

IN THE MATTER between **809656 ALBERTA LTD.**, Applicant, and **RICHARD PAYNE**, 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:

809656 ALBERTA LTD.

Applicant/Landlord

- and -

RICHARD PAYNE

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 eight hundred seven dollars (\$807.00).
2. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondent shall pay the applicant costs related to repairs of tenant damages to the premises in the amount of three hundred two dollars (\$302.00).

DATED at the City of Yellowknife, in the Northwest Territories this 13th day of December, 2002.

Hal Logsdon
Rental Officer

IN THE MATTER between **809656 ALBERTA LTD.**, Applicant, and **RICHARD PAYNE**, 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:

809656 ALBERTA LTD.

Applicant/Landlord

-and-

RICHARD PAYNE

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: December 10, 2002

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Talib Rasheed, representing the applicant

Date of Decision: December 13, 2002

REASONS FOR DECISION

The respondent/tenant was served with a Notice of Attendance on November 25, 2002 but failed to appear at the hearing. The hearing was held in his absence.

The tenancy agreement between the parties was terminated on October 2, 2002 when the tenant vacated the premises. The landlord retained the security deposit and sought additional amounts related to cleaning and repair costs. An itemized statement of the security deposit was included with the filed application which was served on the tenant. The landlord also provided a copy of a condition report which was signed by the tenant at the commencement of the tenancy. The report indicated that the premises were in a clean and undamaged condition when the tenancy started.

The landlord testified that the tenants failed to leave the premises, including the carpets, in a reasonably clean condition. He testified that cleaning of the premises and the carpet were required. The nature of the repairs, holes in walls and broken doors, indicates, in my opinion, damages due to negligence. I find the costs of repair and cleaning reasonable. Deducting the security deposit and interest from the costs claimed for repair and cleaning, I find the amount to be \$302, calculated as follows:

Security deposit and interest	\$428.00
General cleaning	(120.00)
Carpet cleaning	(135.00)
Wall repair	(225.00)
Key replacement	(50.00)
Door repair	<u>(200.00)</u>
Amount owing for repairs/cleaning	\$302.00

In the matter of rent, I find the landlord's ledger in order and the rent arrears to be \$807.

The landlord also claimed an amount of \$140 with respect to a provision in the tenancy agreement regarding a rent discount. The tenancy agreement between the parties is in writing and does not set out a rent for the premises. That section of the tenancy agreement has not been completed. The agreement is made for a term of one year, commencing March 1, 2002. An addendum to the tenancy agreement, referred to as "Schedule B" sets out a "market rent" of \$1095 then sets out a "discount rent" of \$975 to be charged provided the tenant resides in the unit for the full one year term and pays rent no later than the first of every month. The agreement sets out a provision whereby the discount will be recaptured if the tenant terminates the tenancy earlier than the end of the term.

The landlord has taken the difference between his one year "market rent" rate and his discounted rate for a six-month term tenancy agreement (\$20/month) and multiplied it by the number of months the tenant was in possession (7 months).

The tenancy agreement, which includes the Schedule B addendum, requires the payment of additional money if elements of the agreement are not fulfilled by the tenant. In law, this money must be either liquidated damages or a penalty. Liquidated damages must be a reasonable pre-estimate of damages. In this case the longer the tenant complies with the tenancy agreement, the greater the sum he must pay. However, the landlord's potential damages obviously decrease the longer the tenant remains in possession. In my opinion, this can not be considered a reasonable

pre-estimate of damages. If the provision does not meet the test for liquidated damages it must be a penalty. Section 13 of the *Residential Tenancies Act* prohibits a tenancy agreement from requiring a specific sum becoming due and payable on the tenant's breach of the agreement or Act.

13. No tenancy agreement shall contain any provision to the effect that a breach of the tenant's obligation under the tenancy agreement or this Act results in the whole or any part of the remaining rent becoming due and payable or results in a specific sum becoming due and payable, and a provision of this kind is of no effect.

In my opinion, a schedule or formula used to calculate a specific sum payable on the tenant's breach of the agreement which does not constitute a reasonable pre-estimate of damages is prohibited pursuant to section 13. The landlord's claim for \$140 as compensation for early termination of the tenancy agreement is, in my opinion, a penalty and the claim is denied.

I find the tenants failed to pay the lawful rent to the landlord and failed to clean or repair the premises at the termination of the tenancy. I find the rent arrears to be \$807 and the costs of cleaning and repair to be \$302, after deducting the security deposit and interest. An order shall be issued requiring the tenants to pay the landlord those amounts.

Hal Logsdon
Rental Officer