

IN THE MATTER between **MICHAEL LAPIERRE**, Tenant, and **SHELTER CANADIAN PROPERTIES LTD.**, Landlord;

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:

MICHAEL LAPIERRE

Tenant

- and -

SHELTER CANADIAN PROPERTIES LTD.

Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 30(4)(d) of the *Residential Tenancies Act*, the landlord shall pay the tenant compensation for loss of full enjoyment of the rental premises in the amount of three thousand fifty dollars and fifty five cents (\$3050.55). The landlord shall pay the tenant an additional twenty nine dollars and three cents (\$29.03) for each day after August 5, 2009 until the damage to the premises is repaired or the tenancy agreement between the parties is terminated.
2. Pursuant to section 41(4)(c) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Apartment 10, 15 Ptarmigan Road,

Yellowknife, NT shall be terminated on September 10, 2009 and the tenant shall vacate the premises on that date unless rent of at least one thousand dollars (\$1000.00) is paid in full, in addition to any credits applied to the account by the landlord.

DATED at the City of Yellowknife, in the Northwest Territories this 26th day of August, 2009.

Hal Logsdon
Rental Officer

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REASONS FOR DECISION

Date of the Hearing: August 5, 2009

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Michael LaPierre, tenant
Louise Boutilier, representing the tenant
Darin Ryden, representing the landlord.

Date of Decision: August 26, 2009

REASONS FOR DECISION

The tenant filed an application on June 23, 2009 alleging that the landlord had failed to maintain the rental premises and seeking compensation for loss of full enjoyment of the premises. The landlord filed an application on July 8, 2009 alleging that the tenant had failed to pay rent and seeking payment of the alleged rent arrears and termination of the tenancy agreement. As both applications relate to the same tenancy agreement and the same premises both were heard at a common hearing.

On May 14, 2009 there was a sewage back up in the premises causing raw sewage to overflow onto much of the first floor of the two story premises. The landlord retained a contractor who removed most of the carpeting and other flooring, leaving only the bare sub-floor. Photographs of the premises indicate that fixtures have also been removed from the downstairs bathroom and lower portions of the drywall have been removed in areas, presumably because they were contaminated with sewage.

The tenancy agreement between the parties was made for a one year term commencing on December 1, 2008 and appears to still be in effect. There is no evidence that the tenancy agreement has been terminated in accordance with the *Residential Tenancies Act*. The landlord has not served any notice on the tenant or filed an application seeking termination due to frustration of the tenancy agreement. Although it appears that the repairs may require vacant possession and a building permit, the landlord has not filed for termination pursuant to section 59

of the *Residential Tenancies Act*. The landlord has not considered the premises abandoned although the tenant has not been living there since the incident. The tenant has not sought termination of the tenancy agreement through an order or by mutual agreement. The tenant stated that he wants to continue living in the premises when the landlord completes the repairs but does not consider them fit for habitation.

The parties agreed that the May, 2009 rent was paid in full and \$1500 was paid in partial satisfaction of the June, 2009 rent. No rent has been paid since. There were also two previous NSF cheques for which the tenant was charged \$50. Therefore the balance of rent owing is now \$3950, calculated as follows:

Balance of June/09 rent	\$300.00
July/09 rent	1800.00
August rent	1800.00
NSF charges	<u>50.00</u>
Total	\$3950.00

There is no evidence that the sewage back-up was the result of the landlord's negligence or any failure of the landlord to maintain the premises. However, the premises, at least the main floor, have been rendered practically uninhabitable by the incident and the premises have remained in that condition for almost three months. Section 30 of the *Residential Tenancies Act* obligates a landlord to maintain the rental premises in a good state of repair and fit for habitation.

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.**

In my opinion, notwithstanding the cause of the damages, a landlord is obligated to make repairs in a reasonable time unless they were caused by the negligence of the tenant. In this matter, it appears little has been done except for the initial clean up and this has deprived the tenant of his full enjoyment of the premises. I disagree with the tenant however, that the premises continue to be uninhabitable.

Following the incident, the tenant left the premises and has remained living elsewhere. The tenant stated that he pays rent of \$2100 for the other premises compared to \$1800 for the Ptarmigan Road premises. He stated that he also has to pay for utilities at the Ptarmigan Road premises which average about \$196/month. Therefore the difference in rent and utilities between the two premises is \$104/month calculated as follows:

Monthly rent for current premises	\$2100
Monthly rent for Ptarmigan premises	(1800)
Monthly utilities for Ptarmigan premises	<u>(196)</u>
Difference/month	\$104

In my opinion the tenant is entitled to a 100% abatement of rent from the time of the incident to May 31, 2009. During this time, due to the clean up of the raw sewage in the premises, I am satisfied that the premises were completely uninhabitable. As well the tenant is entitled to any difference in rent and utilities he had to pay when he left the premises. From June 1, 2009 to date, I believe the tenant is entitled to a 50% abatement of rent. While the tenant could have

sought the termination of the tenancy agreement by order, he has chosen not to do so, and has expressed his choice to continue the tenancy. However, the evidence supports that only 50% of the premises are habitable.

I find the landlord in breach of their obligation to repair the premises and find reasonable compensation to the date of the hearing to be \$3050.55 calculated as follows:

May 14-31 @ 100% abatement	\$1045.00
June/09 @ 50%	900.00
July/09 @ 50%	900.00
August 1-5 @ 50%	145.16
Difference in rent (May 14-31)	<u>60.39</u>
Total	\$3050.55

As the repairs remained outstanding at the time of the hearing, the tenant is also entitled to continuing compensation of \$29.03 for each day until the repairs are completed or until the tenancy agreement is terminated.

Offsetting the rent arrears by the application of the rent credit results in rent arrears of \$899.45 as at August 5, 2009. Even if the repairs are not completed by September 30, 2009, the rent arrears will be in excess of \$1000. In my opinion, there are sufficient grounds for termination of the tenancy agreement unless at least \$1000 is paid to the landlord for rent on or before September 10, 2009.

An order shall issue requiring the landlord to pay compensation to the tenant in the amount of \$3050.55 and continue paying compensation at the rate of \$29.03/day until the repairs are

completed or until the tenancy agreement between the parties is terminated. The compensation shall be paid in the form of a rent credit. The tenancy agreement between the parties shall be terminated on September 10, 2009 unless the tenant pays rent to the landlord of at least \$1000.

Hal Logsdon
Rental Officer