

IN THE MATTER between **TSIIGEHTCHIC HOUSING ASSOCIATION**, Applicant,
and **FREDERICK ANDRE**, 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 **TSIIGEHTCHIC, NT.**

BETWEEN:

TSIIGEHTCHIC HOUSING ASSOCIATION

Applicant/Landlord

- and -

FREDERICK ANDRE

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 84(3) and 41(4)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant rent arrears in the amount of three thousand seven hundred thirty one dollars (\$3731.00).
2. Pursuant to section 42(3)(c) of the *Residential Tenancies Act*, the respondent shall pay the applicant costs to repair damages to the rental premises in the amount of five thousand seven hundred forty two dollars and sixteen cents (\$5742.16).

DATED at the City of Yellowknife, in the Northwest Territories this 26th day of July,
2006.

Hal Logsdon
Rental Officer

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-and-

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REASONS FOR DECISION

<u>Date of the Hearing:</u>	July 25, 2006
<u>Place of the Hearing:</u>	Yellowknife, NT, via teleconference
<u>Appearances at Hearing:</u>	Angela Fleming, representing the applicant Frederick Andre, respondent
<u>Date of Decision:</u>	July 26, 2006

REASONS FOR DECISION

The tenancy agreement between the parties was terminated on March 9, 2006 when the applicant considered the premises abandoned and took possession of the premises. The applicant retained the security deposit and accrued interest of \$345.64, applying it against the costs of repair to the premises and rent arrears. The applicant sought an order requiring the respondent to pay repair costs in the amount of \$5742.15 and rent arrears in the amount of \$4311. The applicant also sought compensation for the removal of the respondent's abandoned personal property in the amount of \$859.86 and storage costs of \$10/day.

A fire occurred in the premises on November 11, 2005 which was caused by a frying pan left on the stove. A fire report, provided by the applicant in evidence indicates that the cause of the fire was human error. The landlord repaired the damages at a cost of \$5713.19 and invoiced the respondent.

The applicant served a notice of early termination on the respondent on February 21, 2006 seeking vacant possession on March 6, 2006. The applicant stated that the respondent left the community shortly after service of the notice. On March 9, 2006, the applicant considered the premises abandoned and took possession of the premises. The respondent's personal possessions were removed from the premises and stored. An inventory was completed and filed with the application. Additional repairs to the premises were undertaken consisting of wall repair and the replacement of an interior door. The respondent was charged \$374.61 for the repairs.

The respondent did not dispute the allegations but stated that he thought the storage costs of \$10/day were excessive.

In the matter of the alleged rent arrears, I find the respondent in breach of his obligation to pay rent and find the rent arrears to be \$3731. The applicant provided a summary of the rent account which indicated a balance owing in the amount of \$13,639. The applicant testified that the full unsubsidized rent of \$2509 which had been applied in four months had been subsequently adjusted to \$32 resulting in a reduction of the arrears by \$9908. An arithmetic error resulted in the amount of \$4311 being sought by the applicant.

In the matter of the alleged damages and repair costs, I find the respondent in breach of his obligation to repair damages which were made necessary due to his negligence. I find the repair costs of \$5713.19 and \$374.61 to be reasonable. Applying the security deposit and accrued interest to the repair costs, I find the repair costs due to the applicant to be \$5742.16 calculated as follows:

Security deposit	\$250.00
Interest on deposit	95.64
Repair costs (fire damage)	(5713.19)
Repair costs (door and wall damage)	<u>(374.61)</u>
Total repair costs due to applicant	\$5742.16

In the matter of the removal and storage costs, sections 64 and 65 of the *Residential Tenancies Act* sets out how abandoned personal property of a tenant shall be dealt with. When abandoned property is claimed by a tenant, a landlord may demand payment for removal and storage costs

before releasing the goods.

- 64.(6) Where the tenant or owner of an item of personal property stored by the landlord pays the landlord the cost of removing and storing the item, the landlord shall give the item to the tenant or owner and notify the rental officer.**

When a tenant fails to claim the stored property, a landlord may seek the permission of a rental officer to sell the property.

- 65.(1) Where no person has taken possession of an item of personal property stored under subsection 64(5) during the 60 days referred to in that subsection, the rental officer may permit the landlord to sell or dispose of the item in the manner and subject to the terms and conditions set by the rental officer.**
- (2) Where a landlord sells an item of personal property under subsection (1) or 64(4), the landlord may, subject to the terms and conditions set by the rental officer under those subsections,**
- (a) retain that part of the proceeds of the sale necessary to reimburse the landlord for the reasonable costs of removing, storing and selling the property; and**
 - (b) retain that part of the proceeds of the sale necessary to satisfy any order for compensation made in favour of the landlord by the rental officer or a judge of the Supreme Court or territorial judge, where the order was made under this Act**

The Act anticipates that a landlord will recoup removal and storage costs either from the tenant or from the sale of the goods. There is no provision permitting a rental officer to make an order compensating a landlord for costs of removal and storage. Without the jurisdiction to make such an order, I must deny the applicant's request for relief for removal and storage costs. I will, however offer the following observations and comments.

The inventory that was filed by the applicant on May 8, 2006 is 19 pages long and contains well over 500 items. Rather than list “fifteen books”, “kitchen utensils” or “foodstuffs”, the landlord has listed each individual book title, every fork, spoon, knife and other utensil and every item of food, including the brand name. The applicant stated that they wished to eliminate any dispute over what was removed from the premises. While I can appreciate the landlord’s desire to eliminate any liability connected with the removal of the property, the creation of the detailed inventory consumed 36 staff hours costing \$859.36. In my opinion, the inventory could have been considerably abbreviated.

The charges of \$10/day may or may not be appropriate depending on the cost of the storage facilities to the landlord. At the hearing the applicant was unsure if the premises were leased or provided free of charge. It could not be determined if the storage area was heated or if the landlord paid for other utilities or taxes. The Act is intended to permit the landlord to recover *costs*, not to set an arbitrary fee. The applicant may wish to review their costs in this area and make any adjustments in the per diem charge deemed reasonable.

The landlord also stated that the building in which the goods were stored was needed by the owner and that they would have to move the respondent’s goods in the near future. The goods have been stored for the minimum 60 day period and the landlord is entitled to seek the permission of a rental officer to sell or dispose of the goods at any time. If permission is granted, it should eliminate the need to move the property again if the respondent does not promptly claim it.

Should the respondent feel that the amount demanded for removal and storage is excessive they may make an application pursuant to section 66 of the Act seeking an order requiring the landlord to return the goods to the respondent and determine the removal and storage costs.

Hal Logsdon
Rental Officer