

IN THE MATTER between **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, Applicant, and **CHRISTINE JACOBSON**, 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 -

CHRISTINE JACOBSON

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 thousand five hundred ninety six dollars and sixty seven cents (\$2596.67).
2. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondent shall pay the applicant repair costs in the amount of two thousand forty eight dollars and thirty eight cents (\$2048.38).

DATED at the City of Yellowknife, in the Northwest Territories this 20th day of February, 2007.

Rental Officer

Hal Logsdon

IN THE MATTER between **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, Applicant, and **CHRISTINE JACOBSON**, 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.

BETWEEN:

NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST

Applicant/Landlord

-and-

CHRISTINE JACOBSON

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
Christine Jacobson, respondent

Date of Decision: February 20, 2007

REASONS FOR DECISION

Since this application was filed on December 20, 2006, the respondent has vacated the premises. The premises were vacated on January 29, 2007. The applicant has retained the security deposit and issued a statement of account indicating a balance owing of \$10, 924.59. The applicant sought relief in that amount.

The applicant stated that the amount owing included rent arrears from a previous apartment (222 Parkview) as well as the recently vacated apartment (210 Mackenzie). The applicant provided statements for both of these premises which indicated rent arrears for Parkview in the amount of \$650 and rent arrears for Mackenzie in the amount of \$3975.

The applicant also alleged that the respondent had damaged the premises at 210 Mackenzie and left the apartment in an unclean state which necessitated cleaning and repairs. An itemized estimate of repair and cleaning costs was provided in evidence. The estimated costs of cleaning and repairs was \$3284.43

The applicant testified that the respondent had failed to give written notice to terminate the tenancy agreement and sought compensation for the February, 2007 rent in the amount of \$1850.

A 15% administration fee and 6% GST was applied to the outstanding balance.

The respondent testified that she had given verbal notice to the landlord on November 28, 2006 that she would terminate the tenancy agreement on January 31, 2007. The tenancy agreement was made for a term to end on that date. The respondent did not think she should have to pay for the February rent charges.

The respondent stated that she had never paid her rent by cheque or pre-authorized payment. The respondent disputed the applicant's testimony that several reversed entries on the rent statements were likely NSF cheques. The applicant was not able to produce any receipts for payments that had been reversed although she apparently brought receipts to the hearing and was given an opportunity to review her documents and produce them in evidence. The respondent agreed with the applicant that a security deposit of \$1375 was provided to the landlord for the Parkview premises and was transferred to the Mackenzie apartment.

The respondent acknowledged that the Mackenzie premises were in good condition and appeared to have new carpet and paint when she took possession on February 1, 2006. She did not dispute any of the itemized damages outlined in the applicant's evidence and acknowledged that the carpet had been stained and the walls damaged during her tenancy.

I find the respondent in breach of her obligation to pay rent and her obligation to repair damages to the rental premises. However, I must dismiss a portion of the relief sought by the applicant for the following reasons:

1. Three credits on the rent statements have been reversed. The applicant stated that these reversing entries were likely due to NSF cheques. The applicant's representative had no direct knowledge of the transactions. The respondent testified that she had never provided cheques for the payment of rent and always paid in cash or by debit card. Although the respondent did not produce any physical evidence of rent payments made which were not properly accounted for by the landlord, I must weigh the evidence before me, taking into consideration that the onus is not on the tenant to prove she made a payment but on the landlord to prove she did not. The sole explanation given by the applicant is that the reversing entries represent NSF cheques. The respondent testified that she did not tender any cheques for payment of rent during the tenancy and payments were made exclusively by cash or debit card. The applicant acknowledged that a debit card payment is authorized by the bank at the time of payment. Therefore, if the testimony of the respondent is true, the reversed entries can not be due to NSF cheques. No other explanation was provided by the applicant. I find no reason to believe that the respondent's testimony under oath is not credible. On the balance of probabilities, I find no justification for the reversing entries and shall adjust the rental arrears accordingly.

2. The applicant has included the required security deposit of \$1375 on the rent statement as a debit but has only a credit of \$500. The parties agree that the security deposit provided was \$1375.

The rent arrears for the Mackenzie premises shall be adjusted to \$3196.67 calculated as follows:

Balance as per statement	\$3975.00
less security deposit error	(875.00)
December/06 rent	1850.00
January/07 rent	1850.00
less payments. made	(3040.00)
less reversing entries	<u>(1250.00)</u>
Balance owing	\$2510.00

The rent for the Parkview premises shall be adjusted to

Balance as per statement	\$650.00
less reversing entries	<u>(563.33)</u>
Balance owing	\$86.67

3. Cleaning charges for supplies have been reduced by \$10. The applicant acknowledged that an error had been made with regard to these costs.
4. The replacement of the carpet and painting are estimated at cost when they should be estimated taking into consideration their useful life. Using a useful life of ten years for carpet and considering that it was one year old, I have reduced the relief to 90% of the

replacement cost. Similarly, assuming an apartment is repainted every five years, I have reduced the painting and patching costs to 80% of the replacement cost.

5. An administration charge of 15% has been applied to the total amount owing. In my opinion, this charge represents a penalty in excess of the prescribed amount when applied to rent. I have allowed it only to be applied to the charges for cleaning and repairs.
6. Goods and Services Tax of 6% has been applied to the total amount owing. Residential rent is GST exempt. I have allowed it on cleaning and repair costs only.
7. Compensation for rent lost in February, 2007 is denied. Compensation for lost rent is a damages claim and not a penalty. No loss had been sustained by the landlord at the time of the hearing and in my opinion, \$1850 is not a reasonable pre-estimate of loss.

Applying the retained security deposit first to repairs and cleaning, I find repair costs in the amount of \$2048.38 and rent arrears in the amount of \$2596.67 calculated as follows:

Security deposit	\$1375.00
Interest	82.50
Repair costs	<u>(3505.88)</u>
Balance of repair costs owing	\$2048.38

Rent arrears (Parkview)	\$86.67
Rent arrears (Mackenzie)	<u>2510.00</u>
Balance of rent arrears	\$2596.67

An order shall issue requiring the respondent to pay the applicant rent arrears in the amount of \$2596.67 and repair costs in the amount of \$2048.38.

Hal Logsdon
Rental Officer