

IN THE MATTER between **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, Applicant, and **LAURA KENNEDY**, 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 -

**LAURA KENNEDY**

Respondent/Tenant

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 67(4) of the *Residential Tenancies Act*, the respondent shall pay compensation to the applicant for use and occupation of the rental premises in the amount of seven dollars and forty four cents (\$7.44).

DATED at the City of Yellowknife, in the Northwest Territories this 6th day of November, 2007.

---

Hal Logsdon  
Rental Officer

IN THE MATTER between **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, Applicant, and **LAURA KENNEDY**, 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-

**LAURA KENNEDY**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:**                      **October 25, 2007**

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

**Appearances at Hearing:**                      **Darrin Holmes, representing the applicant  
Laura Kennedy, respondent (by telephone)**

**Date of Decision:**                              **November 6, 2007**

### **REASONS FOR DECISION**

The tenancy agreement between the parties was terminated on October 1, 2006 when the respondent vacated the premises. The applicant retained the security deposit. The applicant claimed that a statement of the security deposit was issued but could not produce a copy at the hearing. The applicant sought an order requiring the respondent to pay for repairs and rent arrears in excess of the retained security deposit.

The application was filed on September 6, 2007. Section 68 of the *Residential Tenancies Act* sets a time limitation to file an application but permits a rental officer to extend that time limit.

- 68. (1) An application by a landlord or a tenant to a rental officer must be made within six months after the breach of an obligation under this Act or the tenancy agreement or the situation referred to in the application arose.**
- (2) A landlord or a tenant making an application to a rental officer for an order or a decision under this Act must file the application with the rental officer and serve a copy of the application on the other party within at least 14 days after the filing of the application.**
- (3) A rental officer may extend the time for the making of an application to the rental officer, whether or not the time for making the application to a rental officer has expired, where the rental officer is of the opinion that it would not be unfair to do so.**

In this case the applicant stated that the respondent had made several payments since the tenancy agreement was terminated and he believed the matter might be resolved without recourse to legal action. The respondent stated that she agreed with some of the allegations but disputed others and wished to have the matter resolved. In my opinion, it is reasonable and beneficial to both parties

to extend the time limitation and resolve this matter.

The applicant provided a statement of account in evidence which indicated a balance of rent owing in the amount of \$1500. The statement also indicated charges for general cleaning, patching and painting, and replacement of the carpet. The total repair costs sought, net of the security deposit, is \$2181.89.

In the matter of the alleged rent arrears, the respondent gave written notice on August 31, 2006 that she intended to vacate the premises in 30 days. The original tenancy agreement was made for a six month term commencing on November 1, 2002. It does not appear that the parties signed any other tenancy agreement. Therefore the tenancy agreement reverted to a monthly tenancy on May 1, 2003. Section 52 of the *Residential Tenancies Act* sets out the notice requirements for a tenant to terminate a periodic agreement.

**52. (1) Where a tenancy agreement does not specify a date for the termination of the tenancy agreement, the tenant may terminate the tenancy on the last day of a period of the tenancy by giving the landlord a notice of termination,**

- (a) in the case of a weekly tenancy, at least seven days before the termination date stated in the notice of termination;**
- (b) in the case of a monthly tenancy that has continued for less than 12 months, at least 30 days before the termination date stated in the notice of termination; or**
- (c) in the case of a monthly tenancy that has continued for 12 months or more, at least 60 days before the termination date stated in the notice of termination.**

Therefore the notice of termination given by the respondent was not sufficient as it does not

conform with the time requirement set out in 52(1)(c). The applicant is entitled to compensation for lost rent provided the premises were not re-rented and the applicant took reasonable steps to mitigate loss. However, the applicant did not claim to have lost any rent nor did he provide any evidence of loss or mitigation. In a letter to the respondent, dated January 3, 2007 the applicant justified the charge of the full rent for October, 2006 by stating, "...you where (sic) to vacate your unit by September 31, 2006 (sic), you where (sic) still in possession of the unit as of October 1, 2006. Northern property REIT does not lease units on a daily or weekly basis. So you were charged for the month of October 06." In my opinion, the applicant has not demonstrated any loss of rent or efforts to mitigate loss and is entitled only to compensation for use and occupation for one day in the amount of \$48.39.

The applicant provided a report setting out the condition of the premises at the commencement of the tenancy agreement and a check-out report in evidence. The check out report confirms that the premises were not left in a reasonable clean condition. The respondent did not dispute the requirement for cleaning or the costs claimed of \$165. I find the costs reasonable.

The check-in report indicates a single carpet stain in the living room and a single carpet stain in one bedroom. The applicant stated that carpet was much more stained at the termination of the tenancy and required replacement. The applicant claimed the replacement cost was \$1620.80 but discounted the cost to the tenant by \$13.76 to reflect the damage done prior to the tenancy agreement. The respondent did not dispute that the carpet was badly stained. The carpet was obviously not new in November, 2002 as the condition report indicates it was already stained.

Neither party knew the age of the carpet. In my opinion, the carpet must be at least five years old and, given a useful life of ten years, the landlord has already enjoyed 50% of its value. Therefore in my opinion, the respondent should compensate the applicant for 50% of the replacement value which I find to be \$810.40.

The applicant alleged that the walls and ceilings required patching and painting and sought repair costs in the amount of \$1287.80. The applicant stated that some patching was done by the respondent but the areas were not properly finished requiring additional sanding to prepare the surfaces for paint. The extent of patching by the respondent was not clear from the evidence but it appears to be limited to areas in the hallway and bedrooms. Although the check-out report indicates the areas only require sanding, the applicant has charged 9.5 hours of labour and \$20 of material. The check-in report makes it clear that the premises were not freshly painted at the commencement of the tenancy. The paint is at least five years old. Given a useful life of 5 years, the apartment was due for repainting which always involves some minor patching. In my opinion, the evidence does not support the requirement for 9.5 hours of sanding. The painting costs are therefore denied and the applicant shall have \$90 for sanding the improper patching done by the respondent, which represents three hours of labour.

In summary I find the following repair costs to be reasonable:

Patching drywall	\$90.00
Carpet replacement	810.40
General cleaning	165.00
GST	63.92
Administration	<u>159.81</u>
Total	\$1289.13

The applicant has applied only \$83.06 in security deposit interest. I am not sure how the interest was calculated but it should be applied from the date the security deposit was paid to the date the tenant vacates or abandons the premises. I calculate the applicable interest to be \$130.08.

Applying the retained security deposit first to repair costs I find compensation for use and occupation of the rental premises due to the applicant in the amount of \$7.44 calculated as follows.

Security deposit	\$1200.00
Interest	130.08
Repairs	(1289.13)
Compensation-overholding	<u>(48.39)</u>
Amount due applicant	\$7.44

An order shall issue requiring the respondent to pay the applicant the above noted compensation.

---

Hal Logsdon  
Rental Officer