

IN THE MATTER between **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, Applicant, and **LINDA DUFOUR**, 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 REAL ESTATE INVESTMENT TRUST

Applicant/Landlord

- and -

LINDA DUFOUR

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondent shall pay the applicant repair costs in the amount of three thousand four hundred sixty six dollars and thirty six cents (\$3466.36).

DATED at the City of Yellowknife, in the Northwest Territories this 14th day of April, 2009.

Hal Logsdon
Rental Officer

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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-

LINDA DUFOUR

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: April 3, 2009

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Connie Diener, representing the applicant
John Hynes, witness for the applicant
Shane Francis, witness for the applicant
Linda Dufour, respondent

Date of Decision: April 14, 2009

REASONS FOR DECISION

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay for repair costs which were made necessary by her negligence. The applicant sought an order requiring the respondent to pay for the repair costs and terminating the tenancy agreement unless the costs were paid in full.

The applicant testified that the landlord was summoned to the residential complex on January 3, 2009 because water was entering apartment 102 from above. Maintenance staff shut off the building water supply and entered apartment 202, the respondent's apartment, to find several burst pipes and considerable water on the floor. The applicant's witnesses both testified that the bedroom window was open and the thermostat set to the minimum when they entered the premises. The respondent was not at home. The applicant's witnesses testified that the heating circuit had gelled and the water supply pipes in the bedroom/bathroom wall and the bedroom/kitchen wall had frozen and burst causing the escape of water.

The applicant provided an invoice for clean-up and repair of both apartments and accommodation costs for the tenant in apartment 102 while the repairs were being undertaken. The respondent, in a notice, sent to the landlord on February 4, 2009 denied her responsibility for the damages and refused to pay the invoice. The itemised invoice is for \$5996.86 and includes charges for the clean-up (\$2830.36), accommodation charges for the tenant from apartment 102, (\$636) the landlord's labour (\$315), carpeting costs (\$1627.50), repairs to apartment 102 (\$378)

and unspecified material costs (\$210).

The respondent testified that she was away when the incident occurred and returned on January 5, 2009 to find clean-up equipment in the apartment. She stated that the apartment was dry at that time. The respondent denied leaving the window open and stated that it was usually frozen shut and would not open in the winter. She stated that the repairs to the premises had not been completed. The respondent provided photographs of the premises which indicated areas of the bedroom/kitchen wall that had been cut out to repair the water pipes and areas where the carpeting had been removed but not replaced. She stated that she did not know if the repairs had been completed in apartment 102.

A sketch of the apartment was provided by the respondent and the applicant's witnesses provided detail as to where the burst pipes and heating circuit were located. The bedroom contains one fixed pane window with an opening awing window below. The bedroom shares an interior wall with the kitchen which contains the water supply pipes for the kitchen. The bedroom also shares an interior wall with the bathroom which contains the water supply pipes for the bathroom. The heating circuit runs along the exterior wall of the apartment and under the bedroom window. The gelled portion of the circuit was slightly to the right of the bedroom window. There were burst pipes in both bedroom/kitchen wall and the bedroom/bathroom wall.

The minimum temperature on January 3, 2009 was -40.8 C and the maximum temperature was -37.1 C. It had been even colder the day before, dropping down to -44.6 C.

In my opinion, the water supply pipes could not have burst unless they were frozen and would not have frozen unless the window was open. The pipes are all in interior walls. The minimum temperature permitted by the thermostat is 10 C. The heating system is protected from freezing by glycol, although it will gel if subjected to temperatures well below the freezing point. Two witnesses testified that the window was open. On the balance of probabilities, I must conclude that the water escape was caused by the bedroom window being open, causing the heating circuit to gel, which in turn permitted the temperature to drop below freezing in the apartment causing the water supply pipes to burst. In my opinion, leaving a window open in severely cold weather is negligent and the respondent is responsible for the repair of resultant damages sustained by the landlord.

None of the applicant's representatives or witnesses knew how the costs of repair were calculated. The evidence suggests that the work has not been done, at least in the respondent's premises. In my opinion, there is not sufficient evidence to support the repair costs other than the clean-up and accommodation costs. Therefore, the clean-up costs of \$2830.36 and the accommodation costs of \$636 are allowed and the remainder are denied without prejudice. In my opinion, this matter is purely a monetary one. Nothing suggests that a similar incident will occur if the tenancy continues. In my opinion, termination is not an appropriate remedy and the applicant's request for an order terminating the tenancy agreement is denied.

An order shall issue requiring the respondent to pay the applicant repair costs in the amount of \$3466.36, calculated as follows:

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Clean-up costs (NDS invoice)	\$2830.36
Accommodation costs (Capital Suites)	<u>636.00</u>
Amount owing applicant	\$3466.36

Hal Logsdon
Rental Officer