

IN THE MATTER between **Michael Jekabson**, Applicant, and **Donna Kisoun**,
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, **Adelle Guigon**, Deputy Rental Officer,
regarding a rental premises located within the **Town of Norman Wells in the Northwest
Territories**.

BETWEEN:

MICHAEL JEKABSON

Applicant/Landlord

- and -

DONNA KISOUN

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the Respondent shall pay to the Applicant rental arrears in the amount of \$4,200 (four thousand two hundred dollars).
2. Pursuant to section 30(4)(c) of the *Residential Tenancies Act*, the Applicant shall pay to the Respondent reasonable expenses for repairs to the rental premises in the amount of \$1,040 (one thousand forty dollars).
3. Pursuant to section 41(4)(c) of the *Residential Tenancies Act*, the tenancy agreement between the parties regarding the rental premises known as #3 Ptarmigan Avenue in Norman Wells, Northwest Territories, is terminated effective October 15, 2013, and the Respondent shall vacate the premises on or before that date.

.../2

4. Pursuant to section 63(4)(b) of the *Residential Tenancies Act*, the Respondent shall pay to the Applicant compensation for the use and occupancy of the rental premises known as #3 Ptarmigan Avenue in Norman Wells, Northwest Territories, in the amount of \$17.26 per day for each day the Respondent remains in the rental premises after October 15, 2013.

DATED at the City of Yellowknife in the Northwest Territories this 17th day of September 2014.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Michael Jekabson**, Applicant, and **Donna Kisoun**,
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 **Adelle Guigon**, Deputy Rental Officer,

BETWEEN:

MICHAEL JEKABSON

Applicant/Landlord

-and-

DONNA KISOUN

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: September 6, 2013

Place of the Hearing: Yellowknife, Northwest Territories, via Teleconference

Appearances at Hearing: Michael Jekabson, Applicant
Donna Kisoun, Respondent

Date of Decision: September 16, 2013

REASONS FOR DECISION

Application

The Application to a Rental Officer made by Michael Jekabson as the Applicant/Landlord against Donna Kisoun as the Respondent/Tenant regarding the rental premises known as #3 Ptarmigan Avenue in Norman Wells, Northwest Territories, was received and filed by the Rental Office on July 30, 2013. The Applicant served a copy of the application package on the Respondent by Express Post signed for on August 21, 2013.

The Applicant sought an order for payment of rental arrears, termination of the tenancy, eviction, and compensation for use and occupancy of the rental premises following termination of the tenancy. Evidence submitted regarding this application is listed under Appendix 'A' attached to these reasons for decision.

Hearing

A hearing was scheduled for September 6, 2013, for which both parties were served notice by registered mail, signed for by each party on August 27, 2013. The hearing proceeded as scheduled and then was adjourned *sine die* pending receipt of additional supporting evidence.

Submissions

At hearing the Applicant reiterated his request for an order for rental arrears, termination of the tenancy, and eviction.

Both parties agreed: the tenancy commenced February 1, 2013, by written fixed-term tenancy agreement to July 31, 2013; the monthly rent was \$525 due the first of the month; the security deposit was \$500; the Respondent was permitted occupancy approximately January 8, 2013; and that no rent was requested for January 2013. Both parties further agreed that neither the rent nor the security deposit has been paid for the duration of the tenancy to date.

Both parties agreed that significant work needed to be done to the rental premises, including:

- repair and stabilizing of the deck stairs;
- repair of the deck;
- repair of the porch;

- replacement of the kitchen, living room, and hallway flooring; and
- replacement of a leaking window.

The parties agreed the stairs and deck required work to bring them to a condition that could be deemed safe for use. This work was completed in August 2013 and paid for by the Applicant.

The porch remains unrepaired. According to the Respondent's testimony at hearing and the Respondent's e-mail of June 19, 2013, submitted as evidence, the porch – which is a small addition attached to the rental premises – is pulling away from the main structure and the roof is caving in. The Respondent reported at hearing that the gap between the porch structure and the main structure is approximately six inches wide.

