

IN THE MATTER between **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, Applicant, and **DARRYL HAMMER**, 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:

**NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**

Applicant/Landlord

- and -

**DARRYL HAMMER**

Respondent/Tenant

**ORDER**

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 18th day of April, 2006.

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Hal Logsdon  
Rental Officer

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BETWEEN:

**NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**

Applicant/Landlord

-and-

**DARRYL HAMMER**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:** April 11, 2006

**Place of the Hearing:** Yellowknife, NT

**Appearances at Hearing:** Krista Cooper, representing the applicant

**Date of Decision:** April 18, 2006

**REASONS FOR DECISION**

The respondent was served with a Notice of Attendance sent by registered mail to last known address of the respondent. The respondent failed to appear at the hearing and the hearing was held in his absence.

The tenancy agreement between the parties was terminated on February 28, 2006 when the respondent vacated the premises. The applicant retained the security deposit and issued a statement of deposit which indicated a balance owing to the applicant in the amount of \$518.99.

The application was filed on March 9, 2006 seeking an order requiring the respondent to pay rent arrears. A statement of the security deposit, a rent statement an inspection report and the respondent's notice to terminate the agreement were provided in evidence.

The inspection report and the security deposit statement both indicate that the premises were vacant on February 28, 2006. The rent statement indicates a balance of rent owing in the amount of \$1333.06 but includes the March, 2006 rent in the amount of \$1425. The security deposit statement includes a deduction for rent arrears of \$1333.06.

The applicant testified that the respondent had not given adequate notice and that the landlord had shown the premises to prospective tenants but had not been able to re-rent the premises.

Section 18(2) of the *Residential Tenancies Act* specifies what may be deducted from a security deposit.

**18.(2) A landlord may, in accordance with this section, retain all or part of the security deposit for repairs of damage caused by a tenant to the rental premises and for any arrears of the rent.**

The March, 2006 rent is not rent arrears. Rent arrears are rent which has come due and has not been paid. The March rent did not come due as the tenancy had been terminated. At February 28, 2006 the respondent had no rent arrears and, as indicated on the rent statement, had a credit balance. Therefore the security deposit statement should not have included the March, 2006 rent amount as a deduction and should have resulted in a refund of part of the security deposit to the tenant.

The landlord may be entitled to compensation for lost rent. However, compensation for lost rent can not be deducted from a security deposit. The applicant is evidently considering the amount of the March rent as a penalty rather than compensation. The application was filed on March 9, 2006 which was before the losses could have been determined. Section 13 of the *Residential Tenancies Act* prohibits penalties of this kind.

I find no rent arrears. As the application sought relief for non-payment of rent, it shall be dismissed. The applicant may file an application seeking compensation for lost rent provided the security deposit statement is amended and the portion of the security deposit owing to the respondent is returned to him.

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Hal Logsdon  
Rental Officer