

IN THE MATTER between **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, Applicant, and **ESTHER ROSS-KENDI**, 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 -

**ESTHER ROSS-KENDI**

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 three thousand three hundred fifteen dollars and ninety three cents (\$3315.93).

DATED at the City of Yellowknife, in the Northwest Territories this 15th day of November, 2007.

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Hal Logsdon  
Rental Officer

IN THE MATTER between **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, Applicant, and **ESTHER ROSS-KENDI**, 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-

**ESTHER ROSS-KENDI**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:**                      **October 25, 2007**

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

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

**Date of Decision:**                              **November 15, 2007**

**REASONS FOR DECISION**

The respondent was served with a Notice of Attendance sent by registered mail. The rental officer also contacted the respondent by phone on October 24, 2007 and advised the respondent of the time, date and place of the hearing. The respondent failed to appear at the hearing and the hearing was held in her absence.

The tenancy agreement between the parties was terminated on August 5, 2007 when the respondent vacated the premises. The applicant retained the security deposit, applying it against rent arrears. The applicant now seeks an order requiring the respondent to pay rent arrears in excess of the retained security deposit. The applicant stated that the apartment was left in a clean condition with no repairs necessary. There were no deductions from the security deposit for repairs of damages.

The applicant provided a statement of the rent account in evidence which indicated a balance of rent owing in the amount of \$4715.93 after the application of the security deposit and accrued interest. I find the statement in order except for the following items:

Missing security deposit credit

The applicant acknowledged receiving a security deposit of \$1450. The statement of account shows that amount as being applied against rent arrears but only indicates the receipt of \$1125. A credit of \$325 is missing on the statement.

Application of late fees

Five late fees of \$25 have been applied. This is contrary to the penalty set out in section 41 of the *Residential Tenancies Act* for late payment of rent and shall be denied.

Application of pet fees

The tenancy agreement between the parties commenced on October 14, 2006 and was made for a term to end on October 31, 2007. The rent for the premises was \$1450/month. There is no provision in the tenancy agreement for a rent increase during the term. On December 8, 2006, the landlord notified the respondent in writing that commencing January 1, 2007 a charge of \$50 would be added to her rent each month because she kept a dog in the premises. The notice stated, "Your total rent from January 1, 2007 onward will be \$1500 per month."

The additional charge levied is a rent increase. Rent is defined in the *Residential Tenancies Act* as follows:

**"rent" includes the amount of any consideration paid or required to be paid by a tenant to a landlord or his or her agent for the right to occupy rental premises and for any services and facilities, privilege, accommodation or thing that the landlord provides for the tenant in respect of his or her occupancy of the rental premises, whether or not a separate charge is made for the services and facilities, privilege, accommodation or thing.**

The Schedule contains an optional provision which, if elected by the parties, permits a rent increase during the term. As the tenancy agreement between the applicant and respondent does not contain such a provision, a rent increase during the term is not

permitted. The \$350 pet fees or rent increase is denied.

Application of parking fees

The written tenancy agreement between the parties sets out a monthly rent of \$1450 which includes a storage space and a parking space for one vehicle. The tenancy agreement also obligates the landlord to pay for electricity. On October 19, 2006 the respondent was notified in writing of her assigned parking space and that an additional charge of \$100/month would apply between November 1 to April 30. The applicant argued that the additional fee was necessary to pay for electricity for the parking space during the winter months.

As noted above, rent includes any payment for services or facilities that a landlord provides to a tenant. "Services and facilities" includes, among other things, parking and utilities. The tenancy agreement obligates the landlord to provide both a parking space and electricity. Therefore the fee for parking is a rent increase. As there is no provision for a rent increase during the term of the tenancy agreement, the \$600 in parking fees applied to the account must be denied.

Applying the above noted adjustments to charges shown on the statement of account, I find rent arrears in the amount of \$3315.93 calculated as follows:

Balance as per statement	\$4715.93
less missing security deposit credit	(325.00)
less late fees applied	(125.00)

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less pet fees	(350.00)
less parking fees	<u>(600.00)</u>
Amount owing applicant	\$3315.93

An order shall issue requiring the respondent to pay the applicant rent arrears in the amount of \$3315.93.

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Hal Logsdon  
Rental Officer