File #10-12335

IN THE MATTER between **RHIAN MOORE (HARRISON)** Applicant, and **FERNE FURROW**, Respondent;

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

AND IN THE MATTER of a Hearing before, **HAL LOGSDON**, Rental Officer, regarding the rental premises at **HAY RIVER, NT.**

BETWEEN:

RHIAN MOORE (HARRISON)

Applicant/Landlord

- and -

FERNE FURROW

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 four thousand nine hundred ninety six dollars and eighty four cents ($4996.84).

DATED at the City of Yellowknife, in the Northwest Territories this 4th day of October, 2011.

Hal Logsdon
Rental Officer

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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:

RHIAN MOORE (HARRISON)

Applicant/Landlord

-and-

FERNE FURROW

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing:	**September 16, 2011**
Place of the Hearing:	**Hay River, NT**
Appearances at Hearing:	**Rhian Moore (Harrison), applicant** **Ferne Furrow, respondent**
Date of Decision:	**October 4, 2011**

REASONS FOR DECISION

The tenancy agreement between the parties was terminated on June 15, 2011 when the respondent moved out of the premises. The applicant retained the security deposit ($1200) and accrued interest ($13.16) applying against rent arrears ($6000), repairs to the plumbing and heating systems ($14,000), tile replacement in front entrance ($825.28), tile replacement in dining area and in front of stove ($694), replacement of carpet ($615.38), replacement of trees in yard ($971.25), garage door repair ($709.79) and vehicle towing ($210) resulting in a balance owing to the applicant of $22,812.54. The applicant sought an order requiring the respondent to pay that amount.

The applicant stated that the rent had been paid in full to August 31, 2010. After that date the rent that came due to June 15, 2011 was $14,250 (9.5 months x $1500/month) and the rent paid was $8250, leaving rent arrears of $6000. The respondent did not dispute the arrears of rent.

The applicant alleged that the respondent had permitted the premises to freeze causing extensive damage to the heating and water supply systems. Photographs of the systems and quotations for the replacement of the boiler, supply of a water tank and repairs to the systems were provided in evidence. The applicant alleged that the freezing was caused by fuel exhaustion and provided delivery records provided by the propane supplier.

The applicant alleged that ceramic tiles in the front entrance had been damaged and provided

photographs showing cracked tiles and an invoice indicating repair costs. The applicant also stated that vinyl tile in the dining area and in front of the stove had been damaged by water. Photographs and invoices for repair costs were provided in evidence.

The applicant alleged that a grass fire on the property started by the respondent's children had killed several trees. A fire report and invoice for the landscaping were provided in evidence.

The applicant alleged that the respondent had damaged the garage door. Photographs of the door and a quotation for the replacement of the door were provided in evidence.

The parties agreed that there was no inspection report completed at the commencement of the tenancy agreement or any inspection report completed at the termination of the tenancy.

The respondent disputed the repair cost for the tile flooring testifying that the tiles were damaged at the commencement of the tenancy agreement. She also disputed the repair costs to the vinyl flooring testifying that there was apparent water damage to the subfloor at the commencement of the tenancy agreement which caused the deterioration of the vinyl flooring. The respondent also testified that the garage door was damaged at the commencement of the tenancy. The respondent acknowledged that two vehicles were left on the property and stated that she intended to remove them after the tenancy agreement was terminated but was concerned that the applicant would consider her a trespasser. The respondent denied that the grass fire was caused by her negligence or the negligence of her children.

The respondent stated that none of the damage to the heating and water systems depicted in the photographs was present when she vacated the premises. She stated that a leak in an expansion tank was reported to the applicant in December 2010 and the applicant's husband stopped the leak by shutting off the heating circulating system. She stated that the system was never fixed and the wood boiler was barely sufficient to heat the premises since it only produced radiant heat. She stated that the water supply system also failed in January 2011 and was not repaired.

The premises are heated by hot water produced by two propane fired hot water tanks, a wood fired boiler and an oil fired boiler serving a single system of radiation. The configuration of the controls, safety devices, valves and expansion tanks is unknown but the photographs suggest a system which does not conform to usual domestic heating systems and likely fails to conform with applicable codes. For a person very familiar with hot water heating, the management of the system would not be difficult but for an average tenant, the system would be imposing, at best. The applicant stated that she had difficulty finding a plumber who would give her a repair estimate for the heating system because no one wanted to work on boilers. In my opinion, the difficulty in finding a plumber was attributable to the unwillingness of most trades persons to work on such a system. In fact, the quotation for both the heating and water systems is for the entire replacement of the systems with conventional heating and water components, not the repair of the existing system.

In March, 2011 the applicant's husband wrote the respondent seeking vacant possession stating, "the house has had difficulty with water and plumbing, we feel is not fit to rented right now (sic)

and we can not afford the repairs." The respondent stated that the applicant's husband had told her that they needed tenants who were mechanically inclined that could work on and maintain the system.

The applicant stated that she was alerted by the supplier of propane that the fuel delivery volumes were very low. Fearing that the house might freeze, the applicant called the respondent who stated that everything was alright. There is not any evidence that the applicant advised the respondent that using only wood heat might subject the premises to damage. The applicant also stated that the leaking expansion tank did not reduce the effectiveness of the heating system. Without a detailed schematic of the system, I am unable to determine if this is true.

Whether or not the expansion tank had any effect on the heating system, it is my opinion that the system was such that a responsible average tenant would not be able to effectively manage the system. If there was damage to the system, it was not caused, in my opinion, by the respondent's neglect or oversight. I would also add that the respondent did very little to mitigate any potential damage to the property that might be caused by using wood heat alone. There is no evidence of any advice or instruction to the tenant that failure to use the propane or oil fired devices in the system could result in damage nor is there any indication that the system was glycol protected. For these reasons the heating and plumbing costs are denied.

The relief for the tile and vinyl floor repairs, carpet replacement and garage door replacement are also denied. The applicant has not provided sufficient evidence to show, on the balance of

probabilities, that the damage was done during the term of the agreement.

The relief for the replacement of trees is also denied. The evidence provided by the fire report does not implicate the respondent's children.

The relief of $210 for the towing of the respondent's vehicles is reasonable.

I find the respondent in breach of her obligation to pay rent and find the rent arrears to be $6000. I also find the respondent in breach of her obligation to remove the vehicles from the property at the end of the tenancy agreement. Applying the security deposit first to the towing charges, I find rent arrears of $4996.84 calculated as follows:

Security deposit	1200.00
Interest	13.16
Rent arrears	(6000.00)
Towing	(210.00)
Amount owing	$4996.84

An order shall issue requiring the respondent to pay the applicant rent arrears in the amount or $4996.84.

Hal Logsdon
Rental Officer