The parties agreed that the flooring needed to be replaced and, in fact, the Applicant had initiated this work before the Respondent took possession of the rental premises by making an agreement with the previous tenant for spare flooring the previous tenant had available from another property. The replacement work had not been performed when the Respondent took possession of the rental premises. The Applicant and Respondent attempted to work together to arrange for the replacement work to happen. The Respondent proceeded to arrange for the flooring to be replaced, based on the implied permission given by the Applicant in his January 8, 2013, e-mail.

The Respondent submitted that the flooring work required the contractor to remove the promised carpeting for the living room from the property it was in and transport it to the Applicant's rental premises, remove the flooring there, clean the plywood sub-floor of black mold, and then install the replacement flooring. She also indicated that the carpeting ended up being not quite enough for the rental premises, so the contractor had to work with it to make it fit properly. The Respondent paid for this work out of her own pocket. The Respondent asked the Applicant in her e-mail of April 6, 2013, to apply the money she paid for the flooring against her rent and security deposit owing.

The Respondent submitted an estimate from the contractor hired to replace the flooring. The estimate listed a total of 56 hours of labour at \$40 per hour, plus the costs for minor materials. The estimate did not identify details of the labour, aside from dates. Both parties agreed this document was not the official invoice for the replacement of the flooring and could not be accepted as such.

The Respondent identified to the Applicant that the window was leaking in her e-mail of June 19, 2013, and the Applicant acknowledged in his Application to a Rental Officer that the window had lost its seal and would need to be replaced. It was not made clear at hearing or in evidence whether or not this window has been repaired or replaced yet.

The Applicant stated at hearing that his request for termination of the tenancy and eviction was supported by the fact that he had not received any rent payments for the duration of the tenancy, and since the premises appeared to require substantial work to bring it to a safe living condition it would be in the best interest of both parties if the landlord could regain vacant possession of the rental premises.

The Respondent indicated she did not mind living in the rental premises with the work that needed to be done and was prepared to assist in having the work completed. She stated she had only just moved to the community and started a new business. This, along with having paid for the flooring replacement, put her in a financially tight position in the early months of the tenancy. She did not offer an explanation for her continued failure to pay rent.

Determinations

Tenancy Agreement

The written tenancy agreement submitted in evidence reflects the commencement date of February 1, 2013, for a fixed-term to July 31, 2013. It further reflects the agreed upon monthly rent of \$525 due the first of the month, and security deposit of \$500. The tenancy agreement was signed by the landlord, forwarded to the tenant by e-mail on January 8, 2013, and the tenant was permitted to take occupancy of the rental premises. I am satisfied a valid tenancy agreement was in place. Pursuant to the Act, this tenancy agreement reverted to a periodic tenancy as of August 1, 2013.

Rental Arrears

The Applicant provided a rent statement into evidence reflecting the security deposit and rent payable to July 1, 2013. The Respondent did not dispute this statement and confirmed that she had made no payments to the Applicant for either her rent or security deposit since commencing the tenancy. At hearing the parties agreed to add the rent for the months of August and September to the statement, adjusting the balance owing for rent to \$4,200. I am satisfied this amended rent statement accurately reflects the rent owing and I find the Respondent has rental arrears of \$4,200.

Repairs

The Applicant referenced required repairs to the rental premises in his Application to a Rental Officer to which the Respondent was able to reply and to which both parties corroborated with testimony and additional evidence. The Respondent could have made an Application to a Rental Officer for remedy under the act for these deficiencies, and in light of the fact that both parties spoke to these deficiencies during the course of this hearing I am considering these required repairs.

The Applicant submitted an invoice dated August 6, 2013, from RDH Contracting Ltd. identified as being issued for the repairs to the stairs and the deck, and he indicated at hearing he paid this invoice directly. The Respondent confirmed at hearing that these repairs did take place. I am satisfied that these deficiencies have been remedied.

