

IN THE MATTER between **TANYA NOWDLAK-GLADUE**, Tenant, and
GUENTHER GOLCHERT, Landlord;

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:

TANYA NOWDLAK-GLADUE

Tenant

- and -

GUENTHER GOLCHERT

Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the tenant shall pay the landlord rent arrears in the amount of two thousand one hundred ninety dollars and thirty one cents (\$2190.31).
2. Pursuant to section 30(4)(a) of the *Residential Tenancies Act*, the landlord shall comply with his obligation to comply with health standards required by law by undertaking the following measures previously ordered by the Environmental Health Officer:
 - a) Determine the extent of the mould in the premises.
 - b) Remove all building material infected with mould.
 - c) Repair the roof to prevent water from entering the premises.

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 Apartment 3, 5111 54th Street, Yellowknife, NT shall be terminated on July 31, 2006 and the tenant shall vacate the premises on that date, unless the rent arrears are paid in full.

DATED at the City of Yellowknife, in the Northwest Territories this 7th day of July, 2006.

Hal Logsdon
Rental Officer

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BETWEEN:

TANYA NOWDLAK-GLADUE

Tenant

-and-

GUENTHER GOLCHERT

Landlord

REASONS FOR DECISION

<u>Date of the Hearing:</u>	July 6, 2006
<u>Place of the Hearing:</u>	Yellowknife, NT
<u>Appearances at Hearing:</u>	Tanya Nowdlak-Gladue, tenant Guenther Golchert, landlord
<u>Date of Decision:</u>	July 6, 2006

REASONS FOR DECISION

The tenant's application was filed on May 25, 2006 and the landlord's application was filed on June 8, 2006. As both applications relate to the same tenancy agreement and rental premises, both applications were heard at a common hearing.

The tenant alleged that the landlord failed to comply with an order by an Environmental Health Officer concerning mould in the premises. The tenant's application indicated that she sought an order terminating the tenancy agreement but at the hearing she expressed her preference to continue the tenancy agreement if the ordered instructions of the Environmental Health Officer were carried out by the landlord.

The tenant provided a copy of the letter sent to the landlord dated May 5, 2006. It instructed the landlord to determine the extent of mould in the premises, remove all building material infected with mould and make repairs to the roof to prevent further water infiltration. The tenant also produced a letter addressed "to whom it may concern" from the Environmental Health Officer dated July 6, 2006 which indicated that the premises had been inspected again on June 7, 2006 and the work done found to be unsatisfactory.

The landlord stated that he had not seen a copy of the July 6, 2006 letter but intended to comply with the Environmental Health Officer's instructions. He confirmed that no work had been done since the June 7, 2006 inspection.

The landlord alleged that the respondent had failed to pay the full amount of rent. He testified that the amount of rent owing was \$2280.31 and sought an order requiring the tenant to pay the alleged rent arrears and terminating the tenancy agreement.

The landlord testified that in May, 2006 the tenant had paid only \$1334.25 of the \$1500 rent , leaving a balance owing of \$165.75. A late fee of \$30 was applied which was paid. He testified that only \$945 was received for the June, 2006 rent, leaving a balance owing for that month of \$554.56. Again a late payment charge was applied which remains outstanding. He testified that no rent had been paid in July, 2006 and that another \$30 late payment has been applied.

The tenant did not dispute the allegations concerning rent.

Section 13 of the *Residential Tenancies Act* prohibits penalties of a specific sum.

- 13. No tenancy agreement shall contain any provision to the effect that a breach of the tenant's obligation under the tenancy agreement or this Act results in the whole or any part of the remaining rent becoming due and payable or results in a specific sum becoming due and payable, and a provision of this kind is of no effect.**

Section 41 of the Act sets out the permissible penalty for late rent which is now set at 3.37%.

- 41. (1) A tenant shall pay to the landlord the rent lawfully required by the tenancy agreement on the dates specified by the tenancy agreement.**
(2) A tenant who pays his or her rent later than the dates specified by the tenancy agreement is liable to a penalty.
(3) The penalty referred to in subsection (2) is calculated for each day that the rent is late by multiplying
(a) the rent due, by
(b) the bank deposit rate on deposit receipts for 30 days, as determined and published by the Bank of Canada in the

periodic publication entitled the *Bank of Canada Review*, in effect on January 1 in the year that the late payment is calculated, and the total is divided by 365.

The penalties applied by the landlord are inconsistent with the provisions of the Act and shall be denied.

I find the landlord in breach of his obligation to comply with health standards required by law and find the tenant in breach of her obligation to pay rent. I find the rent arrears to be \$2190.31 calculated as follows:

May rent arrears	\$165.75
June rent arrears	554.56
July rent arrears	1500.00
less late fee paid	<u>(30.00)</u>
Total arrears	\$2190.31

In my opinion, there are sufficient grounds to terminate the tenancy agreement unless the rent arrears are promptly paid. An order shall issue requiring the tenant to pay the landlord rent arrears in the amount of \$2190.31 and terminating the tenancy agreement on July 31, 2006 unless the arrears are paid in full. The landlord is ordered to comply with the health standards required by law by undertaking the repairs ordered by the Environmental Health Officer, namely to,

- a) Determine the extent of the mould in the premises,
- b) Remove all building material infected with mould, and
- c) Repair the roof to prevent water from entering the premises.

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Hal Logsdon
Rental Officer