

IN THE MATTER between **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, Applicant, and **JULIA NEYELLE**, 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 -

**JULIA NEYELLE**

Respondent/Tenant

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 62(2) of the *Residential Tenancies Act*, the respondent shall pay the applicant compensation for lost rent in the amount of one thousand two hundred sixty one dollars and sixty three cents (\$1261.63).

DATED at the City of Yellowknife, in the Northwest Territories this 7th day of December, 2007.

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Hal Logsdon  
Rental Officer

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-and-

**JULIA NEYELLE**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:** December 5, 2007

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

**Appearances at Hearing:** Darrin Holmes, representing the applicant  
Julia Neyelle, respondent

**Date of Decision:** December 7, 2007

**REASONS FOR DECISION**

The tenancy agreement between the parties commenced on November 1, 2006 and was made for a term of one year. The respondent gave written notice to the applicant on July 15, 2007 that due to ill health she could no longer afford the rent and intended to move out and stay with friends.

The notice did not specify a date that the respondent intended to move.

The respondent vacated the premises on August 7, 2007. The applicant retained the security deposit and interest and issued a statement on October 10, 2007. There is no evidence to suggest that an estimated statement was previously issued. The applicant now seeks rent arrears, compensation for lost rent and repair costs in excess of the retained security deposit.

The security deposit statement was provided in evidence. The security deposit (\$1900) and interest (\$69.15) was applied against repairs and cleaning costs (\$2575.41) and rent arrears (\$2475) resulting in a balance owing the applicant in the amount of \$3081.26. The rent arrears figure included rent to August 31, 2007, some of which represented compensation for lost rent rather than rent arrears. An itemised statement of the repair costs was provided by the applicant. Inspection reports outlining the condition of the premises at the commencement and the end of the tenancy agreement were also provided in evidence.

The respondent disputed the applicant's claim for compensation for lost rent pointing out that she had advised the landlord in writing of her medical condition and her inability to pay the rent. The

applicant stated that he had notified the respondent that a physician's certificate was required but none was provided. He testified that he had shown the premises to prospective tenants but was unable to rent the premises for the remainder of August, 2007. Section 53 of the *Residential Tenancies Act* permits early termination in these types of situations but does require a medical certificate. Section 55 outlines the contents of the required notice.

- 53.(1) Notwithstanding any other provision of this Act,**
- (a) where a tenant dies or the health and physical condition of the tenant deteriorates and the tenant is unable to pay the rent, or**
  - (b) where a spouse of a tenant dies and the income of the surviving spouse is insufficient to pay the rent,**
- the tenant, his or her heirs, assigns or legal or personal representative may terminate the tenancy agreement by giving notice, in accordance with section 55.**
- (2) The notice referred to in subsection (1) must be accompanied, where applicable, by a medical certificate respecting the health of the tenant or the spouse of the tenant.**
- 55. (1) A notice of termination by a tenant or a landlord shall be in writing and must**
- (a) be signed by the tenant or the landlord or an agent of the tenant or the landlord;**
  - (b) identify the rental premises to which the notice applies;**
  - (c) state the date on which the tenancy is to terminate; and**
  - (d) state the reason for the termination of the tenancy.**

Because a medical certificate did not accompany the respondent's notice and because the notice failed to identify the rental premises or state the date on which the tenancy was to be terminated, it is of no effect and the respondent is considered to have abandoned the premises. In my opinion, the applicant took reasonable steps to mitigate the loss and is entitled to compensation for the loss of rent from August 8 to August 31, 2007.

The respondent also disputed the charges for cleaning, carpet replacement and painting. The respondent testified that her nieces cleaned the premises and that they were left in a reasonably clean state. The itemised statement of costs submitted by the applicant claims that 16 hours were required to clean the premises and the labour and material costs were \$555. The check-out inspection report notes that most of the walls and fixtures were dirty.

The respondent testified that the carpets were shampooed and no stains were noticeable after they were cleaned. The applicant claimed that the carpets were one year old. The check-out report notes stains throughout the premises. The check-in report indicates that the living room carpet was stained at the commencement of the tenancy. Only 108 square feet of carpet was replaced suggesting that only the living room carpet was replaced. The check-out notes that the living room carpet required replacement.

The respondent stated that she had used only small tacks to hang pictures and that the walls in the premises were not damaged. The parties acknowledged that the apartment was freshly painted at the commencement of the tenancy agreement. The check-out report indicates several scuffs and chips on the walls, one hook on the living room ceiling and some tack holes in the kitchen. The schedule to the tenancy agreement permits the use of "small 1" picture nails" and prohibits the use of "ceiling hooks or drive nails". The premises appear to have been patched and painted throughout after the tenancy agreement was terminated.

The evidence concerning the condition of the premises is very contradictory and difficult to

weigh. Given the detail of the observations on the check-out report regarding cleaning, I am inclined to accept it. However, I can not accept the requirement to also paint the premises, given that the much of the cleaning must have been directed at the walls which had negligible damage and were painted only ten months before the termination of the tenancy agreement. I also question whether the living room carpet stains were the result of the tenant's negligence or the fault of the previous tenant. The check-in report notes stains in the living room.

The applicant also claims \$90 for "minor maintenance repairs" but was unable to state what was actually repaired. Without some specific information concerning the repairs I am inclined to view them as maintenance, which is the responsibility of the landlord.

On the balance of probabilities the following repair and cleaning charges are reasonable. The remainder are denied.

Garbage removal	\$45.00
Dump fee	20.00
Cleaning	555.00
Admin fee	93.00
GST	<u>42.78</u>
Total	\$755.78

I find the rent arrears to be \$1004.03 calculated as follows:

Rent arrears to July 31, 2007	\$575.00
Rent arrears (Aug 1-7)	<u>429.03</u>
Rent arrears	\$1004.03

Applying the retained security deposit first to repair costs and rent arrears, I find compensation

for lost rent due to the applicant in the amount of \$1261.63 calculated as follows:

Repair costs	\$755.78
Rent arrears	1004.03
Less security deposit	(1900.00)
Less interest	<u>(69.15)</u>
Subtotal	(\$209.34)
Plus compensation August 8-31	<u>1470.97</u>
Amount owing applicant	\$1261.63

An order shall issue requiring the respondent to pay the applicant compensation for lost rent in the amount of \$1261.63.

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Hal Logsdon  
Rental Officer