

IN THE MATTER between **THERESE PELLETIER**, Applicant, and **NORA DOIG**, 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 **RAE-EDZO, NT**.

BETWEEN:

**THERESE PELLETIER**

Applicant/Landlord

- and -

**NORA DOIG**

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 one thousand five hundred thirty seven dollars and ninety eight cents (\$1537.98)

DATED at the City of Yellowknife, in the Northwest Territories this 11th day of October, 2005.

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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:

**THERESE PELLETIER**

Applicant/Landlord

-and-

**NORA DOIG**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:** September 28, 2005

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

**Appearances at Hearing:** Therese Pelletier, applicant (by telephone)  
Nora Doig, respondent (by telephone)

**Date of Decision:** October 7, 2005

**REASONS FOR DECISION**

The applicant alleged that the respondent had undertaken work on the rental premises and deducted the costs from the rent owing without her approval. She sought an order requiring the respondent to pay the rent which was owing in accordance with the tenancy agreement.

It is somewhat difficult to determine when the tenancy agreement between the parties actually commenced. The applicant prepared a written tenancy agreement, but omitted the name of the tenant and entered only the word "September" as the commencement date. The applicant signed the agreement and forwarded it to the respondent. The applicant stated that she expected the respondent to fill in the commencement date when she moved into the premises and return it to her. The document was never completed or returned. The applicant stated that in her opinion, the premises were ready for occupancy in September, 2004 but she had agreed to not charge any rent until the repairs were completed. Although the written tenancy agreement was signed by the landlord and given to the tenant, in my opinion, the lack of the tenant's name on the document and the lack of a commencement date make it invalid. However, the first month's rent and the full security deposit were paid to the landlord on October 4, 2004. In my opinion, that is the commencement date of a verbal tenancy agreement between the parties as the tenant was entitled to occupy the rental premises at her pleasure.

The applicant had arranged for a mechanical contractor to complete some plumbing connections which were in the wall by the bathtub. The wall had been opened up to permit access to the pipes,

making the shower unusable. It appears from the work order of the mechanical contractor that they went to the premises on October 9, 2004 to do the work. The respondent met the contractor at the premises and noticed what she described as black mould in the wall cavity. The work order states that the respondent called the applicant and indicated to the contractor that the wall was going to be replaced. The respondent stated that she obtained the approval of the landlord to replace the wall. The applicant was not sure when she learned about the apparent problem with the wall.

The respondent arranged for the carpentry work to be done to replace the wall and eventually had the wall and floor replaced, a new toilet and tub installed, purchased new bathtub fixtures and numerous other materials and bought a closet organizer. The respondent did not take occupancy of the premises until December 8, 2004. Prior to that date the premises froze on at least one occasion and the respondent hired persons to thaw the pipes. In total, the respondent claims to have spent \$3377.96 which she deducted from the rent due to the applicant.

The contractor repaired the damage caused by freezing, repaired the pipes in the bathroom, set up the bathtub, set the taps and drain and assembled the toilet. The applicant paid the contractor's bill in full which was \$1931.87.

The applicant stated that while she wanted to have the premises repaired properly, the respondent kept arranging for additional work without her authorization. The applicant stated that she never authorized the replacement of the toilet or the bathtub and saw no requirement for their replacement. It was the opinion of the applicant that the plumbing work in the wall and the wall finish were the

only items to be completed at her expense and she characterized the work done as continually growing and beyond her control. The applicant stated that she was willing to assume part of the costs as she realized the improvements enhanced the value of the property and would be left on the property at the termination of the tenancy agreement. She expressed her concern and frustration with the way the work had been conducted without specific approval.

Section 30 of the *Residential Tenancies Act* obligates a landlord to maintain the premises in a good state of repair.

**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.**

Section 30 of the Act also obligates a tenant to notify the landlord of any substantial breach of the obligation to repair.

**30.(5) A tenant shall give reasonable notice to the landlord of any substantial breach of the obligation imposed by subsection (1) that comes to the attention of the tenant.**

Section 30 of the Act sets out a number of remedies which a rental officer may order on the application of a tenant, including an order authorizing the tenant to undertake the repairs and receive compensation for costs from the landlord.

