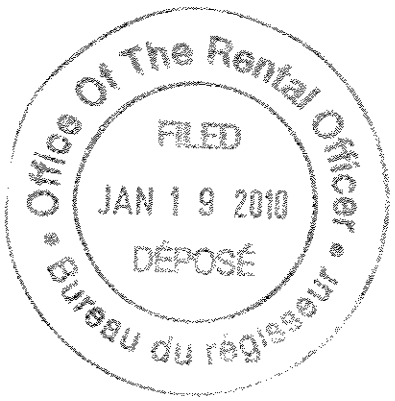
File #10-11164 and #10-11214

IN THE MATTER between **PAMELA NORWEGIAN**, Tenant, and **5655 NWT 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:



PAMELA NORWEGIAN

Tenant

- and -

5655 NWT LTD

Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 62(2) of the *Residential Tenancies Act* the tenant shall pay the landlord compensation for lost rent in the amount of six hundred fifty one dollars and three cents ($651.03).

DATED at the City of Yellowknife, in the Northwest Territories this 18th day of January, 2010.

Hal Logsdon
Rental Officer

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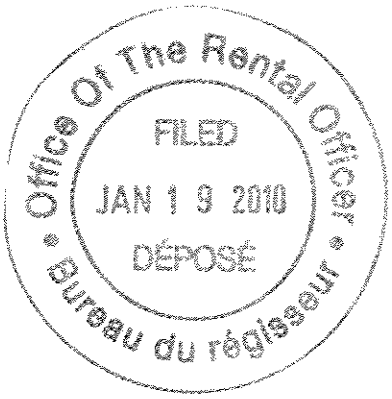

PAMELA NORWEGIAN

Tenant

-and-

5655 NWT LTD

Landlord

REASONS FOR DECISION

Date of the Hearing:	**January 6, 2010**
Place of the Hearing:	**Yellowknife, NT**
Appearances at Hearing:	**Pamela Norwegian, tenant** **Jennifer Moss, representing the tenant** **Lynn Elkin, representing the landlord** **Ted Studer, representing the landlord**
Date of Decision:	**January 18, 2010**

REASONS FOR DECISION

The tenant's application was filed on October 30, 2009. The landlord's application was filed on November 25, 2009. As both applications dealt with the same tenancy agreement and rental premises, with the consent of the parties, both matters were heard at a common hearing.

The tenancy agreement between the parties was terminated on October 30, 2009 when the tenant moved out of the premises.

The tenant alleged that the landlord had breached the tenancy agreement by failing to repair the rental premises and sought an order terminating the tenancy agreement on October 30, 2009.

The landlord retained the security deposit ($1750) and interest ($18.57) applying it against carpet cleaning ($150), painting ($150), repairs to mould area in the bathroom ($100), replacement of a microwave ($136.29), costs to re-advertise the premises for rent ($50) and rent arrears ($3700), resulting in a balance owing the landlord of $2517.72. At the hearing, the landlord revised the amount of rent alleged owing to $2900 resulting in a revised balance owing the landlord of $1717.72. The landlord sought an order requiring the tenant to pay that amount.

The tenant disputed the deductions from the security deposit.

The tenancy agreement between the parties commenced on June 7, 2009 and was made for a

term ending on May 31, 2010. The monthly rent for the premises was $1750.

The tenant stated that she had given written notice that she would be giving up possession on November 15, 2009. There is no evidence that this notice was provided in writing. In any case, the notice would not have been effective since section 51(1) permits term tenancy agreements to be terminated by the tenant's notice only at the end of the term.

> **51.(1) Where a tenancy agreement specifies a date for the termination of the tenancy agreement, the tenant may terminate the tenancy on the date specified in the agreement by giving the landlord a notice of termination not later than 30 days before the termination date.**

The tenant stated that the mould in the porch area was, in her opinion, a serious health concern. She stated that since the landlord had not addressed the problem, she felt compelled to move. The tenant stated that members of the household had shown adverse health effects which she believed were due to the mould in the premises. The tenant provided movies and photographs showing the condition of the porch and other areas of the premises. The tenant also stated that she had the Environmental Health Officer inspect the premises but there was no report presented in evidence and no evidence that the officer had ordered any remedial action.

The landlord stated that he had made it clear to the tenant that if she wished to take possession of the premises in June, 2009 he did not intend to address the issues with the porch until the onset of winter, preferring to complete outside work before repairs to the porch. He advised the tenant to not use the porch and noted that there was another entrance to the premises which permitted the tenant to avoid the porch area altogether. The landlord also noted that the tenancy

agreement obligated the tenant to perform the obligations contained in section 30 as set out in section 31 of the Act.

