

IN THE MATTER between **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, Applicant, and **DWAYNE THOMPSON**, 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 -

**DWAYNE THOMPSON**

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 sixty eight dollars and eighty one cents (\$268.81).

DATED at the City of Yellowknife, in the Northwest Territories this 8th day of May, 2007.

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Hal Logsdon  
Rental Officer

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Applicant/Landlord

-and-

**DWAYNE THOMPSON**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:** April 24, 2007

**Place of the Hearing:** Inuvik, NT

**Appearances at Hearing:** Darrin Holmes, representing the applicant

**Date of Decision:** May 8, 2007

**REASONS FOR DECISION**

The respondent was served with a Notice of Attendance served by registered mail sent to the tenant's usual address. The respondent failed to appear at the hearing and the hearing was held in his absence.

The applicant testified that the respondent abandoned the rental premises on April 10, 2007. The applicant alleged that the respondent had failed to pay the full amount of the rent, failed to repair damages to the premises, failed to leave the premises in a clean condition and failed to give adequate notice, causing the landlord to lose rent. The applicant sought an order requiring the respondent to pay the alleged rent arrears, repair and cleaning costs, and compensation for lost rent.

The application was filed on March 19, 2007 seeking payment of alleged rent arrears and termination of the tenancy agreement pursuant to sections 41(4)(a) and 41(4)(c) of the *Residential Tenancies Act*. The applicant stated that he held a security deposit of \$1200 but it had not been applied to the respondent's account. There was no evidence that a statement of the security deposit had been completed or sent to the respondent in accordance with section 18 of the Act. The application was not amended to indicate the applicant's intention to seek relief for repairs, cleaning or compensation for lost rent.

Section 75 of the *Residential Tenancies Act* sets out a rental officer's obligation to follow the

rules of natural justice.

**75. A rental officer shall adopt the most expeditious method of determining the questions arising in any proceedings and ensure that the rules of natural justice are followed.**

The principles of natural justice require that the parties must know the case against them, must be allowed an opportunity to dispute the allegations against them and must be able to present evidence in support of their case. In this case, the respondent, having been served with only the application, could not have been aware that the applicant intended to seek relief for repairs or cleaning or compensation for lost rent. The respondent did not receive a security deposit statement itemizing the repair and cleaning costs nor was the application amended to state the applicant's intention to seek relief for anything other than outstanding rent.

The Notice of Attendance sent to both parties includes information regarding the hearing process, including the following advice:

**"The Hearing is called to deal only with the specific issues discussed in the application."**

As the application sets out only non-payment of rent as the alleged breach of the respondent and no security deposit statement has been issued to the respondent setting out the itemized repair and cleaning costs sought and the application has not been amended to include any issues other than rent, it is not, in my opinion, reasonable to consider matters other than rent. It is entirely possible that a respondent may elect to not appear at a hearing because they do not dispute the allegations set out in the application. In my opinion, it is not fair to then introduce new issues at the hearing without having made the absent respondent aware of them. The applicant may file a

future application regarding repairs and/or compensation for lost rent provided the application is filed prior to the six month limitation contained in section 68 of the Act.

The applicant provided a statement of the rent account in evidence which indicated a balance of rent owing in the amount of \$1525. Included in that amount was a flat-rate penalty of \$25.

Section 41 sets out the penalty permitted for late rent. The penalty applied by the applicant does not comply with the provisions of section 41 and therefore denied.

I find the respondent in breach of his obligation to pay rent. I find the rent arrears to be \$1500.

Taking into account the retained security deposit and accrued interest I find the amount owing to the applicant to be \$268.81 calculated as follows:

Security deposit	\$1200.00
Interest	31.19
Rent arrears	<u>(1500.00)</u>
Amount owing applicant	\$268.81

An order shall issue requiring the respondent to pay the applicant rent arrears in the amount of \$268.81.

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Hal Logsdon  
Rental Officer