

IN THE MATTER between **CHRIS SCHOTT**, 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 **YELLOWKNIFE, NT**.

BETWEEN:

CHRIS SCHOTT

Applicant/Tenant

- and -

NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 30(4)(d) of the *Residential Tenancies Act*, the respondent shall pay the applicant compensation related to the respondent's failure to maintain the premises in a good state of repair in the amount of three hundred fifty four dollars and twenty three cents (\$354.23).

DATED at the City of Yellowknife, in the Northwest Territories this 7th day of April, 2008.

Hal Logsdon
Rental Officer

IN THE MATTER between **CHRIS SCHOTT**, 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.

BETWEEN:

CHRIS SCHOTT

Applicant/Tenant

-and-

NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: March 18, 2008

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Chris Schott, applicant
Julia O'Brien, representing the respondent

Date of Decision: April 7, 2008

REASONS FOR DECISION

The applicant previously filed an application seeking an order to make certain repairs to the rental premises. The matter was heard on April 13, 2007. At that hearing, the landlord outlined the work that was planned for the residential complex but stated that much of it could not be done until milder weather arrived. The landlord agreed to provide certain compensation related to a sewer back-up in the premises and moving costs and agreed to consider additional costs submitted by the tenant. An order was issued requiring the landlord to undertake certain repairs and the tenant was granted leave to file for compensation if the parties were unable to agree on a final settlement.

The applicant now states that the parties can not agree on reasonable compensation and seeks an order. The compensation requested consists of four components:

1. Relocation related claim:

The applicant seeks \$20 for the re-connection fee for his Internet service.

2. Heating related claim:

The applicant seeks compensation for the purchase of an electric heater (\$69.99) and the increased electrical consumption to provide additional heat to the premises due to the infiltration of outside air caused by the structural failure of the foundation (\$150.19).

3. Claim related to sewage back-up

The applicant seeks compensation for loss of personal items (\$114.05).

4. Lost sublet revenue claim

The applicant stated that he rented a bedroom to a tenant at a monthly rent of \$670.

The tenant vacated due to the lack of sufficient heat and the applicant was unable to re-rent the room. The applicant sought compensation for loss of three months rent in the amount of \$2010.

The respondent did not dispute their responsibility to repair the structural problems with the building and agreed to compensate the applicant for all the claimed components except the lost sublet revenue. The respondent stated that the applicant did not seek approval to sublet the bedroom as required by the *Residential Tenancies Act*.

A sublet occurs when a tenant rents all or part of the rental premises to another person for a term less than their own. Section 22(2) of the *Residential Tenancies Act* requires the approval of the landlord before the tenant is permitted to sublet.

22(2) An assignment or subletting is not valid unless the landlord has given written consent, which shall not be unreasonably withheld.

There is no evidence that the applicant sought the approval of the respondent to sublet the bedroom to another party. One of the required elements of a successful claim for compensation related to a breach is foreseeability. If the applicant's claim is to be successful, it must be demonstrated that the landlord should have foreseen the damages that would have resulted from a breach of their obligation. In my opinion, the landlord should have foreseen that the failure to repair the premises would result in a loss of full enjoyment of the premises, increased costs for

the tenant and possible damages to the tenant's property. If the landlord had approved of the sublet, they should have also foreseen that a breach of their obligation to repair would result in a loss of income for the tenant. However, such approval was not sought by the tenant or given by the landlord. It is not evident that the landlord was even aware of the sublet. Therefore, in my opinion, the respondent could not have reasonably foreseen that the breach of the obligation to repair would result in a loss of income for the applicant. The claim for loss of income is therefore denied.

The parties agree on the remainder of compensation and I find those amounts to be reasonable. The applicant is entitled to the first three components of compensation totalling \$354.23. It should be noted that when the compensation is paid the heater should become the property of the respondent.

An order shall issue requiring the respondent to pay compensation to the applicant in the amount of \$354.23.

Hal Logsdon
Rental Officer