

IN THE MATTER between **INUVIK HOUSING AUTHORITY**, Landlord, and **JANE TETLICH AND JOSEPH KAYE**, Tenants;

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

Landlord

- and -

JANE TETLICH AND JOSEPH KAYE

Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the tenants shall pay the landlord rent arrears in the amount of one thousand one hundred forty four dollars (\$1144.00).
2. Pursuant to section 84(2) of the *Residential Tenancies Act*, the respondents may pay the rent arrears in monthly installments of no less than two hundred dollars (\$200.00), the first payment becoming due on December 1, 2004 and payable thereafter on the first day of every month until the rent arrears are paid in full.

3. Pursuant to section 41(4)(b) of the *Residential Tenancies Act*, the respondents shall pay future rent on time.

DATED at the City of Yellowknife, in the Northwest Territories this 13th day of November, 2004.

Hal Logsdon
Rental Officer

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INUVIK HOUSING AUTHORITY

Landlord

-and-

JANE TETLICH AND JOSEPH KAYE

Tenants

REASONS FOR DECISION

Date of the Hearing: **October 25, 2004**

Place of the Hearing: **Inuvik, NT**

Appearances at Hearing: **Victoria Boudreau, representing the landlord**
Jane Tetlich, tenant
Joseph Kaye, tenant

Date of Decision: **November 4, 2004**

REASONS FOR DECISION

The Landlord's application was filed on August 31, 2004 and the respondents' application was filed on September 21, 2004. As both applications relate to the same tenancy agreement and rental premises, both matters were heard at a common hearing. The tenancy agreement is acknowledged by both parties to be made between the landlord and Jane Tetlich and Joseph Kaye as joint tenants. Accordingly, the order shall include both joint tenants.

The landlord alleged that the tenants had breached the tenancy agreement by failing to pay rent and sought an order requiring the tenants to pay the alleged rent arrears and terminating the tenancy agreement. The landlord testified that after the application was filed, the tenants had been invoiced for repair costs related to damages to their previous premises. The landlord noted that no detail of the alleged damages had been provided with the application and stated their willingness to not seek further remedy for the repair costs at this time.

The landlord provided a statement of account in evidence which indicated a balance of rent owing in the amount of \$1958 and charges for repairs in the amount of \$2907.19.

The tenants disputed the allegations pertaining to rent arrears, stating that they thought the arrears were only \$610. After considerable review of the statement provided by the landlord, the tenants were unable to identify any payments that did not appear on the statement or any errors in the assessment of the monthly rent.

Ms. Tetlichich testified that she had received the invoice for repairs in September, 2004 and has some concerns about the costs. She stated that she intends to speak to the board of directors about the charges.

Ms. Tetlichich testified that the premises had been severely damaged by water infiltration in April, 2004, forcing them to live in one room. She stated that the carpets had been ruined by the water. She notified the landlord who relocated her other premises in mid-May, 2004. The tenants sought compensation for moving expenses, compensation for the value of the carpets and compensation for loss of full enjoyment of the premises. Ms. Tetlichich stated that the carpets had cost \$179 when new and were only eight months old. She also provided a receipt for moving expenses in the amount of \$190. The tenants sought compensation amounting to the full amount of the April, 2004 rent.

The landlord acknowledged that the premises had suffered extensive damage due to water infiltration and provided photographs of the premises. The landlord stated that they had relocated the tenants as soon as another unit was available. The landlord referred to article 20 of the written tenancy agreement between the parties which states:

The Landlord shall not be responsible for any damage to any tenant property located on the premises. The Landlord shall not be liable for any injury or death occurring on the premises. The Tenant shall assume all risks relating to property and persons on the property and shall be responsible for insuring his own personal property.

The landlord stated that the tenants' requests for compensation had been brought before the Board of Directors and denied.

Section 30 of the *Residential Tenancies Act* sets out a landlord's obligation to maintain rental premises.

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.**

Subsection 4 sets out remedies for a landlord's breach of this obligation and includes the remedy of compensation for loss that has been or will be suffered as a direct result of the breach.

Any provision in a tenancy agreement must be consistent with the Act. In my opinion, if the damage of the tenants' property and the moving expenses she incurred were the result of the landlord's failure to maintain the premises in a good state of repair, the landlord is liable for those costs. The evidence suggests that the building envelope was not properly maintained to prevent the infiltration of water from melting snow. In my opinion, the landlord failed to maintain the building to prevent this occurrence and the carpet costs and moving costs are both reasonable.

Section 34 of the *Residential Tenancies Act*, a landlord shall not disturb a tenant's enjoyment of

the rental premises. In this matter, the tenants were deprived of much of the premises for over a month due to the water infiltration which was due to the landlord's failure to maintain. The Act provides for a remedy of compensation. The tenants were deprived of full use of the premises for approximately six weeks during the months of April and May, 2004. The photographic evidence provided supports the fact that the premises were seriously damaged by the water infiltration. In my opinion, reasonable compensation for loss of full enjoyment is \$445 which is approximately 50% of the rent for that period.

I find the tenants in breach of their obligation to pay rent and find the landlord in breach of their obligation to maintain the premises. Taking into consideration the compensation due to the tenants, I find the rent arrears to be \$1144, calculated as follows:

Rent arrears as at October 1/04	\$1958
less compensation for carpet	(179)
less compensation for moving expenses	(190)
less loss of full enjoyment	<u>(445)</u>
Rent arrears	\$1144

I am not considering the landlord's allegations concerning tenant damages as they did not form a part of the application. The landlord may make a future application if the parties can not come to an agreement on the matter.

In my opinion, the tenancy agreement should be permitted to continue, provided the tenants pay the rent arrears. The parties previously agreed that rent arrears could be paid in monthly installments of \$200. In my opinion, such an arrangement to pay these arrears is reasonable.

An order shall issue requiring the tenants to pay the landlord rent arrears in the amount of \$1144 in monthly installments of no less than \$200. The first payment shall be due on December 1, 2004 and payable thereafter on the first day of every month until the rent arrears are paid in full. The order shall also require the tenants to pay the monthly rent on time.

Should the tenants fail to make payments in accordance with this order, the landlord may make a future application requesting the lump sum payment of any balance and termination of the tenancy.

Hal Logsdon
Rental Officer