

IN THE MATTER between **WILLIAM ANTONIUK AND VALERIE KIMIKSANA**,
Applicants, and **NORTHERN PROPERTY LIMITED PARTNERSHIP**, 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:

WILLIAM ANTONIUK AND VALERIE KIMIKSANA

Applicants/Tenants

- and -

NORTHERN PROPERTY LIMITED PARTNERSHIP

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 34(2)(c) of the *Residential Tenancies Act*, the respondent shall pay the applicants compensation for loss of a table, a propane tank and the use of the balcony in the amount of one hundred ninety five dollars and seventy cents (\$195.70).

DATED at the City of Yellowknife, in the Northwest Territories this 26th day of August,
2010.

Hal Logsdon
Rental Officer

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Applicants/Tenants

-and-

NORTHERN PROPERTY LIMITED PARTNERSHIP

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: August 18, 2010

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Valerie Kimiksana, applicant
Joyce Dust, representing the respondent
Howard Sansone, representing the respondent

Date of Decision: August 26, 2010

REASONS FOR DECISION

The respondent's name was not correct on the application. The order shall reflect the proper name of the respondent.

The respondent undertook some structural repairs to the balconies of the residential complex. A notice was sent to the applicants asking them to remove items from the balcony before June 9, 2010. The applicant stated that she had a BBQ, a propane tank and a table on the balcony. She stated that she did not think it was a good idea to bring the propane tank or the BBQ indoors and she did not have room in the apartment for the table. She stated that she was told that the items would be removed for her and replaced when the work was completed. She stated that she was told that the work would take about one day.

The applicant stated that the work was not completed in a timely manner and she was not able to use the balcony until July 30, 2010 when the work was completed. Although the BBQ was returned, the propane tank and the table were not. The applicant stated that she believed the propane tank was stolen and the table taken to the dump. The applicant provided an invoice for the propane tank which was new, indicating a purchase price of \$69.85. The applicant estimated the value of the table as \$50. A photograph of the table was provided in evidence. The applicant sought compensation for the loss of her property and the loss of use of the balcony.

The respondent's witness stated that structural repairs were undertaken on 54 balconies in the

residential complex. He stated that each repair normally took two days and that the contractor worked on 4-5 balconies at a time. The respondent's witness was unable to determine what happened to the applicants' property but acknowledged that the landlord or the landlord's contractor removed it from the balcony. The respondent's witness stated that the project did suffer some delays due to material shortages and did not dispute that the applicants' balcony was unusable during the period of time she claimed.

A notice to tenants in the residential complex concerning the balconies was provided in evidence. The notice advised tenants to remove all items from the balcony no later than June 9, 2010 and stated that, "Any items left behind will be disposed of by our staff".

The landlord had a duty to repair the balcony and a right to enter, after giving notice, to undertake the repairs. However, in my opinion, it is not reasonable to expect the tenant to bring a BBQ or propane tank into the premises or find a suitable storage area while the repairs are completed and certainly not reasonable for the landlord to dispose of any article left on the balcony after June 9. It is unclear exactly what happened to the table and propane tank but it is clear that both items were in the possession of the landlord or their contractor. That being the case, the landlord was responsible for their safekeeping and return. In my opinion the value of the items claimed by the applicants is reasonable and the landlord should pay the applicants compensation for their loss.

When a repair is undertaken by a landlord, it should be done in a timely manner. A tenant should be expected to tolerate a reasonable degree of disruption or temporary loss of use while the repair

is being done. In my opinion, compensation for loss of use is only reasonable when a repair takes significantly longer than normal or is undertaken in a manner that creates more than reasonable disruption or loss of use. If the balcony repairs normally took two days and the contractor repaired four or five at a time, one would expect the loss of use of a balcony to be no more than ten days. It would appear that the applicant's were unable to use the balcony from June 9 to July 30, a period of fifty-one days. That represents an unreasonable loss of use of forty one days. In my opinion, given the size of the balcony an abatement of rent of 5% is reasonable compensation for the loss of use of the balcony. I calculate that amount as \$75.85 as follows:

$$\text{Rent @ \$37/day} \times 5\% \times 41 \text{ days} = \$75.85$$

In summary, I find the respondent in breach of their obligation to not disturb the tenant's possession or quiet enjoyment of the premises and find reasonable compensation to be \$195.70 calculated as follows:

Compensation for loss of propane tank	\$69.85
Compensation for loss of table	50.00
Compensation for loss of use of balcony	<u>75.85</u>
Total	\$195.70

An order shall issue requiring the respondent to pay compensation to the applicants in the amount of \$195.70. The respondent shall provide the compensation by cash, cheque or rent credit as per the applicants' request.

Hal Logsdon
Rental Officer