

IN THE MATTER between **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, Applicant, and **PETER SMITH AND CLARA ELIAS**, Respondents;

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 -

**PETER SMITH AND CLARA ELIAS**

Respondents/Tenants

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondents shall pay the applicant rent arrears in the amount of three thousand three hundred thirty two dollars and eighty three cents (\$3332.83).

DATED at the City of Yellowknife, in the Northwest Territories this 8th day of May, 2007.

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Hal Logsdon  
Rental Officer

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**NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**

Applicant/Landlord

-and-

**PETER SMITH AND CLARA ELIAS**

Respondents/Tenants

**REASONS FOR DECISION**

**Date of the Hearing:** April 24, 2007

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

**Appearances at Hearing:** Darrin Holmes, representing the applicant

**Date of Decision:** May 8, 2007

**REASONS FOR DECISION**

The respondents were served with Notices of Attendance sent by registered mail and confirmed delivered. The respondents failed to appear at the hearing and the hearing was held in their absence.

The applicant testified that the respondents abandoned the rental premises on March 18, 2007. The applicant alleged that the respondents had failed to pay the full amount of the rent, failed to repair damages to the premises, failed to leave the premises in a clean condition and failed to give adequate notice, causing the landlord to lose rent. The applicant sought an order requiring the respondents to pay the alleged rent arrears, repair and cleaning costs, and compensation for lost rent.

The application was filed on March 19, 2007 pursuant to sections 41(4)(a), 41(4)(b) and 41(4)(c) of the *Residential Tenancies Act* seeking payment of alleged rent arrears, termination of the tenancy agreement and ordering the respondents to pay future rent on time. The applicant stated that he held a security deposit of \$480 but it had not been applied to the respondents' account. There was no evidence that a statement of the security deposit had been completed or sent to the respondents in accordance with section 18 of the Act. The application was not amended to indicate the applicant's intention to seek relief for repairs, cleaning or compensation for lost rent.

Section 75 of the *Residential Tenancies Act* sets out a rental officer's obligation to follow the rules

of natural justice.

**75. A rental officer shall adopt the most expeditious method of determining the questions arising in any proceedings and ensure that the rules of natural justice are followed.**

The principles of natural justice require that the parties must know the case against them, must be allowed an opportunity to dispute the allegations against them and must be able to present evidence in support of their case. In this case, the respondents, having been served with only the application, could not have been aware that the applicant intended to seek relief for repairs or cleaning or compensation for lost rent. The respondents did not receive a security deposit statement itemizing the repair and cleaning costs nor was the application amended to state the applicant's intention to seek relief for anything other than outstanding rent.

The Notice of Attendance sent to both parties includes information regarding the hearing process, including the following advice:

**"The Hearing is called to deal only with the specific issues discussed in the application."**

As the application sets out only non-payment of rent as the alleged breach of the respondents and no security deposit statement has been issued to the respondents setting out the itemized repair and cleaning costs sought and the application has not been amended to include any issues other than rent, it is not, in my opinion, reasonable to consider matters other than rent. It is entirely possible that a respondent may elect to not appear at a hearing because they do not dispute the allegations set out in the application. In my opinion, it is not fair to then introduce new issues at the hearing without having made the absent respondent aware of them. The applicant may file a

future application regarding repairs and/or compensation for lost rent provided the application is filed prior to the six month limitation contained in section 68 of the Act.

The applicant provided a statement of the rent account in evidence which indicated a balance of rent owing as at March 15, 2007 in the amount of \$3874. Included in that amount were two flat-rate penalties of \$25. Section 41 sets out the penalty permitted for late rent. The penalties applied by the applicant do not comply with the provisions of section 41 and is therefore denied.

I find the respondents in breach of their obligation to pay rent. I find the rent arrears to be \$3824.

Taking into account the retained security deposit and accrued interest I find the amount owing to the applicant to be \$3332.83 calculated as follows:

Security deposit	\$480.00
Interest	11.17
Rent arrears	<u>(3824.00)</u>
Amount owing applicant	\$3332.83

An order shall issue requiring the respondents to pay the applicant rent arrears in the amount of \$3332.83.

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Hal Logsdon  
Rental Officer