

IN THE MATTER between **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, Applicant, and **TERRY UPCOTT**, 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 -

TERRY UPCOTT

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 four hundred ninety three dollars and twenty three cents (\$1493.23).

DATED at the City of Yellowknife, in the Northwest Territories this 23rd day of April, 2008.

Hal Logsdon
Rental Officer

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BETWEEN:

NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST

Applicant/Landlord

-and-

TERRY UPCOTT

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: April 1, 2008

Place of the Hearing: Inuvik, NT

Appearances at Hearing: Darrin Holmes, representing the applicant
Terry Upcott, respondent
Paula Rawlings, witness for the respondent

Date of Decision: April 23, 2008

REASONS FOR DECISION

The applicant alleged that the respondent abandoned the rental premises on October 31, 2007. The applicant retained the security deposit (\$1050) and accrued interest (\$81.77) to rent arrears (\$1075) leaving a balance owing to the respondent of \$56.77. The applicant testified that despite efforts to re-rent the premises, they were not re-rented until December 15, 2007. The applicant also stated that the respondent had failed to pay for electricity and sought compensation for electrical costs paid on behalf of the respondent. The applicant testified that the premises were furnished and the respondent had taken the furniture from the premises.

The applicant sought compensation for electrical costs paid on behalf of the respondent, compensation for lost rent to December 15, 2007 and an order requiring the respondent to return the furniture or pay compensation for its loss.

The tenancy agreement between the parties commenced on May 1, 2007 and was made for a term of three years. The premises are named as Suite 101, 50 Tununuk Drive, Inuvik, NT. Article 3 of the tenancy agreement states that the premises are unfurnished. There is no reference to furniture in the remainder of the agreement. A security deposit was required but there was no evidence of a condition report which would have presumably included the condition of any furnishings if they were supplied. The applicant stated that the furnishings were supplied in two previous tenancy agreements for premises located at 20 Tununuk Drive. The applicant alleged that the furniture was taken from those premises. The respondent acknowledged taking the furniture but testified

that an arrangement with the previous landlord, Nihjaa Properties Ltd., transferred ownership of the furniture to him upon paying an additional rent premium for one year. This dispute arises from a former tenancy agreement which was terminated over ten months before this application was filed. Section 68(1) of the *Residential Tenancies Act* requires that applications be filed in a timely manner.

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.

Although a rental officer may extend this time limitation, I see no reason to do so. The matter of the furniture should have been resolved with the security deposit for the former premises when it was noticed that the furniture was missing. The request for compensation is denied.

The applicant provided copies of electrical bills in evidence which included electrical charges from October 1, 2007 to December 14, 2007. The respondent testified that he vacated the premises and returned the keys to the landlord on October 3, 2007. The respondent's witness testified that the electrical service was discontinued on October 1, 2007. The total electrical consumption for the three bills is only 66 KWH, which indicates that the premises were not likely occupied from early October 2007 to December 14, 2007. In my opinion, the evidence supports abandonment of the premises at the beginning of October, not the end of October as the applicant claims. Section 62 of the *Residential Tenancies Act* limits compensation to lost rent when premises are abandoned.

62.(1) Where a tenant abandons a rental premises, the tenancy agreement is terminated on the date the rental premises were abandoned but the

tenant remains liable, subject to subsection 9(2), to compensate the landlord for loss of future rent that would have been payable under the tenancy agreement.

As electrical costs paid directly to the supplier are not rent, the electrical costs that accrued after the abandonment of the premises can not be claimed by the applicant. The applicant's request for compensation for electrical costs paid on behalf of the respondent after the abandonment of the premises is denied.

The respondent gave written notice to the applicant on July 30, 2007 of his intention to vacate the premises and discontinue electrical service on September 1, 2007. The notice did not terminate the tenancy agreement as it was not made in accordance with section 51(1) of the *Residential Tenancies Act*.

51.(1) Where a tenancy agreement specifies a date for the termination of the tenancy agreement, the tenant may terminate the tenancy on the date specified in the agreement by giving the landlord a notice of termination not later than 30 days before the termination date.

The notice can not be considered as a mutual agreement to terminate the agreement as the landlord returned a notice to the tenant stating that the notice of termination was not accepted.

Had the respondent actually vacated the premises on September 1, 2007 I might question why the applicant was unable to re-rent the premises until December 15, 2007. However, it appears that the respondent spent another month in possession and it is likely that the applicant was not aware that he had actually moved out until the electrical bills were re-directed to the landlord in late October, 2007. In my opinion, those circumstances make the applicant's claim that he took

reasonable steps to mitigate the loss of rent entirely reasonable.

The respondent testified that he had received no refund of the security deposit. The applicant stated that it has been applied to the October, 2007 rent which had not been paid. Although the applicant's rent statement and security deposit statement support the non-payment of the October, 2007 rent, they also indicate that there was a balance due to the tenant in the amount of \$56.77. There is no evidence that this amount was returned to the respondent. As well, a \$25 penalty for late rent has been applied which is not in accordance with the permissible penalty set out in section 41 of the Act. Setting these amounts off against the compensation for lost rent, I find the respondent responsible to pay compensation for lost rent to the applicant in the amount of \$1493.23, calculated as follows:

Compensation for lost rent to November 1 - December 15, 2007	\$1575.00
Less un-refunded security deposit	(56.77)
Less penalty for late rent	<u>(25.00)</u>
Amount due applicant	\$1493.23

An order shall issue requiring the respondent to pay the applicant compensation for lost rent in the amount of \$1493.23.

Hal Logsdon
Rental Officer