

IN THE MATTER between **SHAWNA TOHM AND GEOFF BUNGAY**, Applicants,
and **5655 NWT LTD.**, 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:

SHAWNA TOHM AND GEOFF BUNGAY

Applicants/Tenants

- and -

5655 NWT LTD.

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 30(4)(e) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as 226 Fairchild Crescent, Yellowknife, NT shall be terminated on September 30, 2008 and the applicants shall vacate the premises on that date.
2. Pursuant to section 30(4)(d) of the *Residential Tenancies Act*, the respondent shall pay the applicant compensation for loss suffered as a result of the respondent's failure to maintain the premises in a good state of repair in the amount of three hundred ninety three dollars (\$393.00). The compensation shall be set off against any unpaid rent or paid in cash if the rent has been paid in full to September 30, 2008.

DATED at the City of Yellowknife, in the Northwest Territories this 1st day of October,
2008.

Hal Logsdon
Rental Officer

IN THE MATTER between **SHAWNA TOHM AND GEOFF BUNGAY**, Applicants,
and **5655 NWT LTD.**, 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:

SHAWNA TOHM AND GEOFF BUNGAY

Applicants/Tenants

-and-

5655 NWT LTD.

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: September 23, 2008

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Shawna Tohm, applicant
Geoff Bungay, applicant
Lynn Elkin, representing the respondent
Ted Studer, representing the respondent

Date of Decision: October 1, 2008

REASONS FOR DECISION

The applicants alleged that the respondent had breached the tenancy agreement by failing to maintain the premises in a good state of repair. The applicants sought an order terminating the tenancy agreement on September 30, 2008 and compensation for loss suffered as a direct result of the respondent's failure to repair.

The parties entered into a one year term tenancy agreement to end on June 30, 2009. The applicants took possession of the premises on June 8, 2008 and paid a prorated rent for that month. The monthly rent for the premises is \$1700 but the landlord reduces that amount to \$1650 if postdated cheques are provided.

The applicants stated that they were without water or a toilet for three days at the beginning of the tenancy as the landlord was completing repairs. The applicants stated that they had not given up possession of their former premises at that time so they still had the use of facilities at the former location.

The applicants stated that the roof began to leak in July, 2008 and the landlord was notified. The applicants stated that the landlord put a tarp over the leaking sections of the roof and also attempted to seal the leaking areas with tar but the roof continued to leak. The applicants stated that they moved many of their personal belongings to a storage locker on August 15, 2008 to protect them from damage. The monthly rental for the locker was \$150. The applicants stated

that the tarp was placed over the chimney, making it dangerous to use the furnace to heat the premises and dry up the moisture. The applicants stated that one of the bedrooms was rendered uninhabitable due to the leakage.

The respondent stated that they had no objection to terminating the tenancy and had offered to mutually agree to do so on a date suitable to the applicants. The respondent stated that the former tenants had not complained of any leakage and they were first made aware of the problem on July 23, 2008 when they were notified by the applicants. The respondent confirmed that they had tried to curtail the leakage by putting a tarp over the affected areas of the roof but the tenants removed the tarp from over the chimney. The respondent stated that given the demand for trades-persons, they were unable to contract the roof repair immediately. The respondent stated that they were not informed that their temporary remedial actions had not been effective in eliminating the leakage.

An Environmental Health Officer inspected the premises on August 20, 2008 and provided a brief memo to the rental officer which was provided to both parties. The memo states that "conditions within the premise were found to be inadequate and substandard. A number of issues will need to be corrected before the premise is considered to be satisfactory as a rental accommodation."

The parties agreed that the September, 2008 rent had not been paid and that the applicants had put a stop payment on the postdated cheque previously supplied to the landlord for that month's

rent.

Terminating this tenancy agreement by order is practically unnecessary as both parties appear to agree that it should be terminated on September 30, 2008. However, I shall nevertheless issue an order to eliminate any possible future dispute on that issue. In my opinion, there are sufficient grounds to do so based on the Environmental Health Officer's evidence, the photographs provided by the applicants and the testimony I have heard. The more contentious issue is the matter of compensation.

Section 30 of the *Residential Tenancies Act*, outlines a landlord's obligation to maintain the premises and sets out remedies for tenants where a breach has occurred.

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.**
- (2) Any substantial reduction in the provision of services and facilities shall be deemed to be a breach of subsection (1).**
- (3) Subsection (1) applies even where a tenant had knowledge of any state of non-repair before the tenant entered into the tenancy agreement.**
- (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.**
- (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.**
- (6) A landlord shall, within 10 days, remedy any breach referred to in subsection (5).**

Although the evidence suggests that the respondent was not aware of the state of disrepair of the roof until informed by the tenants on July 23, 2008 it is not unreasonable, in my opinion, to expect the landlord to have followed up on the temporary repair to ensure that the water infiltration had been eliminated. Putting a tarp over the roof may have been the only quick solution to the immediate problem but it was obviously a stopgap measure until the proper repairs could be undertaken. Section 30(6) specifies a definite period of time for a landlord to remedy a substantial breach. I find no evidence to indicate that the respondent had arranged for the repairs or taken other temporary action to eliminate the leakage which might justify an extension of this limitation. In my opinion, the landlord could have foreseen that placing a tarp

over the roof might not solve the problem and that further water infiltration could lead to damage to the tenants' property. However, there does not appear to be extensive loss. The evidence does not support the allegation made by the applicants that the bedroom was rendered uninhabitable. Neither the photographs or the Environmental Health Officer's memo lead me to that conclusion. However it was reasonable, in my opinion for the applicants to store certain items out of harm's way and the rental of the storage space is a legitimate cost consequence of the landlord's failure to address the water infiltration. I find compensation of \$225 reasonable to offset the rental costs incurred by the applicants.

I also find compensation for the loss of water and toilet facilities to be a significant breach for which compensation is warranted. Regardless of whether the applicants had alternate facilities, the respondent was charging rent for critical facilities that were not available for three days. In my opinion three days rent or \$168 is reasonable compensation.

I find the respondent in breach of their obligation to maintain the premises in a good state of repair. An order shall issue requiring the respondent to pay the applicants compensation in the amount of \$393 and terminating the tenancy agreement between the parties on September 30, 2008. The compensation shall be paid as a set off against the unpaid September rent of \$1700, resulting in rent arrears of \$1307. If the rent has been paid in full since the hearing, the compensation shall be made by cash payment to the applicants.

Hal Logsdon
Rental Officer