

IN THE MATTER between **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, Applicant, and **CATHERINE CIBOCI**, 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:

NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST

Applicant/Landlord

- and -

CATHERINE CIBOCI

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 two thousand seven hundred dollars (\$2700.00).
2. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondent shall pay the applicant repair costs related to damages to the front door in the amount of three hundred eighteen dollars (\$318.00).
3. Pursuant to section 43(3)(c) of the *Residential Tenancies Act*, the respondent shall pay compensation to the applicant for call-out costs required as a result of a disturbance in her rental premises in the amount of seventy five dollars (\$75.00).

4. Pursuant to sections 42(3)(a) and 42(3)(d) of the *Residential Tenancies Act* the respondent shall comply with her obligation to complete repairs to the front door on or before March 15, 2007. Should the repairs not be completed by March 15, 2007, the applicant is authorized to complete the repairs on behalf of the respondent and charge her for reasonable costs incurred.
5. Pursuant to section 41(4)(c) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as 12 Nanuk Place, Inuvik, NT shall be terminated on February 28, 2007 and the respondent shall vacate the premises on that date, unless the rent arrears, the rent for February, 2007, repair costs and call-out costs in the total amount of four thousand six hundred ninety three dollars (\$4693.00) is paid in full.
6. Pursuant to section 43(3)(b) of the *Residential Tenancies Act*, the respondent shall not breach the obligation to not disturb other tenants in the residential complex again.
7. Pursuant to section 41(4)(b) of the *Residential Tenancies Act*, the respondent shall pay future rent on time

DATED at the City of Yellowknife, in the Northwest Territories this 2nd day of February, 2007.

Rental Officer

Hal Logsdon

IN THE MATTER between **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, Applicant, and **CATHERINE CIBOCI**, 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.

BETWEEN:

NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST

Applicant/Landlord

-and-

CATHERINE CIBOCI

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: January 30, 2007

Place of the Hearing: Inuvik, NT

Appearances at Hearing: Darrin Holmes, representing the applicant
Catherine Ciboci, respondent

Date of Decision: February 2, 2007

REASONS FOR DECISION

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay rent, failing to repair damages to the premises and by disturbing other tenants in the residential complex. The applicant sought an order requiring the respondent to pay rent arrears, repair costs and compensation related to the alleged disturbance.

The applicant provided four notices in evidence relating to alleged incidents of disturbance but stated that he wished to have only the latest notice considered. That incident allegedly occurred on December 14, 2006. The applicant stated that the police were summoned due to a disturbance in the apartment and broke down the door to gain entry. One of the landlord's staff had to be called out to the disturbance which cost the applicant \$75. The applicant stated that temporary repairs were made to the door, which had already been previously repaired due to tenant damage. The applicant sought \$1240 for repair costs to the door and \$75 for the call out expenses.

The respondent testified that she was out of town when the December, 2007 disturbance occurred. She stated that her sister was staying in the premises at the time. The respondent stated that her sister no longer resided in the premises and was no longer permitted to stay there.

The respondent questioned the costs associated with the door repair. The respondent provided a quotation for the door repair which was considerably less than the amount the applicant sought

in relief. The respondent also provided photographs of the door and noted that the repairs completed were only temporary and the final repair of the door had not been completed.

The respondent also questioned the accuracy of the statement provided in evidence by the applicant. When questioned about a credit and corresponding debit of \$2000 and another credit and corresponding debit for \$600, the applicant stated that he assumed the debits represented returned cheques due to insufficient funds. The respondent however, provided receipts from the landlord showing that the debit card transactions were approved.

The respondent stated that the tenancy agreement was made between the applicant and herself and Edwin Amos as joint tenants. The respondent questioned why Mr. Amos should not be responsible for paying part of the rent arrears.

The respondent had several complaints concerning the maintenance of the premises and stated that she had suffered loss due to the failure of the landlord to properly maintain the premises.

The written tenancy agreement does contain the name of Edwin Amos but it appears to have been written in by hand and Mr. Amos has not signed the agreement. However, notwithstanding that this tenancy agreement may be a joint tenancy, the landlord is entitled to seek remedy from either joint tenant or both of them. I can not find Mr. Amos liable for the rent arrears if the landlord has not elected to name him as a respondent in the application.

I shall not consider any of the respondent's complaints or alleged losses contained in her statement. She must file an application to a rental officer pursuant to section 30 of the Act to seek a remedy.

In the matter of the alleged disturbance, I note that the applicant did not issue a notice of early termination pursuant to section 54 of the Act. Instead the applicant chose to issue a "final notice of warning" which advised the respondent that the landlord intended to seek repair costs, not termination of the tenancy agreement, through legal action. I also note that the respondent has apparently taken steps to ensure that the disturbances, caused by her sister, will not reoccur.

While I am satisfied that the respondent has breached her obligation to not disturb other tenants or the landlord, I do not feel the disturbance alone is grounds for termination of the tenancy agreement.

