

IN THE MATTER between **NORTHERN PROPERTY LIMITED PARTNERSHIP**,
Applicant, and **JESSICA ORR**, 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 **YELLOWKNIFE, NT** .

BETWEEN:

NORTHERN PROPERTY LIMITED PARTNERSHIP

Applicant/Landlord

- and -

JESSICA ORR

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 one hundred fifty seven dollars (\$1157.00).
2. Pursuant to sections 41(4)(c) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as 6262 Finlayson Drive, Yellowknife, NT shall be terminated on January 31, 2008 and the respondent shall vacate the premises on that date, unless the rent arrears are paid in full.

DATED at the City of Yellowknife, in the Northwest Territories this 16th day of January,
2008.

Hal Logsdon
Rental Officer

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BETWEEN:

NORTHERN PROPERTY LIMITED PARTNERSHIP

Applicant/Landlord

-and-

JESSICA ORR

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: January 15, 2008

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Julia O'Brien, representing the applicant

Date of Decision: January 15, 2008

REASONS FOR DECISION

The respondent was served with a Notice of Attendance sent by registered mail to the rental premises. The applicant testified that the respondent was still in possession of the premises. The respondent failed to appear at the hearing and the hearing was held in her absence.

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay rent and by failing to pay for the cost of water. The applicant sought an order requiring the respondent to pay the alleged rent arrears and water costs and terminating the tenancy agreement.

The applicant provided a statement of account in evidence which indicated a balance of rent owing in the amount of \$1378.36. Included in that amount are charges of \$210.40 for water and an administration charge of \$10.96 for paying the water charges on behalf of the tenant.

A previous order (file #10-9629, filed on July 16, 2007) required the respondent to pay rent arrears of \$1625 and terminated the tenancy agreement on July 31, 2007 unless the arrears were paid in full. The respondent was also ordered to pay future rent on time. The applicant noted that the rent arrears were paid in full but that the respondent had breached the order to pay future rent on time.

The written tenancy agreement between the parties sets the monthly rent at \$1600 and indicates that the rent includes water/sewer and fuel. The applicant noted that the tenancy agreement had

been amended to make the tenant responsible for water/sewer and fuel by the landlord's notice of December 7, 2007 which cited section 12(3) of the *Residential Tenancies Act* as their authority to do so.

Section 12 of the *Residential Tenancies Act* deals with additional obligations and rules.

- 12.(1) In addition to the rights and obligations contained in the residential tenancy agreement set out in the Schedule, a landlord and tenant may provide in a written tenancy agreement for other rights and obligations that are not inconsistent with this Act.**
- (2) Where an additional obligation concerns the tenant's use, occupancy or maintenance of the rental premises or residential complex, the obligation cannot be enforced unless it is reasonable in all circumstances.**
- (3) A landlord shall not establish, modify or enforce rules concerning the tenant's use, occupancy or maintenance of the rental premises or residential complex, unless the rules are reasonable in all circumstances, in writing and made known to the tenant.**
- (4) A landlord or tenant may apply to a rental officer to determine whether an obligation or rule is reasonable.**
- (5) A rental officer who receives an application under subsection (4) may determine whether an obligation or rule is reasonable and order the landlord or tenant to comply.**

Section 12 differentiates rights and obligations from rules. Rights and obligations are contained either in the Schedule or agreed to in a written tenancy agreement between the landlord and tenant. Rules, on the other hand, are not contained in the Schedule or in a written tenancy agreement. Any changes to rights and obligations in a tenancy agreement must have the mutual agreement of landlord and tenant. Changes to rules can be made by the landlord provided they are made in writing, made known to the tenant and reasonable.

The responsibility for utilities is set out in the Schedule as well as in the written tenancy agreement between the parties. It is not a rule but an obligation. It can not be unilaterally changed by the landlord. Section 12(3) applies to rules and can not be used to modify an obligation. The applicant's December 7, 2007 notice is of no effect and can not be enforced. The charges for water and the corresponding administration charge totalling \$221.36 are therefore denied.

The applicant argued that since the previous order to pay rent on time was repeatedly breached, the tenancy should be terminated without condition. The Act permits a rental officer discretion, where the remedy of termination is permitted by the Act. In doing so, a rental officer must consider all the circumstances. In this matter, I recognize that the previous order to pay rent on time has been breached. The statement suggests that the respondent has failed on numerous occasions to pay rent in advance as required by the tenancy agreement although to come to that conclusion one must assume that the actual date of payment corresponds with the date of payment shown on the statement. No evidence was produced by the applicant in that regard. One must also consider that the current rent arrears are less than one month's rent and, at the time of the hearing, were 15 days late. In my opinion, notwithstanding the previous order, the tenancy agreement should be allowed to continue provided the respondent promptly pays the arrears and begins to pay her rent on time in the future.

I find the respondent in breach of her obligation to pay rent and find the rent arrears to be \$1157, calculated as follows:

| | |
|-------------------------------|----------------|
| Balance as per statement | \$1378.36 |
| less October/07 water charge | (137.32) |
| less November/07 water charge | (73.08) |
| less administration charge | <u>(10.96)</u> |
| Rent arrears | \$1157.00 |

An order shall issue requiring the respondent to pay the applicant rent arrears in the amount of \$1157 and terminating the tenancy agreement on January 31, 2008 unless those arrears are paid in full. The respondent has already been ordered to pay future rent on time. That order remains in effect.

Hal Logsdon
Rental Officer