

IN THE MATTER between **KIMBERLY LEGLER**, Applicant, and **TED STUDER**,
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:

KIMBERLY LEGLER

Applicant/Tenant

- and -

TED STUDER

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 27th day of
September, 2007.

Hal Logsdon
Rental Officer

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AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter
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AND IN THE MATTER of a Hearing before **Hal Logsdon**, Rental Officer.

BETWEEN:

KIMBERLY LEGLER

Applicant/Tenant

-and-

TED STUDER

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: September 25, 2007

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Kimberly Legler, applicant

Date of Decision: September 26, 2007

REASONS FOR DECISION

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

The applicant alleged that the respondent had breached the tenancy agreement by failing to maintain the premises in a good state of repair and sought an order requiring the respondent to compensate her for one month's rent. The applicant stated that the premises were flooded on July 31, 2007 during a rainstorm. The applicant testified that she notified the landlord on August 1, 2007 but the landlord failed to take any action. The applicant stated that following the flood, mould and fungus appeared in the premises which caused her to cease using parts of the premises and caused health problems. The applicant vacated the premises on September 1, 2007.

The applicant provided photographs in evidence which indicated mould on a bedroom wall, her toothbrush holder and the shower stall and fungus near the baseboard of the flooded wall. The applicant stated that she believed the flooding was caused by poor maintenance as it did not rain that much.

The respondent provided a written statement of defence, stating that he had attended the premises on seven occasions to determine the damage. His statement indicates that he was unable to find the applicant at home or was denied entry to the premises. The applicant acknowledged that she had denied the landlord entry because he had not provided any notice.

In order for a compensation claim to succeed, it must be determined that a loss occurred and that it was the direct result of some negligence or oversight of the other party. The amount of the loss must be reasonable. The claimant's duty to mitigate loss may also be a factor.

The only loss to the applicant was the alleged loss of her use of the premises. There was no evidence that the applicant suffered any damage to her possessions. The compensation requested would indicate that the applicant was deprived of the use of the entire premises for a month. This is clearly not the case. First, only some areas of the premises were affected by mould and fungus. There is no evidence that the entire premises were rendered inhabitable. Second, the mould certainly did not appear immediately after the rainstorm, causing the loss of parts of the premises for a full month.

I can not accept that the flooding was the result of any negligence or oversight on the part of the respondent. Although the applicant may have recalled the July 31 rainstorm as insignificant, weather records indicate that 57.4 mm of rain fell that day, considerably more than normally falls in the entire month of July. The heavy rain was not caused by the respondent's negligence. The applicant's claim must rest on a finding that the respondent failed to address the problem of the mould and fungus in a reasonable and timely manner.

One would assume that a tenant adversely affected by the aftermath of a flood would welcome a landlord who seeks entry to assess the damage. The applicant acknowledged that she did not permit the landlord to enter without due notice. While she is entitled to such notice pursuant to

section 26 of the *Residential Tenancies Act*, in my opinion, her failure to consent to entry is also a failure to reasonably mitigate the damages she claims.

For these reasons, the applicant's claim for compensation fails and the application is dismissed.

Hal Logsdon
Rental Officer