

IN THE MATTER between **WILLIAM ROBINS**, Applicant, and **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, 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:

**WILLIAM ROBINS**

Applicant/Tenant

- and -

**NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**

Respondent/Landlord

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 18(5) of the *Residential Tenancies Act*, the respondent shall return a portion of the retained security deposit and interest to the applicant in the amount of six hundred twelve dollars and eighty six cents (\$612.86).

DATED at the City of Yellowknife, in the Northwest Territories this 29th day of May, 2008.

Hal Logsdon  
Rental Officer

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

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

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BETWEEN:

**WILLIAM ROBINS**

Applicant/Tenant

-and-

**NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**

Respondent/Landlord

**REASONS FOR DECISION**

**Date of the Hearing:** May 28, 2008

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

**Appearances at Hearing:** William Robins, applicant  
Angela Hunter, representing the respondent

**Date of Decision:** May 29, 2008

### **REASONS FOR DECISION**

The tenancy agreement between the parties was terminated on February 28, 2008 when the applicant vacated the premises. The respondent retained a portion of the security deposit (\$1300.00) and interest (\$28.35), applying it against lost rent for March, 2008 (\$545.16), removal of garbage (\$115.00), repairs (\$54.45), administration (\$25.42) and GST (\$11.69), returning the balance of \$576.63 to the applicant. The respondent issued a statement of the deposit although it did not identify the repairs that were undertaken and was not issued within the 10 day period specified in section 18 of the *Residential Tenancies Act*.

The applicant disputed the deductions and sought an order requiring the respondent to return the full amount of the security deposit and accrued interest.

The respondent acknowledged that the compensation for lost rent deducted from the security deposit was due to the fact that the applicant did not give adequate notice to terminate the term tenancy agreement and the premises were not re-rented until March 13, 2008. Notwithstanding the lack of proper notice or the landlord's efforts to mitigate loss, only rent arrears and repairs of damages may be deducted from a security deposit.

- 18.(2) A landlord may, in accordance with this section, retain all or part of the security deposit for repairs of damage caused by a tenant to the rental premises and for any arrears of the rent.**

Compensation for lost rent is not arrears of rent; it is a damages claim. Compensation for lost rent can only be ordered on the application of a landlord. It may not be deducted from a security deposit.

The applicant stated that the premises were left in a clean condition and that the deduction for removal of garbage was unreasonable. The respondent stated that the charges related to large items such as furniture being left by the applicant by the dumpster. The respondent explained that these items are not picked up as domestic garbage and must be taken to the land fill where a tipping fee is applied. The respondent explained that the charges covered the transportation and tipping fees to take the items to the land fill. The applicant acknowledged that the fees were reasonable and withdrew his objection to the deduction of \$115.

The applicant stated that any damages to the premises were present at the commencement of the tenancy agreement and no repairs were necessary due to his

negligence. The respondent stated that the repair cost of \$54.45 was related to the touch up painting of door trim. I have no inspection reports before me nor was the applicant provided with an itemized list of the repairs. In my opinion there is not sufficient evidence to establish that the painting done to the door trim was made necessary due to the applicant's negligence.

The GST charged on the garbage removal and repairs was based on 6% of the cost. The GST should be charged at 5% on invoices after January 1, 2008.

Adjusting the security deposit accordingly I find the amount owing the applicant to be \$612.86, calculated as follows:

Security deposit	\$1300.00
Interest	28.35
Garbage removal	(115.00)
Administration	(17.25)
GST	<u>(6.61)</u>
Total	\$1189.49
Less refund	<u>(576.63)</u>
Amount owing applicant	\$612.86

An order shall issue requiring the respondent to return a portion of the retained security deposit and interest to the applicant in the amount of \$612.86.

Hal Logsdon  
Rental Officer

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