

IN THE MATTER between **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, Applicant, and **CHARLES FIRTH**, 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 -

CHARLES FIRTH

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant rent arrears in the amount of five hundred twenty dollars and seventy one cents (\$520.71).

DATED at the City of Yellowknife, in the Northwest Territories this 26th day of March, 2009.

Hal Logsdon
Rental Officer

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BETWEEN:

NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST

Applicant/Landlord

-and-

CHARLES FIRTH

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: March 19, 2009

Place of the Hearing: Inuvik, NT

Appearances at Hearing: Lee Smallwood, representing the applicant
Charles Firth, respondent

Date of Decision: March 26, 2009

REASONS FOR DECISION

The applicant stated that they discovered the rental premises abandoned on March 16, 2009. The applicant took possession of the premises. The applicant retained the security deposit (\$950.00) and accrued interest (\$14.87) applying it against rent arrears (\$3057.90), Cleaning (\$555.00), replacement of a chair (\$125.00), patching and painting two areas of wall damage (\$200.00) administration (\$132.00) and GST (\$50.60), leaving a balance owing to the applicant of \$3155.63. The applicant sought an order requiring the respondent to pay that amount.

The respondent disputed the rent stating that he was served with a "10 Day's Notice of Eviction" on January 8, 2009 which required him to leave the premises on January 19, 2009. The respondent testified that he left the premises on January 19, 2009 in compliance with the notice but acknowledged that he had not returned the keys because he lost them or advised the landlord he was leaving.

The respondent also disputed the repair costs for the wall repairs stating that one hole in the wall was there when the tenancy commenced and the other wall damage by the kitchen table was normal wear and tear. The respondent acknowledged the damage to the chair and did not dispute the cleaning charges.

Section 54(1)(g) of the *Residential Tenancies Act* permits a landlord to serve a notice of early termination when a tenant has repeatedly failed to pay the full amount of rent or to pay the rent

on the days it is due.

- 54.(1) Subject to subsection (2), a landlord may, at any time, give a tenant a notice of termination of at least 10 days, where**
- (g) the tenant has repeatedly failed to pay the full amount of the rent or to pay the rent on the dates specified in the tenancy agreement.**

Section 54(4) also requires a landlord who has served a notice of early termination to make an application to a rental officer for an order terminating the tenancy agreement.

- 54.(4) A landlord who has given a notice of termination under subsection (1) shall make an application to a rental officer for an order to terminate the tenancy agreement and a rental officer may issue an order terminating the tenancy on the date specified in the order and ordering the tenant to vacate the premises on that date.**

It is not the notice of early termination that serves to terminate the tenancy agreement but the order of a rental officer. When the tenant gives up possession before the tenancy agreement is terminated in accordance with the Act, the tenancy agreement is terminated by reason of abandonment.

When the applicant served the respondent with the "10 Day's Notice of Eviction", the respondent was eight days late with the monthly rent. The rent statement indicates that prior to the notice the monthly rent was always paid in the month it was due, albeit not usually on the first day of every month. After the notice was served, there were no payments made whatsoever, yet the applicant apparently did not check the premises to see if they had been abandoned until almost two months had past. Given the circumstances, it is surprising that the applicant did not suspect abandonment shortly after the 10 days had expired.

Confirming abandonment is often difficult when a tenant does not return keys or provide some indication to the landlord that they are leaving. A landlord can not be expected to check with every tenant every day to determine if they are still in possession. However, it is not reasonable, in my opinion, for a landlord to ignore the evidence of abandonment and continue to charge rent, particularly when they have served a notice of early termination.

It is clear from the evidence that the respondent abandoned the rental premises on January 19, 2009. Therefore, the tenancy agreement was terminated on that day and rent ceased to accrue. However, the respondent remained liable for lost rent pursuant to section 62(1) of the Act.

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.

Since the tenancy agreement between the parties was month-to-month and had been in effect for less than 12 months, the respondent's liability is limited to one months rent and because the applicant to date, has taken no action to mitigate loss by showing the apartment to prospective tenants and attempting to re-rent the premises, there can be no compensation for rent pursuant to section 62(1) from January 19, 2009 to present.

In the matter of rent, I find rent owing to the applicant in the amount of \$551.45 calculated as follows:

Balance at December 31/08 as per statement	(\$92.10)
Rent (January 1-19 @ \$33.871/day)	<u>643.55</u>
Rent owing applicant	\$551.45

In the matter of the repair and cleaning, I note that there was no inspection report to rebut the respondent's testimony that one of the areas of wall damage was present at the commencement of the tenancy agreement. The photographic evidence of the other area of wall damage does not, in my opinion, support the respondent's testimony that it is normal wear and tear. Clearly the corner of the wall has been significantly chipped and the metal corner bent. In my opinion the applicant is entitled to 50% of the requested repair costs, or \$100.

The respondent did not dispute that the chair was broken by his negligence but the condition of both chairs as evidenced by the photographs indicates that they are both quite old and badly worn. There was no evidence of replacement costs provided by the applicant but, in my opinion, the replacement cost should be depreciated at least 50% due to the obvious age of the furniture. In my opinion, \$62.50 is reasonable compensation.

The photographic evidence supports the cleaning costs claimed. As well, the time it will take to adequately clean the premises will undoubtedly result in the applicant's inability to even show the premises to prospective tenants. In my opinion compensation for two days rent pursuant to section 42(3)(c) in the amount of \$67.74 is reasonable.

Applying the retained security deposit first to the repairs and cleaning, then to rent arrears, I find

the remaining rent arrears owing to the applicant to be \$520.71 calculated as follows:

Rent credit as at December 31, 2008	(\$92.10)
Cleaning costs	555.00
Chair replacement	62.50
Wall repair	100.00
Administration	107.63
GST	41.26
Lost rent due to cleaning (2 days)	67.74
Rent arrears (Jan 1-19/09)	643.55
Security deposit	(950.00)
Interest on security deposit	<u>(14.87)</u>
Amount owing applicant	\$520.71

An order shall issue requiring the respondent to pay the applicant rent arrears in the amount of \$520.71.

Hal Logsdon
Rental Officer