

IN THE MATTER between **902754 NWT LIMITED**, Landlord, and **SHARON AVIUGANA**, 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:

902754 NWT LIMITED

Landlord

- and -

SHARON AVIUGANA

Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 30(4)(d) of the *Residential Tenancies Act*, the landlord shall pay compensation to the tenant for losses directly related to the landlords failure to maintain the rental premises in a good state of repair in the amount of one thousand two hundred dollars (\$1200.00). The compensation shall be paid by applying a credit to the tenant's rent account.
2. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the tenant shall pay the landlord the remainder of the rent arrears after application of the compensation and

security deposit and interest in the amount of three hundred ninety seven dollars and seventy eight cents (\$397.78).

DATED at the City of Yellowknife, in the Northwest Territories this 4th 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");

AND IN THE MATTER of a Hearing before **Hal Logsdon**, Rental Officer.

BETWEEN:

902754 NWT LIMITED

Landlord

-and-

SHARON AVIUGANA

Tenant

REASONS FOR DECISION

Date of the Hearing: November 27, 2002

Place of the Hearing: Inuvik, NT

Appearances at Hearing: Talal Khatib, representing the landlord
Sharon Aviugana, tenant
Albert Brodhurst, witness for the tenant

Date of Decision: December 4, 2002

REASONS FOR DECISION

The landlord and tenant both filed applications on October 30, 2002. As both applications relate to the same tenancy agreement and rental premises, with the agreement of both parties, both matters were heard at a common hearing. The hearing was originally scheduled for November 26, 2002. At the request of the landlord the hearing was adjourned to November 27, 2002.

The tenant alleged that the landlord had failed to repair the rental premises and sought an order requiring the landlord to undertake repairs and pay compensation to the tenant. The landlord alleged that the tenant had failed to pay rent and sought an order requiring the respondent to pay the alleged rent arrears.

The tenant took possession of the rental premises on or about August 27, 2002. The parties agreed that the tenant provided a security deposit of \$500 and paid the rent for the month of September in the amount of \$1500. The parties also agreed that they had mutually determined what repairs were to be made to the premises.

The tenant testified that she left the rental premises on or about November 12, 2002 because the landlord had not completed the repairs and she felt she could no longer live in the premises due to its poor condition. On or about the same date, the electricity was cut off due to non-payment of the account. The payment of electricity was acknowledged by the tenant as her responsibility. She testified that she has been living at "Turning Point" since that time and did not inform the landlord of her departure or express any intentions to return to the premises.

The landlord testified that he had complaints of foul odours from other tenants in the complex and entered the premises with the assistance of the police on or about November 21, 2002. He discovered spoiled fish in the apartment and assumed the premises had been abandoned. He took possession of the premises and stored the personal possessions of the tenant. The landlord testified that no rent had been paid for October or November, 2002. The rent for the premises was \$1500/month. The landlord testified that he had the premises painted and carpet installed in August, 2002 and had made arrangements to have the remainder of the agreed upon repairs done. He indicated that they would be completed by November 29, 2002. The landlord sought an order requiring the tenant to pay rent arrears in the amount of \$3000.

Section 1(3) of the *Residential Tenancies Act* sets out the definition of abandonment.

1. (3) For the purpose of this Act, a tenant has abandoned the rental premises and the residential complex where the tenancy has not been terminated in accordance with this Act and
 - (a) the landlord has reasonable grounds to believe that the tenant has left the rental premises; or
 - (b) the tenant does not ordinarily live in the rental premises, has not expressed an intention to resume living in the rental premises, and the rent the tenant has paid is no longer sufficient to meet the tenant's obligation to pay rent.

In my opinion, the tenants abandoned the rental premises and the landlord was entitled to consider the premises abandoned and take possession. Pursuant to section 62 of the Act, the tenancy agreement is terminated when a tenant abandons rental premises. I find this tenancy agreement was terminated on November 12, 2002 when the tenant vacated the premises.

From the photographic evidence and testimony of the tenant, I find the landlord breached the

tenancy agreement by failing to maintain the premises in a state of good repair. Despite the repairs undertaken in August, significant problems remained which represented a substantial breach of the agreement. In my opinion, compensation is justified for the loss of full enjoyment of the premises directly related to the landlord's failure to repair. In my opinion, reasonable compensation is one third of the rent payable from September 1, 2002 to the termination of the tenancy agreement or \$1200, calculated as follows:

September rent	\$1500
October rent	1500
November rent (Nov 1-12)	<u>600</u>
Total	\$3600
Compensation	\$1200

As the tenancy agreement is terminated the security deposit of \$500 plus accrued interest of \$2.22 may be retained by the landlord and applied against the rent arrears. Taking the security deposit and compensation into account, I find the remaining rent arrears to be \$397.78 calculated as follows:

October rent	\$1500.00
November rent	600.00
Security deposit + interest	(502.22)
Compensation	<u>(1200.00)</u>
Remaining rent arrears	\$397.78

An order shall be issued requiring the landlord to credit the compensation to the tenant's rent account and requiring the tenant to pay the landlord the remaining balance of the rent arrears. I remind the landlord to comply with the provisions for abandoned personal property contained in the *Residential Tenancies Act*.

Hal Logsdon
Rental Officer