In the matter of the alleged rent arrears, I find the applicant's accounting of the rent to be in error in several respects.

1. The respondent has applied a \$75 late rent payment penalty on two occasions which has been paid by the respondent. Late rent penalties are permitted only pursuant to section 41 of the Act which prescribes the interest that may be applied to late rent. A flat rate of \$75 is not permitted.

2. The payment of \$600 made by the respondent on May 26, 2006 was reversed on August 14, 2006. The respondent's evidence indicates it was paid by debit to her account and approved.
3. The payment of \$2000 made by the respondent on July 7, 2006 was reversed on August 8, 2006. The respondent's evidence indicates it was paid by debit to her account and approved. The receipt issued by the respondent also indicates that \$1600 was to be applied to the July rent and the remaining \$400 to the balance of the security deposit. The full \$2000 was instead applied to rent.
4. Rent has been charged in advance for February and March, 2007 although the rent for those months has not come due. The tenancy agreement requires that rent be paid monthly in advance.
5. An administration fee of 15% has been charged on the balance allegedly owing. The applicant stated that this covers the administration of arrears. It is a penalty and is in excess of the penalty permitted for late rent.
6. The Goods and Services tax has been applied to the outstanding balance. Residential rent is exempt from the GST.

7. The security deposit and accrued interest has been applied to the account. The security deposit can only be applied by the landlord when the tenancy agreement is terminated. This agreement has not been terminated.

Taking into account the above accounting errors, I find rent arrears in the amount of \$2700 calculated as follows:

Rent arrears as per statement (January 1, 2007)	\$6365
plus credit to security deposit from rent	400
less penalties applied to late rent	(150)
less pmt improperly reversed	(2000)
less pmt improperly reverses	(600)
less repair costs applied to rent	<u>(1315)</u>
Rent owing	\$2700

In the matter of the repair costs, section 42 of the *Residential Tenancies Act* obligates a tenant to repair damages to the rental 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.
- (2) Ordinary wear and tear of rental premises does not constitute damage to the premises.

- (3) Where, on the application of a landlord, a rental officer determines that a tenant has breached the obligation imposed by this section, the rental officer may make an order
- (a) requiring the tenant to comply with the tenant's obligation;
 - (b) prohibiting the tenant from doing any further damage;
 - (c) requiring the tenant to compensate the landlord for loss suffered as a direct result of the breach;
 - (d) authorizing any repair or other action that is to be taken by the landlord to remedy the effects of the tenant's breach;
 - (e) requiring the tenant to pay any reasonable expenses directly associated with the repair or action; or
 - (f) terminating the tenancy on the date specified in the order and ordering the tenant to vacate the rental premises on that date.

Clearly, the Act obligates the tenant to repair damages but provides the landlord with an avenue to do the repairs and require the tenant to pay for the repair cost. In my opinion, it is sometimes reasonable for a landlord to proceed immediately with repairs. In this matter, the door to the apartment had been broken down. In order to protect the landlord's property and the property of the tenant, immediate action was necessary to secure the

premises. The tenant was not there to do that. The applicant was right, in my opinion, to undertake the temporary repairs in order to secure the property and his costs should be paid by the respondent. Now the respondent is complaining that the costs to finish the job are unreasonable and has provided a quotation obtained by her to do the work for less money than the applicant is seeking in relief. In my opinion, the respondent should be given the opportunity to contract or do the work herself but it must be done in a reasonable period of time. In my opinion, the respondent should repair the damages on or before March 15, 2007. If the damages are not repaired by the respondent by that date, the applicant may undertake the repairs and charge the respondent for reasonable costs incurred. I find the costs spent by the applicant to date on door repairs to be \$318, including GST.

In the matter of the call-out charges to attend to the December, 2006 disturbance I find the costs of \$75 incurred by the applicant to be directly related to the tenant's breach of her obligation to not create a disturbance.

I find the respondent in breach of her obligations to pay rent, her obligation to not disturb other tenants, and her obligation to repair damages to the premises. In my opinion there are sufficient grounds to terminate the tenancy agreement unless the rent arrears, call-out charge, and repair costs are promptly paid. An order shall issue requiring the respondent to pay the applicant rent arrears in the amount of \$2700, repair costs in the amount of \$318.00, and call-out costs required as a result of a disturbance in her rental premises in the amount \$75.00. The tenancy agreement shall be terminated on February 28, 2007 and the respondent shall vacate the premises on that date, unless the rent arrears, the rent for February, 2007, repair costs and call-out costs in the total amount of \$4693.00 is paid in full. The order shall also require the respondent to repair the front door to the premises on or before March 15, 2007. Should the repairs not be completed by March 15, 2007, the applicant is authorized to complete the repairs on behalf of the respondent and charge her for reasonable costs incurred. The respondent shall

also be ordered to not breach the obligation to not disturb other tenants in the residential complex again and to pay future rent on time.

Hal Logsdon
Rental Officer