

IN THE MATTER between **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, Applicant, and **JAMES GORDON**, 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 -

**JAMES GORDON**

Respondent/Tenant

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 14(6)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant the remaining balance of the required security deposit in the amount of four hundred sixty eight dollars and forty six cents (\$468.46).

DATED at the City of Yellowknife, in the Northwest Territories this 19th day of May, 2009.

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Hal Logsdon  
Rental Officer

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BETWEEN:

**NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**

Applicant/Landlord

-and-

**JAMES GORDON**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:** May 13, 2009

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

**Appearances at Hearing:** Connie Diener, representing the applicant  
James Gordon, respondent  
Trevor Glavich, representing the respondent

**Date of Decision:** May 19, 2009

### **REASONS FOR DECISION**

The parties entered into a tenancy agreement on October 1, 2006 for premises at Sunridge Place. The parties mutually agreed to terminate the Sunridge Place tenancy agreement on February 1, 2009 and enter into a new tenancy agreement for premises at Sandstone South. The applicant terms this as a “transfer” and charged the respondent \$100. The applicant alleged that there were repairs of damages and cleaning required after the respondent vacated the Sunridge apartment and charged the respondent \$650. There were no rent arrears.

Rather than deduct the cleaning and repair costs from the \$1000 security deposit and accrued interest the applicant held, the security deposit principal was applied to the Sandstone South account and that account debited with the \$650 cleaning and repair costs. The accrued interest was not returned to the tenant or credited to the Sandstone South account.

Section 18 of the *Residential Tenancies Act* requires a landlord to return the security deposit and interest to the tenant less any repair costs or rent arrears after a tenant vacates rental premises.

**18.(1) Subject to this section, where a landlord holds a security deposit the landlord shall, within 10 days after the tenant vacates or abandons the rental premises,**

- (a) return the security deposit to the tenant with interest; and**
- (b) give the tenant an itemized statement of account for the security deposit.**

**2) A landlord may, in accordance with this section, retain all or part of the security deposit for repairs of damage caused by a tenant to the rental premises and for any arrears of the rent.**

- (3) **Where a landlord objects to returning all or a part of the security deposit on the grounds that a tenant has caused damage to the rental premises and repairs to the rental premises are necessary or the tenant is in arrears of the rent, the landlord shall, within 10 days after the tenant vacates or abandons the rental premises,**
- (a) **send a notice to the tenant and a rental officer of the intention of the landlord to withhold all or part of the security deposit;**
  - (b) **give the tenant an itemized statement of account for the security deposit;**
  - (c) **give the tenant an itemized statement of account for the repairs or arrears of the rent; and**
  - (d) **return the balance of the security deposit with interest to the tenant.**

Therefore the interest on the original security deposit should have been credited to the new account. The applicant did not know when the security deposit had been paid but assumed it had been paid in full at the commencement of the tenancy agreement on October 29, 2006. I calculate the interest to be \$99.75.

There is no provision in the *Residential Tenancies Act* for a “transfer fee”. The parties have obviously mutually agreed to terminate one tenancy agreement and enter into another. The fee is not compensation directly resulting from a breach by the tenant. In my opinion, the fee is only designed to recover administrative costs which are part of the landlord’s usual costs of doing business. There is no provision in the Act to recover these costs and therefore the \$100 charge is denied.

The respondent did not dispute the repair costs and felt the amounts charged were reasonable.

Deducting the repair costs from the Sunridge security deposit and accrued interest, I find a credit

in favour of the respondent of \$449.75 calculated as follows:

Security deposit	\$1000.00
Interest	99.75
Cleaning	(200.00)
Carpet cleaning	(300.00)
Patch/Paint	<u>(150.00)</u>
Total	\$449.75

This amount should have been returned to the respondent or, at his option, applied to the Sandstone South account.

Applying payments to the oldest debts and rent first, I find a balance of the security deposit for Sandstone South due in the amount of \$468.46 calculated as follows:

Credit balance from Sunridge account	(\$1531.79)
Security deposit credit - Sunridge	(449.75)
Security deposit - Sandstone South (50%)	650.00
Feb/09 rent	1300.00
Pmt	(1300.00)
March/09 rent	1300.00
April rent	1300.00
Pmt	(50.00)
Pmt	(1300.00)
Balance of Sandstone security deposit - due May 01	650.00
May/09 rent	1300.00
Pmt	(1300.00)
Pmt	(50.00)
Pmt	<u>(50.00)</u>
Balance of Security deposit owing (Sandstone)	\$468.46

There is no evidence that a notice of early termination was served on the respondent pursuant to section 54(1)(c). As the remedy of termination is not available unless a notice of early termination has been served on the tenant, I shall issue only an order requiring the respondent to

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pay the remaining balance of the required security deposit to the applicant in the amount of \$468.46.

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Hal Logsdon  
Rental Officer