IN THE MATTER between **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, Applicant, and **OTTO RINAS AND MARY RINAS**, Respondents;

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 **INUVIK, NT.**

BETWEEN:

NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST

Applicant/Landlord

- and -

OTTO RINAS AND MARY RINAS

Respondents/Tenants

<u>ORDER</u>

IT IS HEREBY ORDERED:

1.   Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondents shall pay the applicant rent arrears in the amount of one thousand ninety eight dollars and seventy cents ($1098.70).

2.   Pursuant to section 62(2) of the *Residential Tenancies Act*, the respondents shall pay the applicant compensation for lost rent in the amount of one thousand five hundred fifty dollars ($1550.00).

DATED at the City of Yellowknife, in the Northwest Territories this 10th day of May, 2006.

Hal Logsdon
Rental Officer

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BETWEEN:

NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST

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-and-

OTTO RINAS AND MARY RINAS

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: April 28, 2006

Place of the Hearing: Inuvik, NT

Appearances at Hearing: **Jason Kucharski, representing the applicant**
Otto Rinas, respondent
Mary Rinas, respondent

Date of Decision: May 10, 2006

REASONS FOR DECISION

The respondents were served with a notice of early termination for non-payment of rent on

February 27, 2006 which sought vacant possession of the rental premises on March 10, 2006

unless the rent arrears were paid in full. The respondents vacated the premises on March 31,

2006.

The applicant retained the security deposit, deducting rent arrears and issued a statement of the

security deposit which indicated a balance owing to the applicant in the amount of $2674.70.

This amount included compensation for the April, 2006 rent in the amount of $1550. The

applicant sought an order requiring the respondents to pay the alleged rent arrears and

compensation for the April, 2006 rent. The applicant provided a statement of the rent account

and the security deposit statement in evidence.

The applicant testified that they had shown the premises to prospective tenants after the

respondents left the premises but were unable to re-rent the premises in April, 2006. The

applicant indicated that the premises were rented commencing May 1, 2006.

The respondents disputed the allegations concerning rent and provided numerous receipts in

evidence. The applicant reviewed the receipts and verified that they were receipts issued by the

landlord for rent.

My review of the applicant's statement of the rent account found several entries that are missing on the statement but accounted for. The statement provided in evidence consists of two sheets. The closing balance on sheet one is brought forward as the opening balance on sheet two. However the closing balance on sheet one is $3175 and the opening balance on sheet two is $2375, a difference of $800. Considering the receipts and the statement, the missing entries are as follows:

Closing balance sheet one	$3175.00
Oct. 11/05 pmt (IVDR 117)	(800.00)
November /05 rent	1550.00
Nov. 10/05 pmt (IVDR 130)	(1550.00)
Opening balance sheet two	$2375.00

Considering the missing entries on the rent statement, all of the receipts provided in evidence by the respondents have been accounted for by the applicant. Deducting the April, 2006 rent, I find rent arrears in the amount of $2324.70 calculated as follows:

Balance as per statement	$3874.70
Less April/06 rent	(1550.00)
Rent arrears	$2324.70

Taking into account the retained security deposit and accrued interest (which was not calculated on the security deposit statement), I find the remaining rent arrears due to the applicant to be $1098.70, calculated as follows:

Security deposit	$1200.00
Interest	26.00
Rent arrears	(2324.70)
Rent arrears due to applicant	$1098.70

The remedy of compensation for lost rent is available to a landlord when a tenant abandons a

rental premises pursuant to section 62 of the *Residential Tenancies Act*.

> **62.(1) Where a tenant abandons a rental premises, the tenancy agreement is terminated on the date the rental premises were abandoned but the tenant remains liable, subject to subsection 9(2), to compensate the landlord for loss of future rent that would have been payable under the tenancy agreement.**
>
> **(2) Where, on the application of a landlord, a rental officer determines that a tenant has abandoned a rental premises, the rental officer may make an order requiring the tenant to pay to the landlord the compensation for which the tenant is liable by reason of subsection (1).**

Abandonment of rental premises is defined in the Act as follows:

> **1.(3) For the purpose of this Act, a tenant has abandoned the rental premises and the residential complex where the tenancy has not been terminated in accordance with this Act and**
> **(a) the landlord has reasonable grounds to believe that the tenant has left the rental premises; or**
> **(b) the tenant does not ordinarily live in the rental premises, has not expressed an intention to resume living in the rental premises, and the rent the tenant has paid is no longer sufficient to meet the tenant's obligation to pay rent.**

Section 54 of the Act permits a landlord to serve a notice of early termination on a tenant for

specific breaches, including the repeated non-payment or late payment of rent. However, the

notice itself does not serve to terminate the tenancy agreement. Section 54(4) requires a landlord

who has served a notice of early termination on a tenant to file an application to a rental officer

for an order terminating the tenancy agreement. It is the order that terminates the tenancy

agreement, not the notice.

When a tenant is served with a notice of early termination for non-payment of rent and complies

with the notice by leaving the premises, is the landlord entitled to claim compensation for lost

rent subject to the landlord's duty to mitigate loss? The Act appears to permit such a claim but

also appears to give the rental officer discretion. Several facts in this matter are, in my opinion,

important to consider.

1. The landlord's notice included a provision that full payment of the rent arrears on

    or before the termination date of March 10, 2006 would void the notice.

2. The respondents did not pay the full amount of the rent arrears by March 10,

    2006.

3. The respondents stayed in possession of the premises until March 31, 2006 when

    they elected to move out without notice.

4. The tenancy agreement was made for a term which ended on March 31, 2006.

5. The tenants could have terminated the agreement by notice to the landlord given

    on or before March 1, 2006.

In my opinion the premises were abandoned by the respondents on March 31, 2006. Rather than

leave the premises on the date named in the notice of termination, they elected to leave at the end

of that month. Proper notice to the landlord to terminate the tenancy agreement on March 31,

2006 could have reasonably been given which would have terminated the tenancy agreement in accordance with the Act and relieved the respondents of any liability for lost rent. I am satisfied that the applicant was unable to re-rent the premises until May 1, 2006 despite reasonable efforts to do so.

An order shall issue requiring the respondents to pay the applicant rent arrears in the amount of $1098.70 and compensation for lost rent in the amount of $1550.

Cases reviewed:

190 Lees Avenue Ltd. Partnership v. Dew (1991) 16 RPR (2nd) 79

Pajelle Investments Ltd. v. Braham (1993) 29 RPR (2nd) 172

Danis v. P.A Community Housing Society Inc., 2005 SKQB 194 (CanLII)

Hal Logsdon
Rental Officer