File #10-9673

IN THE MATTER between **ROB NELSON**, Applicant, and **JOEL DE VILLA**, 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:

ROB NELSON

Applicant/Landlord

- and -

JOEL DE VILLA

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant rent arrears in the amount of five hundred fifty dollars ($550.00).

DATED at the City of Yellowknife, in the Northwest Territories this 11th day of September, 2007.

Hal Logsdon
Rental Officer

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Applicant/Landlord

-and-

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REASONS FOR DECISION

Date of the Hearing:	**September 4, 2007**
Place of the Hearing:	**Yellowknife, NT**
Appearances at Hearing:	**Ann Lanteigne, representing the applicant** **Joel DeVilla, respondent** **Sara MacMillan, witness for the respondent**
Date of Decision:	**September 11, 2007**

REASONS FOR DECISION

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay the full amount of rent and by leaving the premises unoccupied without making arrangements to have the premises checked, causing damage due to freezing. The applicant sought an order requiring the respondent to pay the alleged rent arrears and costs related to the repair of the premises.

The rental premises consist of a room on the second floor of a house. The respondent shares a bathroom and kitchen and other facilities with another tenant, Ms. MacMillan. Another suite is located on the first floor of the house. All three premises are served by a common heating plant. The rent for the premises is $550/month.

The landlord alleged that the tenant failed to pay the August, 2007 rent of $550. The tenant did not dispute the allegation.

On January 12, 2007 Ms. MacMillan returned to the premises after an absence of 12 days, discovered that the heat was off in the residential complex, left a message with the landlord and called a plumber. The respondent was not at home having left for vacation on January 6, 2007. Some water lines were frozen as well as the sewer line. The toilet reservoirs in all three premises were frozen and one was cracked. On thawing the lines, some water damage occurred to the ceiling tiles in the downstairs suite. The cause of the furnace failure appeared to be contaminated

fuel and/or a worn fuel pump.

The applicant argued that the repairs related to the freezing of the premises should be the responsibility of the respondent and Ms.MacMillan. The main floor suite was not rented at the time. The landlord sought $409.35 from the respondent and $781.49 from Ms. MacMillan.

Section 42 sets out a tenant's obligation to repair premises.

> **42.(1) A tenant shall repair damage to the rental premises and the residential complex caused by the wilful or negligent conduct of the tenant or persons who are permitted on the premises by the tenant.**
>
> **(2) Ordinary wear and tear of rental premises does not constitute damage to the premises.**

There is no evidence to indicate that the heating plant failed due to any wilful or negligent conduct of the respondent. This was acknowledged by the landlord. The landlord instead rests his claim on a rule established in the written tenancy agreement between the parties.

> **6. HOLIDAYS - If the tenant is absent from the suite, and the suite is unoccupied when the outside temperature drops below -20C, arrangements are to be made with a competent person to check the heat and water daily.**

It would appear from the testimony of Ms. MacMillan and the respondent that they had planned on several persons being in the premises and/or checking on the premises during their respective absences. Ms. MacMillan rented one of the rooms in her premises to a woman named Pam who she believed occupied the premises during her absence and the absence of the respondent. Ms. Macmillan also stated that she arranged for Nathan Jarman to take care of her plants and a letter from Mr. Jarman indicates he attended the premises on January 7, 2007 and January 9 or 10,

2007 and found all to be in order. The tenant stated that her housekeeper attended the premises on January 9 or 10, 2007. The respondent stated that he assumed someone had moved into the suite downstairs as he frequently heard activity from that apartment. The applicant stated that the downstairs suite was not rented but was in the process of being renovated, which accounted for the activity.

Both parties agree that the plumber who attended the premises on January 12, 2007 indicated that he believed the heat had been off for approximately 24 hours. The temperature on January 11, 2007 ranged from -25.2C to -36.6C. The mean temperature on that day was -30.9C.

Notwithstanding the reasonableness of rule 6 of the tenancy agreement, which I find questionable where a residential complex contains multiple premises serviced by a single heating plant, I can not find sufficient evidence to conclude that the respondent failed to comply with it's provisions. The evidence suggests that the respondent and Ms. MacMillan made arrangements for the oversight of the premises during their absences. There is nothing to indicate that none of those persons were in the premises sometime on January 11, 2007, the day the heating plant presumably failed. An inspection at or after 9:50 AM on January 11 is all that would be required to satisfy the rule. Just because the premises were frozen does not establish a breach of the rule. In my opinion, a house could easily freeze in less than 24 hours when the mean temperature is below -30C. The landlord's claim for repair costs is denied.

I find the respondent in breach of his obligation to pay rent and find the rent arrears to be $550.

An order shall issue requiring the respondent to pay the applicant rent arrears in the amount of $550.

Hal Logsdon
Rental Officer