> **31.(1) Notwithstanding section 30, where a residential complex is composed of one rental premises, a landlord and tenant may agree that any or all of the obligations set out in subsection 30(1) may be performed by the tenant except for repairs required as a result of reasonable wear and tear or as a result of fire, water, tempest or other act of God.**

The photographs of the porch area indicate that it is in a state of complete disrepair. There are heavy concentrations of mould in the porch and it's condition serves to render it unusable. The condition of the porch has been caused by a complete lack of any maintenance over a long period of time. Consequently, water has infiltrated the structure causing rot and mould. In my opinion, the election of section 31 in the tenancy agreement does not obligate the tenant to repair the porch as it is clearly the result of prolonged disregard of the effects of normal wear and tear. Therefore I find the landlord responsible to repair the porch.

It should be noted that the tenant's application was filed on the same day as she moved out of the premises although it is clear from the evidence that the mould was present since the commencement of the tenancy agreement. In my opinion, it is not reasonable to retroactively terminate a tenancy agreement by order unless there is clear evidence that waiting for a hearing would subject the tenant to undue risk. Since the tenant was able to isolate the porch area from the remainder of the premises and there is no evidence from the Environmental Health Officer or other source that the mould represented a serious hazard, I am not inclined to order the termination of the tenancy agreement retroactively.

Section 30(4) of the *Residential Tenancies Act* sets out several remedies when a landlord fails to maintain or repair the property and section 83 of the Act permits a rental officer to issue an order for a remedy that was not specifically requested but could have been applied for.

> **30.(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.**

> **83.(1) After holding a hearing and having regard to all the circumstances, where the rental officer is satisfied that**
>
> **(a) an order or decision that has been applied for is justified, the rental officer shall make that order or decision; or**
>
> **(b) another order or decision that could have been applied for is justified, the rental officer may make that other order or decision.**

In my opinion the remedy of compensation is a more appropriate remedy as the tenant was deprived of the use of the porch space and the use of that entrance to the premises. The landlord, however continued to apply the full amount of the monthly rent. In my opinion an abatement of

rent of 10% from June to October, 2009 would have been fair compensation for the loss of the porch and entrance. I calculate that amount to be $875 (10% of $1750 for five months).

Of the $2900 the landlord is claiming for rent arrears, $2700 is not arrears of rent but compensation for the loss of the November, 2009 rent and part of December, 2009 rent. It can not be deducted from the security deposit.

The landlord stated that the tenant would not permit entry to show the premises to prospective tenants while they were still in possession. As a consequence the landlord stated that he was unable to re-rent the premises until December, 2009 and then only at a reduced rent of $800. In my opinion, the tenant abandoned the premises and the landlord took reasonable steps to mitigate the loss. Compensation of $2700 is, in my opinion, reasonable compensation calculated as follows.

Loss of November rent @ $1750	$1750
Loss of December rent ($1750 less $800)	950
Total	2700

The tenant did not dispute the rent arrears of $200.

The tenant disputed the requirement for carpet cleaning yet the check-out inspection report, signed by the tenant indicated that cleaning was necessary. The deduction for carpet cleaning is allowed. In my opinion the cost claimed is reasonable.

The tenant disputed the requirement for painting in the back bedroom yet the check-out inspection report indicated damages to the walls in that room. In my opinion, the cost claimed is reasonable.

The tenant disputed the cost of the microwave. It appears that the microwave was inadvertently discarded by the tenant. In my opinion, a reasonable depreciated value of the microwave is 85% of it's replacement value or $94.60. The $25 additional charge for the time purchasing the microwave and the installation is denied. In my opinion, this is a cost of doing business.

The landlord has charged $50 to advertise the premises for rent after the tenant abandoned them. Section 62 permits compensation for lost rent to be awarded to a landlord when a tenant abandons rental premises. Advertising costs are not rent and the landlord's claim for advertising costs is therefore denied.

I find that the landlord owes the tenant $1173.97 for the return of the security deposit, calculated as follows:

Security Deposit	$1750.00
Interest	18.57
Rent arrears	(200.00)
Carpet cleaning	(150.00)
Painting	(150.00)
Microwave	(94.60)
Total owing tenant	$1173.97

I find the landlord in breach of his obligation to maintain the premises in good state of repair

and find reasonable compensation for loss of full enjoyment of the premises to be $875.

I find that the tenant abandoned the premises and find reasonable compensation for lost rent due to the landlord of $2700.

In summary I find the tenant owes the landlord $651.03 calculated as follows:

Security deposit due tenant	$1173.97
plus compensation due tenant	875.00
less compensation due landlord	(2700.00)
Amount owing landlord	$651.03

An order shall issue requiring the tenant to pay the landlord compensation for lost rent in the amount of $651.03.

Hal Logsdon
Rental Officer