The parties agreed at hearing the porch and window still required repair. It was not made clear at hearing when the Applicant intended to facilitate these repairs. In any event, I am satisfied that these deficiencies represent a safety hazard to any tenants occupying the rental premises and are a condition of normal wear and tear, making them the responsibility of the landlord to repair. I find the Applicant in breach of section 30(1)(b) of the Act.

The parties agreed the flooring in the kitchen and living room needed to be replaced. The parties further agreed that the materials for this replacement were provided by the landlord via an agreement with the landlord's previous tenant. The Applicant provided the combined floor measurements for the two rooms as approximately 198 square feet. The Respondent did not dispute this measurement. I am satisfied that the approximate size of the floor area requiring replacement is 198 square feet. While the Respondent's submission of the estimate is not admissible in and of itself as the invoice for replacement of the flooring, it does indicate an hourly rate for labour of \$40, which in my opinion is a reasonable rate to apply against the replacement of the flooring. The Respondent submitted that the work to replace the flooring required extra work in the form of removing the replacement carpeting from its previous location and cleaning the plywood sub-floor of black mold. The Applicant did not dispute this submission. In my opinion it is reasonable to include time spent on this extra work in the calculations for the flooring replacement, as follows:

Description	Hours	Rate per hour	Balance
Removal and transportation of replacement carpeting from previous location	4	\$40	\$160
Removal of flooring and underlay from rental premises kitchen and living room	8	\$40	\$320
Cleaning of black mold from plywood sub-flooring in rental premises kitchen and living room	4	\$40	\$160
Installation of replacement underlay and flooring in rental premises kitchen and living room	10	\$40	\$400
Total Amount for Replacement of Kitchen and Living Room Flooring			\$1,040

Having found the Applicant in breach of section 30(1)(b) of the Act, I further find him responsible to reimburse the Respondent for reasonable expenses associated with replacing the flooring in the amount of \$1,040.

Termination of the Tenancy

The Act specifically precludes tenants from withholding rent from a landlord. The Respondent submitted that she had requested of the Applicant that the costs associated with the flooring replacement for which she paid be applied against the security deposit and rent owing. There was no testimony and there is no evidence before me to indicate the landlord agreed to this request. I am satisfied that no such approval was given and the Respondent remained obligated to pay the rent owing.

Regardless of the condition of the rental premises, the tenant remains obligated to pay her rent from the moment the tenancy commences. In this instance, the Respondent has failed to pay her rent from the very beginning of the tenancy, not just for the period she allegedly believed paying for the flooring replacement would be accounted, and to this date has not paid her rent. In my opinion, the Respondent has not acted in good faith with respect to the rent payments and has not given the Applicant a sufficient reason to believe she will pay her rent in the near future. The landlord has the right to expect to receive the agreed upon compensation for permitting the tenant to occupy his rental premises. Based on the substantial rental arrears evidenced, I find termination of this tenancy is warranted and will be granted effective October 15, 2013.

Eviction and Compensation

I further find eviction of the tenant and compensation for use and occupation of the rental premises after the termination date is justified.

Order

An order will issue for the Respondent to pay the Applicant rental arrears in the amount of \$4,200, for the Applicant to pay the Respondent reasonable expenses for repairs to the rental premises in the amount of \$1,040, for termination of the tenancy agreement effective October 15, 2013, and compensation for use and occupancy of the rental premises in the amount of \$17.26 per day for each day the Respondent remains in the rental premises after the termination date.

An eviction order will follow under separate cover.

Adelle Guigon
Deputy Rental Officer

APPENDIX 'A'

Exhibits

Exhibit 1: Tenancy Agreement dated January 8, 2013

Exhibit 2: Rent Statement

Exhibit 3: Set of e-mails dated between January 8, 2013, to September 10, 2013

Exhibit 4: Two receipts received from the Applicant by e-mail: Canada Post Express Post receipt dated July 23, 2013 and RDH Contracting Ltd. invoice dated August 6, 2012

Exhibit 5: Rough Estimate Sheet dated February 25, 2013

Exhibit 6: Signature page of tenancy agreement reflecting the Respondent's signature