

IN THE MATTER between **DEBBIE MARACLE, MITCH MARACLE AND ADAM MARACLE**, Applicants, and **RICHARD BILLINGHURST**, 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:

DEBBIE MARACLE, MITCH MARACLE AND ADAM MARACLE

Applicants/Tenants

- and -

RICHARD BILLINGHURST

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 30(4)(d) and 84(1) of the *Residential Tenancies Act*, the respondent shall pay compensation to the applicants in the amount of one thousand seven hundred seven dollars (\$1707.00). The compensation shall be paid to the applicants in the form of a rent credit to be applied against rent arrears.
2. Pursuant to section 30(4)(a) of the *Residential Tenancies Act*, the respondent shall comply with instructions given by the Environmental Health Officer regarding the clean-up of the sewage spill at the rental premises.

DATED at the City of Yellowknife, in the Northwest Territories this 20th day of April, 2005.

Hal Logsdon
Rental Officer

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-and-

RICHARD BILLINGHURST

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: April 14, 2005

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Debbie Maracle, applicant
Penelope Billinghurst, representing the respondent
(by telephone)

Date of Decision: April 20, 2005

REASONS FOR DECISION

The applicants alleged that the respondent had breached the tenancy agreement by failing to make repairs to the rental premises which were necessary to maintain the premises in a good state of repair and fit for habitation. The respondents sought an abatement of rent for the period from January 27, 2005 to the completion of repairs.

The applicant testified that on or about January 27, 2005, the sewage and sanitary drainage system in the premises failed causing all of the drains and the toilet to become inoperative. The applicant testified that they notified the landlord's agent that day but that repairs to restore the drains and toilet to operating condition were not completed until March 19, 2005. The applicant testified that during that period, they were unable to use any of the water systems in the house, rendering it unfit for habitation. Notwithstanding the problem, the applicants remained in possession of the premises.. The applicant testified that although the drains and toilet have been repaired, there remains a sewage spill from the premises which requires clean-up.

The respondent did not dispute the allegations but stated that she had made an arrangement with the tenants to fix the problems and pay for the repairs from the rent payable. She stated that when she had refused to give her credit card number to the tenants, the arrangement had been terminated and she made arrangements to have the work completed. The respondent stated that the applicants had failed to pay any rent since the December, 2004 rent was paid. She questioned why the tenants had not made the repairs from the rent money that they had failed to pay to the landlord.

Section 30 of the *Residential Tenancies Act* sets out the landlord's 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.**

There is no indication from the evidence that the failure was caused by any negligence on the part of the tenants. There was no written tenancy agreement provided in evidence and no indication that the tenants had assumed any responsibility for maintenance pursuant to section 31 of the Act. Therefore, it was clearly the obligation of the landlord to repair the premises. The Environmental Health Officer inspected the premises and reported to the landlord and the Rental Officer that the system had apparently been frozen, rupturing the pipes and causing sewage to escape underneath the unit. The Environmental Health Officer notified the landlord and ordered repair of the system and a clean-up of the sewage. A landlord is not relieved of the obligation to repair because the tenants have breached their obligation to pay rent, nor can the landlord automatically expect the tenant to undertake necessary repairs and deduct the costs from the rent.

The damage to the premises was such that, in my opinion, they were rendered nearly uninhabitable. Without sanitary drainage, the tenants had only limited use of water and had to go elsewhere to bath and do wash. In my opinion, they are entitled to compensation for the loss of full enjoyment of the premises due to the landlord's failure to repair between January 27, 2005 and March 19, 2005. The Environmental Health Officer has outlined to the landlord how the

sewage spill must be dealt with. In my opinion, the landlord is obligated under the *Residential Tenancies Act* to comply with these instructions as they relate to a statutory requirement under the *Public Health Act*. However, in my opinion, the repair of the drainage system on March 19, 2005 effectively relieved the tenants of any significant loss of enjoyment and the compensation should not extend beyond that date.

In my opinion, reasonable compensation is a 70% abatement of rent for the period January 27, 2005 to March 19, 2005 which I find to be \$1707, calculated as follows:

January	(4/31 X \$1400) X 70%	\$126.45
February	\$1400 X 70%	980.00
March	(19/31 X \$1400) X 70%	<u>600.65</u>
	TOTAL (rounded)	\$1707

An order shall issue requiring the respondent to pay compensation to the applicants in the amount of \$1707. As the applicants are currently in arrears of rent in excess of this amount, the compensation shall be paid in the form of a rent credit to be applied against the applicants' rent arrears. The order shall also require the respondent to comply with the Environmental Health Officer's instructions regarding the clean-up of the sewage spill at the premises.

Hal Logsdon
Rental Officer