**30.(4) Where, on the application of a tenant, a rental officer determines that the landlord has breached an obligation imposed by this section, the rental officer may make an order**

- (a) requiring the landlord to comply with the landlord's obligation;**

- (b) requiring the landlord to not breach the landlord's obligation again;**
- (c) authorizing any repair or other action to be taken by the tenant to remedy the effects of the landlord's breach and requiring the landlord to pay any reasonable expenses associated with the repair or action;**
- (d) requiring the landlord to compensate the tenant for loss that has been or will be suffered as a direct result of the breach; or**
- (e) terminating the tenancy on a date specified in the order and ordering the tenant to vacate the rental premises on that date.**

There is no provision for a tenant to deduct repair expenses from the rent due to the landlord without an order from a rental officer. Of course, there is nothing to prevent the parties from mutually agreeing to this sort of arrangement and the evidence in this matter indicates that the applicant gave some measure of agreement to some of the repairs undertaken by the respondent but not all.

The evidence suggests that although the applicant did not believe the discolouration in the bathroom wall cavity was mould, she permitted the respondent to have the wall disassembled to determine the extent of any problem. In my opinion, the carpentry and painting work was approved by the applicant and the associated expenses of \$1500.00 should be credited to the rent.

If the tenancy commenced on October 4, 2004 when the tenant was entitled to take possession, then the respondent should have exercised sufficient care and oversight to prevent the premises from freezing. The work order indicates that at least one of the freezing incidents was due to fuel starvation. The provision of fuel during the term of the tenancy was the responsibility of the tenant. Therefore the repairs due to freezing are the responsibility of the respondent. This includes the \$200.00 paid to S. Richardson and the \$40.00 paid to B. McCallum as well as the toilet replacement

costs, which were in all likelihood caused by freezing. The respondent noted that the toilet was not leaking in the summer. The toilet repairs include \$331.70 for the toilet and \$11.65 for the attachment bolts.

The applicant expressed certainty that she never approved the replacement of the bathtub and, other than the fact that the respondent felt it was “old”, there doesn’t seem to have been a need to replace it. Any mould on a steel or enamel tub could certainly have been cleaned off and the tub reinstalled. In my opinion, the tub expenditures of \$446.46 were not approved by the applicant and are not her responsibility.

The remaining expenditures appear to be materials which were purchased either for the applicant’s contractor or the contractors retained by the respondent. The respondent could not remember the detail of these expenditures and characterized them as materials needed by the contractors. As these materials must be partially for work the applicant is responsible for and partially for work the tenant is responsible for I have divided the expenses equally. It is unfortunate that more detail was not available to me at the hearing but I am obligated to do the best with the evidence before me.

In summary I find that the applicant gave approval for work to be undertaken on her behalf in the amount of \$1839.98 and that the remainder of work, the cost of which the respondent has deducted from the rent owing, was not approved by the applicant or was the result of the tenant’s negligence.

Details of my calculations are as follows:

Payee	Purpose	Amount claimed	Approved	Not Approved
J Williah & Assoc.	Carpentry	\$1500.00	\$1500.00	
S. Richardson	Thawing premises	\$200.00		\$200.00
B. McCallum	Thawing premises	\$40.00		\$40.00
Home Bldg	Materials	\$635.39	\$317.70	\$317.69
Emco	Toilet & Hardware	\$343.35		\$343.35
Canadian Tire	Materials	\$44.57	\$22.28	\$22.29
Home Depot	Tub and Fixtures	\$446.64		\$446.64
Sears	Closet organizer	\$168.01		\$168.01
TOTALS		\$3377.96	\$1839.98	\$1537.98

I find the respondent in breach of her obligation to pay rent and find the rent arrears to be \$1537.98 calculated as follows:

Amount deducted by tenant from rent owing	\$3377.96
Authorized deductions	<u>(1839.98)</u>
Rent arrears	\$1537.98

An order shall issue requiring the respondent to pay the applicant rent arrears in the amount of \$1537.98

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Hal Logsdon  
Rental Officer