

IN THE MATTER between **MATTHEW KENNEDY**, Applicant, and **NPR LIMITED PARTNERSHIP**, 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 **YELLOWKNIFE, NT**.

BETWEEN:

MATTHEW KENNEDY

Applicant/Tenant

- and -

NPR LIMITED PARTNERSHIP

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 30(4)(d) of the *Residential Tenancies Act*, the respondent shall pay the applicant compensation in the amount of one thousand ninety eight dollars and eighty three cents (\$1098.83).

DATED at the City of Yellowknife, in the Northwest Territories this 8th day of May, 2014.

Hal Logsdon
Rental Officer

IN THE MATTER between **MATTHEW KENNEDY**, Applicant, and **NPR 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.

BETWEEN:

MATTHEW KENNEDY

Applicant/Tenant

-and-

NPR LIMITED PARTNERSHIP

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: April 2, 2014

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Matthew Kennedy, applicant
David Alexandre, witness for the applicant
Marie Laberge, representing the respondent

Date of Decision: May 7, 2014

REASONS FOR DECISION

The name of the respondent on the application was not the legal name of the landlord. This order reflects the legal name of the respondent.

The applicant alleged that the respondent had breached the tenancy agreement by failing to maintain the rental premises in a good state of repair and sought an order requiring the respondent to pay compensation that was suffered as a result of the breach.

The applicant stated that the apartment had been flooded on two occasions. The first incident occurred on January 4, 2014 and was caused by a failure in the sprinkler system. Another leak occurred in the apartment above on February 5 allowing water to enter the applicant's apartment. The applicant stated that he contacted the landlord and requested accommodation at a hotel and was told that the apartment was habitable and that no compensation for a hotel would be considered. The applicant left the apartment and stayed at a hotel that night.

The following day, an environmental health officer was contacted and attended the apartment. He noted in a letter to the applicant, dated February 11, that he did not consider the condition of the apartment to be a health hazard but noted that, "it is reasonable to conclude that the tenants would be uncomfortable and unable to enjoy the normal standard of living during remediation."

The applicant stated that premises were not livable until February 25, when he moved back into

the apartment. The applicant moved out of the premises on April 1, ending the tenancy agreement. The applicant sought compensation of \$2484.54 composed of the following elements:

| | |
|--|----------------|
| Hotel Accommodation - February 6 | \$140.70 |
| Electricity costs related to repairs | 58.13 |
| 20 days of rent while repairs were completed | 1285.71 |
| 20 days of meal costs while apartment was being repaired | <u>1000.00</u> |
| Total relief sought | \$2484.54 |

Section 30 of the *Residential Tenancies Act* obligates the landlord to maintain the premises in a good state of repair throughout the term of the tenancy.

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.**

The respondent acknowledged that the electricity consumption for the apartment, paid by the tenant, would be higher during the repair period due to fans and dehumidifiers that were in use by the landlord. The respondent submitted that the repairs to the apartment were completed on February 17, 2014.

After reviewing the photographs, I must concur with the environmental health officer that the tenant was certainly unable to fully enjoy the premises after the water escape. The carpets have been torn up, the tenant's furniture is stacked all around the apartment, there are bowls to catch dripping water from the ceiling, light fixtures are partially filled with water and there are fans and

dehumidifiers in use. Although the apartment may not have presented a health hazard, it was in my opinion, unfit for habitation on February 5 and the applicant is entitled to the hotel costs for that night.

There is a discrepancy concerning when the repairs were complete. The respondent testified that they were complete on February 17, 2014. This was supported by a work order provided in evidence. However, another work order was generated on February 18 regarding patching and painting the water damaged ceiling. It suggests that the repairs which were the result of the flood were still outstanding. This work order is not marked completed and was printed on March 11.

On the balance of probabilities, I accept the testimony of the applicant that the apartment was not ready for occupancy until February 25.

The rent for the premises was \$1800/month. The applicant seeks compensation for his loss of full enjoyment of the premises in the form of a refund of rent that was paid in February, 2014. As I have stated previously, I believe that loss amounts to 100% for February 5, 2014. After that date the applicant could have perhaps resumed occupation of the premises but chose not to. He is not entitled to compensation for 100% loss of full enjoyment simply because he chose not to move back into the apartment but in my opinion is entitled to a refund of the rent paid based on the degree of loss of enjoyment he incurred.

The alleged loss of the ability to prepare meals in the apartment should be considered as part of the overall loss of enjoyment rather than a separate item for compensation. In my opinion it is not

reasonable to seek a full abatement of rent plus costs of meals. The loss of his ability to prepare meals is part of the overall loss of full enjoyment of the premises.

In my opinion, the tenant lost an average of 70% of his full enjoyment of the rental premises between February 5 and February 25, 2014. I calculate reasonable compensation as \$900 calculated as follows:

$$(\$1800/28 \text{ days})(20 \text{ days})(70\%) = \$900.00$$

Adding the electrical and hotel costs, I find total compensation to be \$1098.83 calculated as follows:

| | |
|------------------------|---------------|
| Loss of full enjoyment | \$900.00 |
| Electricity | 58.13 |
| Hotel | <u>140.70</u> |
| Total | \$1098.83 |

An order shall issue requiring the respondent to pay the applicant compensation in the amount of \$1098.83.

Hal Logsdon
Rental Officer