

IN THE MATTER between **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, Applicant, and **ANTHONY CROSTON**, 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 **INUVIK, NT**.

BETWEEN:

NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST

Applicant/Landlord

- and -

ANTHONY CROSTON

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 two hundred eighty seven dollars and seventy eight cents (\$287.78).
2. Pursuant to section 45(4)(c) of the *Residential Tenancies Act*, the respondent shall pay the applicant for electrical costs paid on his behalf in the amount of fifty three dollars and ninety seven cents (\$53.97).

3. Pursuant to section 62(2) of the *Residential Tenancies Act*, the respondent shall pay compensation for lost rent to the applicant in the amount of four thousand four hundred dollars (\$4400.00).

DATED at the City of Yellowknife, in the Northwest Territories this 22nd day of February, 2007.

Rental Officer

Hal Logsdon

IN THE MATTER between **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, Applicant, and **ANTHONY CROSTON**, Respondent.

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AND IN THE MATTER of a Hearing before **Hal Logsdon**, Rental Officer.

BETWEEN:

NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST

Applicant/Landlord

-and-

ANTHONY CROSTON

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: January 30, 2007

Place of the Hearing: Inuvik, NT

Appearances at Hearing: Darrin Holmes, representing the applicant

Date of Decision: February 21, 2007

REASONS FOR DECISION

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

The parties entered into a one-year term tenancy agreement on August 28, 2006. The applicant testified that the respondent abandoned the rental premises on or about September 30, 2006. The applicant retained the security deposit of \$550, applying it against rent arrears, repairs and cleaning costs and electricity costs paid on behalf of the respondent. The applicant sought an order requiring the respondent to pay the alleged rent arrears, repair and cleaning costs, electrical costs and compensation for lost rent in the total amount of \$13,542.54. A statement of account was entered in evidence which indicated that amount as due and payable.

The statement indicates that rent for four days in August, 2006 (\$141.94) and the September rent (\$1100) was charged and one payment of \$642 received, resulting in a balance owing the applicant of \$599.94. As the tenancy agreement was terminated on September 30, 2006 due to abandonment, I find the rent arrears to be \$599.94

The applicant testified that the respondent failed to transfer the electrical account to his name and consequently the landlord was charged for electricity for the period the respondent was in possession. A notice from the electrical supplier was produced in evidence showing an amount

owing of \$53.97. The tenancy agreement between the parties obligates the tenant to pay for electricity during the term of the agreement.

The applicant testified that the respondent failed to return the keys to the premises requiring him to change the locks at a cost of \$75. The applicant also testified that the premises were not clean at the termination of the tenancy and cleaning costs were incurred in the amount of \$164.57

The applicant testified that he had not been able to re-rent the premises despite showing it to prospective tenants. The applicant stated that the vacancy rate for that residential complex was 50%.

I find the respondent in breach of his obligation to pay rent and find rent arrears in the amount of \$599.94. I find the respondent in breach of his obligation to pay for electricity during the term of the agreement and find the amounts paid on his behalf to be \$53.97. I find the repair and cleaning costs to be reasonable.

In the matter of compensation for lost rent, it appears the applicant is under the impression that abandonment of rental premises results in the rent for the balance of the term becoming due.

Section 13 of the *Residential Tenancies Act* prohibits accelerated rent.

- 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.

However, on abandonment of rental premises, a tenant is liable for compensation for lost rent, subject to the landlord's efforts to mitigate such loss. Sections 62 and 5 of the *Residential Tenancies Act* outline this liability and a landlord's obligation to mitigate loss.

- 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.
- 5.(1) Where a landlord or tenant is liable to the other for damages as a result of a breach of a tenancy agreement or this Act, the landlord or tenant entitled to claim damages shall mitigate his or her damages.
- (2) Without limiting subsection (1), where a tenant terminates a tenancy agreement, contravenes a tenancy agreement, or vacates or abandons rental premises, other than in accordance with this Act or the tenancy agreement, the landlord shall rent the rental premises again as soon as is practicable and at a reasonable rent in order to mitigate the damages of the landlord.

Clearly, the applicant can not claim compensation for lost rent until the loss has been incurred. At the time of the hearing, the applicant had lost only rent to the date of the hearing. To claim more than that amount would be a claim for accelerated rent. I am satisfied that the applicant

has fulfilled the requirement to mitigate loss but can only consider his losses to date, namely the amounts lost in October, November and December, 2006 and January, 2007 which amount to \$1100 for each of those months or \$4400 in total.

Taking into consideration the retained security deposit and applying the deposit first to cleaning and repairs, I find rent arrears in the amount of \$287.78, calculated as follows:

| | |
|----------------------------------|-----------------|
| Security deposit | \$550.00 |
| Interest | 1.73 |
| Repairs and Cleaning | (239.57) |
| Rent arrears | <u>(599.94)</u> |
| Total rent arrears due applicant | \$287.78 |

An order shall issue requiring the respondent to pay the applicant rent arrears in the amount of \$287.78, electrical costs paid on his behalf in the amount of \$53.97 and compensation for lost rent in the amount of \$4400.

Hal Logsdon
Rental Officer