

IN THE MATTER between **NIRRIE KISTAN**, Applicant, and **BRUCE HANBIDGE**,  
Respondent;

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

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

BETWEEN:

**NIRRIE KISTAN**

Applicant/Tenant

- and -

**BRUCE HANBIDGE**

Respondent/Landlord

**ORDER**

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 7th day of  
December, 2012.

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Hal Logsdon  
Rental Officer

IN THE MATTER between **NIRRIE KISTAN**, Applicant, and **BRUCE HANBIDGE**, 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:

**NIRRIE KISTAN**

Applicant/Tenant

-and-

**BRUCE HANBIDGE**

Respondent/Landlord

**REASONS FOR DECISION**

**Date of the Hearing:** November 16, 2012 continued on November 22, 2012

**Place of the Hearing:** Yellowknife, NT via teleconference

**Appearances at Hearing:** Nirrie Kistan, applicant  
Bruce Hanbidge, respondent

**Date of Decision:** November 22, 2012

### **REASONS FOR DECISION**

This matter was initially set for hearing on November 16, 2012. The matter was adjourned to November 22 because the respondent had filed his written defence with the Rental Officer but had neglected to provide a copy to the applicant. The material was provided to the applicant by the Rental Officer in order to expedite the matter and the hearing adjourned to November 22, 2012.

The applicant alleged that the rental premises were inadequately heated and sought an order terminating the tenancy agreement. The tenancy agreement between the parties was made for a two year term commencing on October 1, 2011 and ending on September 30, 2013. The premises consist of a two story detached house. The applicant uses the lower floor as her residence and the upstairs as her office. The applicant's heating concerns are limited to the first floor. The premises are heated by a conventional gas-fired 126,000 BTU boiler with baseboard mounted radiation. The main floor is heated by a single zone.

The Environmental Health Officer conducted an inspection of the premises on January 30, 2012 and took temperature measurements in all of the downstairs rooms of the house at two levels above the floor. His conclusion was that the overall temperatures were below the minimum health standard of 16C and that corrections to the building and/or heating system are required to maintain a minimum temperature of 16C throughout the building. The inspection report was provided to the respondent.

On February 6, 2012 the respondent contacted a heating contractor and arranged for an inspection of the premises. The Environmental Health Officer tried to coordinate an inspection with the heating contractor on February 6, 2012. The heating contractor failed to appear and the Environmental Health Officer took further temperature readings and issued a second report. The results of the second inspection showed slightly higher room temperatures but all were still below 17C. The Environmental Health Officer also noted that the radiation in the dining room and part of the living room was not warm.

On February 8, 2012 the heating contractor attended the premises alone to check the heating system. He notes on his work order that the downstairs thermostat was set at 22-24C and that the premises felt warm. He noted that all radiation felt hot to warm. He adjusted the boiler temperature from 140-160F to 160-180F and checked the boiler pressure. He also noted that the front window was open and that beds and other items were pushed against the radiation causing some blockage to the air circulation.

The applicant did not file an Application to a Rental Officer until August 27, 2012.

On November 21, 2012 I personally inspected the premises with the Environmental Health Officer who again took temperature readings. The outside air temperature was -13C. With the thermostat set at 20C, readings taken 65 inches above the floor surface ranged from 17.2C in the living room to 21.4C in the back bedroom. The rooms on the north side of the house were noticeably cooler (18.5C average) than those on the south side (20.9C average). The floors were

cold, more so on the north side of the house. Both the Environmental Health Officer and myself felt quite comfortable in shirtsleeves although our feet, clad only in socks, were cool.

I inspected the boiler and the radiation. The boiler temperature and pressure were normal and there was heat in all radiation. I briefly inspected the exterior of the unit and found that snow was drifted in all around the south side of the unit but the north perimeter of the house was open to the wind. This is undoubtedly leading to increased heat loss in the floor on the north side of the house.

The applicant stated that the boiler had been serviced on several occasions since the inspection and adjustments on February 8, 2012.

The respondent questioned the temperature measurements taken by the Environmental Health Officer in January and February, 2012. The respondent stated that he lived in the premises and rented the upstairs during the winter of 2010/2011. He stated that neither he nor his tenants had any concerns about the heat. He also questioned how the January temperature reading in the laundry room could possibly be the lowest in the house unless the outside door had been left open prior to the measurements.

The relevant sections of the *Residential Tenancies Act* are as follows:

**30. (1) A landlord shall**

- (a) provide and maintain the rental premises, the residential complex and all services and facilities provided by the landlord, whether or not included in a written tenancy agreement, in a good state of repair and fit for habitation during the tenancy; and**
- (b) ensure that the rental premises, the residential complex and all services and facilities provided by the landlord comply with all health, safety and maintenance and occupancy standards required by law.**

- (2) Any substantial reduction in the provision of services and facilities is deemed to be a breach of subsection (1).**

**"services and facilities" includes furniture, appliances and furnishings, parking and related facilities, laundry facilities, elevator facilities, common recreational facilities, garbage facilities and related services, cleaning or maintenance services, storage facilities, intercom systems, cable television facilities, heating facilities or services, air- conditioning facilities, utilities and related services, and security services or facilities.**

- 30. (5) A tenant shall give reasonable notice to the landlord of any substantial breach of the obligation imposed by subsection (1) that comes to the attention of the tenant.**

- (6) A landlord shall, within 10 days, remedy any breach referred to in subsection (5)**

- 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.**

There is no evidence that the respondent is currently in breach of section 30. The temperatures recorded on November 21, 2012 are well within the standards established by Environmental Health. Undoubtedly, the temperatures recorded in January and February, 2012 were unacceptable and in my opinion would have constituted a breach of section 30 if the landlord had failed to remedy the heat problem. However, the respondent did take timely action to address the

problem and there is no evidence that the adjustments made to the heating system in February and the actions recommended to the applicant to clear belongings away from the radiation did not increase the temperature in the house to an acceptable level. One would have expected the applicant to file her application before August if the temperatures had remained at the January and February recorded levels.

Even if the temperature in the house was not significantly improved after February 8, 2012 (a fact that has not been established) is it reasonable to consider the termination of the tenancy agreement now for a breach that occurred over six months ago and appears to be resolved? In my opinion, no.

For these reasons, the application is dismissed.

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Hal Logsdon  
Rental Officer