

IN THE MATTER between **INUVIK HOUSING AUTHORITY**, Applicant, and
JENNIE SMITH, 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 **INUVIK, NT**.

BETWEEN:

INUVIK HOUSING AUTHORITY

Applicant/Landlord

- and -

JENNIE SMITH

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 two hundred forty-four dollars (\$244.00).
2. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondent shall pay to the applicant costs related to the repair of tenant damages to the premises in the amount of two hundred forty-six dollars and four cents (\$246.04).
3. Pursuant to sections 41(4)(c), 42(3)(f) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement for the premises known as MC169, 29B Mackenzie Road, Inuvik, NT shall be terminated on March 15, 2004 and the respondent shall vacate the premises on that date, unless this order is fully satisfied.

DATED at the City of Yellowknife in the Northwest Territories this 27th day of February 2004.

Hal Logsdon
Rental Officer

IN THE MATTER between **INUVIK HOUSING AUTHORITY**, Applicant, and
JENNIE SMITH, Respondent.

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter
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BETWEEN:

INUVIK HOUSING AUTHORITY

Applicant/Landlord

-and-

JENNIE SMITH

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: February 24, 2004

Place of the Hearing: Inuvik, NT

Appearances at Hearing: Victoria Boudreau, representing the applicant
Jennie Smith, respondent

Date of Decision: February 27, 2004

REASONS FOR DECISION

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay rent and by failing to repair damages to the premises which were the result of her negligence. The applicant sought an order requiring the respondent to pay the alleged rental arrears and costs related to the repair of the alleged damages and terminating the tenancy agreement between the parties.

The applicant testified that when the premises were inspected on September 10, 2003 there was significant tenant damage. The applicant submitted photographs and an inspection report outlining the condition of the premises on that date. The applicant served a notice of early termination on the respondent on September 15, 2003 seeking vacant possession on October 2, 2003. The respondent appealed the notice to the Board of Directors, who rescinded the notice on the condition that the respondent repair the damages within one month and not damage the premises again.

The premises were inspected again on November 18, 2003. The applicant testified that at that time the repairs had not been completed and there were further damages to the premises. The repairs which were done were not deemed satisfactory by the applicant. No inspection report was done or photographs taken at that time. The applicant testified that there were holes in the walls, radiator covers missing and additional damage to the bedroom. The respondent was again served a notice of early termination seeking vacant possession on December 8, 2004 and an application to a rental officer was filed on January 2, 2004.

The applicant testified that several repairs were carried out by the landlord and billed to the respondent. A smoke detector was repaired and a fire extinguisher replaced for a cost of \$59.63 and a window was repaired for a costs of \$246.04.

The applicant provided a statement of account and invoices for the repairs in evidence. The statement indicated a balance of rent owing in the amount of \$244 and repair costs in the amount of \$305.67.

The respondent did not dispute the allegations concerning rent, but testified that the damage to the smoke detector and fire extinguisher was done by others who broke into the premises. The respondent stated that she had reported the incident to the police and to the landlord. The applicant acknowledged that the incident had been reported to them. The respondent stated that the window had been broken by mistake. The respondent stated that she had tried to repair the premises and if the repairs were not to standard she would have them repaired properly.

A landlord may serve a notice of early termination on a tenant seeking vacant possession for a number of reasons which are stated in section 54. One of the reasons relates to tenant damages:

"54.(1)(b) the tenant, or a person permitted in or on the rental premises or residential complex by the tenant, has caused damage to the rental premises or the residential complex and the tenant has failed to comply with an order of the rental officer made under subsection 42(3);"

There have been no previous orders issued against the respondent. A termination of the tenancy agreement must therefore be made pursuant to section 42(3) and not section 54(4) as the notice given by the landlord was not consistent with the provisions of section 54(4).

Section 42 requires a tenant to repair tenant-caused damages to the premises:

"42.(1) A tenant shall repair damage to the rental premises and the residential complex caused by the wilful or negligent conduct of the tenant or persons who are permitted on the premises by the tenant."

In order to find a tenant in breach of this obligation, a rental officer must see reasonable evidence of damage, determine that it was caused by the wilful or negligent conduct of the tenant or his/her guests, is not normal wear and tear, and has not been repaired by the tenant.

The photographic evidence provided by the applicant is over five months old. There is no doubt that it supports the allegation that the tenant damaged the premises. The question becomes whether the tenant has repaired the damage. The premises were inspected again in November. There is no inspection report or photographic evidence to indicate the condition of the premises at that point in time. The inspection served primarily to determine if the repairs were carried out within the time limit imposed by the Board of Directors. It provides nothing to determine the extent to which repairs have (or have not) ultimately been made. More than three months have passed since the landlord has been in the premises. Consequently, I have little evidence before me to indicate the present condition of the premises.

The damages to the fire extinguisher and smoke detector do not appear to have been done by the tenant or persons permitted in the premises by the tenant. The applicant's request for compensation for the repair costs of \$59.63 are denied. The broken window is the tenant's responsibility and I find the costs of \$246.04 to be reasonable.

I find the respondent breached the tenancy agreement by failing to pay rent and by failing to repair the broken window. I find the rental arrears to be \$244 and the repair costs for the window to be \$246.04. In my opinion, there are sufficient grounds to terminate the tenancy agreement unless the rental arrears and repair costs are promptly paid. An order shall issue requiring the respondent to pay to the applicant rental arrears and repair costs in the total amount of \$490.04.

Hal Logsdon
Rental Officer