hal Logsdon
Rental Officer