

IN THE MATTER between **NORTHERN PROPERTY LIMITED PARTNERSHIP**,  
Applicant, and **BRAD CHRISTENSEN**, 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 LIMITED PARTNERSHIP**

Applicant/Landlord

- and -

**BRAD CHRISTENSEN**

Respondent/Tenant

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant rent arrears in the amount of four thousand two hundred thirty dollars (\$4230.00).
2. Pursuant to sections 41(4)(c) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Apartment D108, 900 Lanky Court, Yellowknife, NT, shall be terminated on January 22, 2010 and the respondent shall vacate the premises on that date, unless the rent arrears are paid in full.

DATED at the City of Yellowknife, in the Northwest Territories this 8th day of January,  
2010.

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Hal Logsdon  
Rental Officer

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BETWEEN:

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Applicant/Landlord

-and-

**BRAD CHRISTENSEN**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:** January 6, 2010

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

**Appearances at Hearing:** Sylvia Siemens, representing the applicant

**Date of Decision:** January 8, 2010

### **REASONS FOR DECISION**

The respondent was personally served with a Notice of Attendance but failed to appear at the hearing. The hearing was held in his absence.

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay rent and sought an order requiring the respondent to pay the alleged rent arrears and terminating the tenancy agreement unless the rent arrears are paid in full on or before January 22, 2010.

The applicant provided a copy of rent statement in evidence which indicated a balance of rent owing in the amount of \$4305. The monthly rent for the premises is \$1435.

The balance includes an "application fee" of \$25 charged on May 8, 2008. The respondent could not offer any explanation as to why the charge was applied. There is no provision in the *Residential Tenancies Act* for such fees to be collected from a tenant by a landlord. Therefore the application fee is denied.

The balance also includes an N.S.F. charge of \$50. The applicant justified this charge by identifying the N.S.F. charge applied by the bank and describing the landlord's extra administration involved with a returned cheque. The landlord's bank charges them \$2500/year to handle all N.S.F. checks for the portfolio which includes approximately 1200 rental units.

Section 13 of the *Residential Tenancies Act* prohibits penalties and accelerated rent.

- 13. No tenancy agreement shall contain any provision to the effect that a breach of the tenant's obligation under the tenancy agreement or this Act results in the whole or any part of the remaining rent becoming due and payable or results in a specific sum becoming due and payable, and a provision of this kind is of no effect.**

In my opinion, section 13 would not preclude a landlord from seeking compensation from the tenant for N.S.F. charges that they incurred but would prohibit a penalty from being applied. The tenancy agreement between the parties appears to be consistent with this interpretation:

**ADDITIONAL CLAUSES:**

- 1.00 The Tenants will pay the **incurred bank charges on all N.S.F. cheques.**

The tenancy agreement obligates the tenant to pay only the incurred bank charges when a check fails to clear the bank. Therefore the administrative charges can not be applied.

At \$50 per returned cheque it would only take 50 N.S.F. cheques/year to cover the annual bank charges. In a portfolio requiring 14,400 rent payments by tenants per year, the N.S.F. rate would only have to be 0.35%. This appears unusually low. Without evidence to support an N.S.F. rate this low, I can not accept a \$50 N.S.F. fee. The \$50 fee is therefore denied.

I find the respondent in breach of his obligation to pay rent and find the rent arrears to be \$4230, calculated as follows:

|                          |             |
|--------------------------|-------------|
| Balance as per statement | \$4305      |
| Less application fee     | (25)        |
| Less N.S.F. fee          | <u>(50)</u> |
| Amount owing applicant   | \$4230      |

In my opinion, there are sufficient grounds to terminate this tenancy agreement unless the rent arrears are promptly paid. A previous order (file #10-10989, filed on September 17, 2009) would have terminated this tenancy agreement on October 15, 2009 unless the rent arrears were paid. The respondent satisfied that order but has failed to pay any rent since, resulting in three months of outstanding rent.

An order shall issue requiring the respondent to pay the applicant rent arrears of \$4230 and terminating the tenancy agreement on January 22, 2010 unless those arrears are paid in full.

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Hal Logsdon  
Rental Officer