

IN THE MATTER between **NIHJAA PROPERTIES LTD.**, Landlord, and **JOHN R. RHYNES**, Tenant;

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 **INUVIK, NT.**

BETWEEN:

NIHJAA PROPERTIES LTD.

Landlord

- and -

JOHN R. RHYNES

Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 34(2)(c) and 84(2) of the *Residential Tenancies Act*, the landlord shall pay compensation to the tenant related to disturbance of the tenant's enjoyment of the rental premises and residential complex in the amount of two thousand fifty three dollars and eighty five cents (\$2053.85). The compensation shall be paid to the tenant in the form of a rent credit.

2. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the tenant shall pay the landlord the remaining arrears of rent after application of the rent credit in the amount of four thousand one hundred seven dollars and seventy cents (\$4107.70).

DATED at the City of Yellowknife, in the Northwest Territories this 1st day of December, 2002.

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");

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BETWEEN:

NIHJAA PROPERTIES LTD.

Landlord

-and-

JOHN R. RHYNES

Tenant

REASONS FOR DECISION

Date of the Hearing: November 25, 2002

Place of the Hearing: Inuvik, NT

Appearances at Hearing: John R. Rhynes, tenant
Sam Kassem, representing the landlord

Date of Decision: December 1, 2002

REASONS FOR DECISION

Both parties filed applications on October 2, 2002. As both applications pertain to the same rental premises and tenancy agreement, with the consent of both parties, the matters were heard at a common hearing.

The landlord undertook major renovations to an apartment complex. The landlord did not seek termination of the existing tenancy agreements, permitting tenants to remain in possession during the construction if they wished. The landlord gave notice to tenants of a rent increase to be effective September 1, 2002. The new rental rate was named as \$1400/month for one-bedroom apartments but current tenants would enjoy a reduced rent of \$1300/month. On June 14, 2002 the landlord requested tenants to pack their belongings to be moved to another apartment while their apartment was being renovated. The notice also outlined the landlord's offer to waive one month's rent, to be applied to either July or August.

The tenant went on vacation during the month of July in order to permit the renovation of the premises while he was away. The tenant testified that on his return in early August, work on the premises was unfinished and remains in that condition. The tenant provided photographs of the premises and the common areas of the building. The tenant outlined the inconveniences of living in the building during extensive renovation and sought an abatement of rent as compensation for his loss of quiet enjoyment of the premises and residential complex. The tenant testified that he and other tenants had attempted to negotiate further reductions in rent, given the magnitude of

disruption, but had not been successful.

The landlord alleged that the tenant had failed to pay rent and indicated that in his opinion, there was no tenancy agreement between the parties. He provided a statement of rent which indicated a balance of rent due in the amount of \$6213.84 as at November 1, 2002. The landlord sought an order requiring the tenant to pay the alleged rent arrears and possession of the premises.

The landlord indicated that he believed the work in the common areas of the complex would be substantially complete by December 31, 2002 but that he may not complete the renovations on all apartments. He also indicated that he could not agree to the tenants' position that rent should be reduced until the renovations to the building are complete.

The tenant disputed the allegation pertaining to rent arrears pointing out that the landlord's statement did not include the free month's rent or the rent reduction to \$1300/month. The tenant also produced a notice from the landlord demanding rent for August, September and October in the amount of \$2700 and a notice of termination from the landlord stating that five months of rent are due in the amount of \$4500.

The rental officer walked through the residential complex but did not enter the premises of the tenant. The condition of the common areas of the building is accurately represented by the photographic evidence submitted by the tenant. I also noted significant construction activity in a number of apartments which created a significant amount of noise.

Section 59 of the *Residential Tenancies Act* permits a rental officer to terminate a tenancy agreement where a landlord requires possession in order to make extensive repairs which require vacant possession. The renovations of this complex clearly fall into that category. Instead of making application to terminate the existing tenancy agreements, the landlord elected to allow tenants to maintain possession during the renovation work. Just how the landlord planned to undertake the work to the apartments still occupied is unclear, but the tenant expected that work on his apartment would be completed during the month of his planned absence and made this known to the landlord. Had the work on the tenant's premises been completed during that period, the compensation of one month's rent would have most likely been deemed reasonable, even if the remaining work on the common areas was not completed for another month or so. However, the work on the tenant's premises is still unfinished and work on the remainder of the complex is still ongoing five months later. In my opinion, the landlord has breached the tenancy agreement by disturbing the tenant's quiet enjoyment of the premises and residential complex and compensation is a reasonable remedy.

The landlord's position that there is no tenancy agreement is without basis. The tenant is in possession and the tenancy agreement has not been terminated in accordance with the Act. The notice of rent increase dated June 1, 2002 appears to be in order and clearly indicates a rent of \$1300/month for current tenants, effective September 1, 2002. The demand notice for rent and the notice of termination appear to calculate rent for August onward at \$900/month but there is no evidence that the landlord rescinded the June 1, 2002 notice of rent increase. The landlord explained the notices as part of "negotiations". Notwithstanding any consideration of rent

abatement, I find the rent owing to be \$6161.55, including rent for December which has now come due. No interest has been calculated from December 1, 2002 and the interest calculations of the landlord have been adjusted to conform with the *Residential Tenancies Act*.

July rent	\$900.00
credit for renovations	(900.00)
August rent	900.00
interest - August	1.61
September rent	1300.00
interest - September	7.72
October rent	1300.00
interest - October	18.53
November rent	1300.00
interest - November	33.69
December rent	<u>1300.00</u>
TOTAL	\$6161.55

In my opinion reasonable compensation for loss of enjoyment is one third of the rent payable from the commencement of the renovations to December 31, 2002. I calculate the compensation and remainder of rent payable as follows:

Rent payable	\$6161.55
Compensation	(2053.85)
Remaining rent owing	\$4107.70

An order shall be issued requiring the landlord to pay compensation to the tenant in the amount of \$2053.85 in the form of a rent credit. The order shall require the tenant to pay the remaining balance of the rent arrears to the landlord in the amount of \$4107.70.

The landlord's application for termination of the tenancy agreement is denied. Should the tenant fail to pay the remaining balance of the rent, the landlord may make seek further remedy through

an application to a rental officer. Similarly, should the disruption of the tenant's enjoyment of the premises continue past December 31, 2002, the tenant may seek further remedy.

Hal Logsdon
Rental Officer