

IN THE MATTER between **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, Applicant, and **CYNTHIA MAYNARD**, 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 -

CYNTHIA MAYNARD

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. The landlord's application is dismissed.
2. Pursuant to sections 83(1) and 18(5) of the *Residential Tenancies Act*, the applicant shall return to the respondent the retained security deposit and accrued interest in the amount of seven hundred thirty six dollars and three cents (\$736.03).

DATED at the City of Yellowknife, in the Northwest Territories this 28th day of March, 2009.

Hal Logsdon
Rental Officer

IN THE MATTER between **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, Applicant, and **CYNTHIA MAYNARD**, 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-

CYNTHIA MAYNARD

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: March 19, 2009

Place of the Hearing: Inuvik, NT

Appearances at Hearing: Lee Smallwood, representing the applicant
Cynthia Maynard, respondent

Date of Decision: March 28, 2009

REASONS FOR DECISION

The applicant alleged that the respondent breached the tenancy agreement by failing to pay rent and sought an order requiring the respondent to pay the alleged rent arrears.

The tenancy agreement between the parties commenced on September 1, 2008 and was made for a term of six months. The respondent notified the applicant in writing on November 30, 2008 that she intended to leave the premises as soon as possible due to the "untenable living conditions" and gave up possession of the premises that day.

The applicant continued to charge rent for December, 2008 and January, 2009 but the respondent stopped payment on the post dated cheques she had provided to the applicant. The applicant charged a \$75 returned cheque fee for each of the cheques they attempted to cash for December 2008, January 2009 and February 2009.

The applicant provided a statement which indicated a balance owing of \$2488.97 after the application of the retained security deposit and interest. I note that the security deposit applied was \$1500 although the actual security deposit held by the landlord was only \$725.

The respondent stated that she was forced to leave the premises due to the constant disturbances. The respondent wrote the applicant on October 3, 2008 outlining her concerns about the noise in the building. The parties agree that the applicant offered to relocate the respondent to another

apartment but the respondent declined the offer.

The applicant stated that he did not know when or if the premises had been re-rented or of any efforts that were made to show the premises to prospective tenants.

Although the respondent could have made an application to a rental officer for an order terminating the tenancy agreement she did not do so. Her notice to the landlord was not effective to terminate the tenancy agreement. Therefore the respondent abandoned the rental premises.

There was no rent owing to the landlord when the respondent left the premises on November 30, 2008. The ledger indicates that rent for September, October and November was charged and paid in full as well as a security deposit of \$725.

When rental premises are abandoned, the tenant remains liable for lost rent but the losses must be real and the landlord must take reasonable steps to mitigate the loss by showing the premises to prospective tenants and re-renting them as soon as practicable. Sections 62(1) and 5 of the *Residential Tenancies Act* set out these provisions.

62.(1) Where a tenant abandons a rental premises, the tenancy agreement is terminated on the date the rental premises were abandoned but the tenant remains liable, subject to subsection 9(2), to compensate the landlord for loss of future rent that would have been payable under the tenancy agreement.

5.(1) Where a landlord or tenant is liable to the other for damages as a result of a breach of a tenancy agreement or this Act, the landlord or tenant

entitled to claim damages shall mitigate his or her damages.

- (2) Without limiting subsection (1), where a tenant terminates a tenancy agreement, contravenes a tenancy agreement, or vacates or abandons rental premises, other than in accordance with this Act or the tenancy agreement, the landlord shall rent the rental premises again as soon as is practicable and at a reasonable rent in order to mitigate the damages of the landlord.**

I find no evidence that the landlord lost rent or took reasonable steps to mitigate their loss. There was no evidence to indicate when or if the premises were re-rented or what steps were taken to mitigate any loss of rent. Therefore the applicant's claim for rent arrears or lost rent is denied.

The charges for the returned cheques is also denied. Because the respondent owed no rent and the cheques were tendered for rent, in my opinion, the cheques should have been returned to the respondent.

A landlord may only retain a security deposit for repairs of damages to the premises and arrears of rent. Since there were neither, the respondent's security deposit must be returned to her along with the accrued interest. I find that amount to be \$736.03 calculated as follows:

Security deposit	\$725.00
Interest	<u>11.03</u>
Amount to be returned	\$736.03

The landlord's application is dismissed. The applicant shall return the retained security deposit and interest in the amount of \$736.03 to the respondent.

Hal Logsdon
Rental Officer