

IN THE MATTER between **TIARELLA HANNA**, Applicant, and **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, 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:

**TIARELLA HANNA**

Applicant/Tenant

- and -

**NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**

Respondent/Landlord

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 18(5) of the *Residential Tenancies Act*, the respondent shall return the retained security deposit and accrued interest to the applicant in the amount of eight hundred sixteen dollars and seventy two cents (\$816.72).

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

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Hal Logsdon  
Rental Officer

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-and-

**NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**

Respondent/Landlord

**REASONS FOR DECISION**

**Date of the Hearing:** February 11, 2010

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

**Appearances at Hearing:** Tiarella Hanna, applicant  
Sylvia Siemens, representing the respondent  
Andrew Kroezen, witness for the respondent  
Karlee Bell, witness for the respondent

**Date of Decision:** February 16, 2010

### **REASONS FOR DECISION**

The tenancy agreement between the parties was terminated on October 31, 2009 when the applicant gave up possession of the rental premises. The respondent retained the security deposit (\$815) and accrued interest (\$1.52) applying it against carpet cleaning (\$300) and compensation for lost rent in November, 2009 (\$1630) resulting in a balance owing to the respondent of \$1113.48. The respondent provided a statement of the security deposit and deductions and sent a notice to the applicant dated November 9, 2009 demanding payment of \$1113.48.

At the hearing the respondent provided a revised security deposit statement which indicated lost rent of only \$923.67 in November, 2009 resulting in a revised balance owing to the respondent of \$407.15.

Section 18(2) of the *Residential Tenancies Act* sets out the allowable deductions from a security deposit.

**18.(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.**

Compensation for loss of future rent is not an allowable deduction from the security deposit. As

Hon. Justice J.Z. Vertes wrote in *Greenway Realty Ltd. v. Roy* [SC CIV 98, 023, April 3, 1998],

Nowhere in the Act is the landlord authorized to retain a security deposit as compensation for loss of future rents. That is an economic loss claim. A security deposit may be retained for *arrears of rent* but that is not the same as future rent. The term *arrears of rent*, as used in the Act, clearly means rent that was due at a fixed time and

that time has now lapsed without payment being made. It is rent behind, not in the future. To hold otherwise would not only distort the plain meaning of the words used in the statute but could also be viewed as conflicting with the express statutory prohibition on taking a security deposit as security for the first or last month's rent: s.14(5).

The respondent's deduction for compensation for the lost November, 2009 rent is not permitted and therefore must be returned to the applicant.

The applicant disputed the \$300 deduction for cleaning costs. The applicant stated that the apartment was not clean at the commencement of the tenancy agreement requiring her to do considerable cleaning to make the premises habitable. The applicant stated that the landlord sent cleaners to the apartment after she took possession but they did very little in the way of cleaning. She stated that the carpet was badly stained as evidenced by the check-in inspection report. She also noted that she only occupied the premises for about a month.

The respondent's witness, Ms. Bell stated that the cleaning charges were only for the cleaning of the carpets and that no charges were made for general cleaning of the premises. The respondent stated that the carpets were cleaned because the applicant had kept two dogs on the premises. The applicant stated that she had cleaned the carpets by hand with soap and water and a vacuum and that they were clean, except for the pre-existing stains, at the end of the tenancy.

The respondent's witness, Mr. Kroezen, stated that at the end of the tenancy the carpets appeared clean and had no perceptible odours. He stated that he was not aware that the applicant had cleaned the carpets by hand.

A tenant is obligated to leave the rental premises in a state of ordinary cleanliness at the end of a tenancy agreement. In some cases, it may be necessary to shampoo the carpets to achieve this state, in other cases it may be only necessary to vacuum the carpets. Clearly, in this case, the stains on the carpet were present before the tenancy commenced. Any efforts by the landlord to remove the stains should be done at the landlord's expense.

When the tenant is permitted to keep a dog on the premises, it is usually considered reasonable to require the carpets to be shampooed to remove dog hair as well as any odours. Is it reasonable to require this to be done with a mechanical carpet cleaner or by a professional cleaner? In my opinion, it is not. The requirement here is the end state of cleanliness of the carpet, not the method by which the cleaning is done. There isn't any evidence that the appearance of the carpet or its odour (or lack of it) indicated that the carpet was not clean. In my opinion, there is not sufficient evidence to conclude that the carpets were not left in a state of ordinary cleanliness by the applicant. I find the deduction of \$300 for carpet cleaning to be unreasonable.

I find the interest on the security deposit from September 26, 2009 to October 31, 2009 to be \$1.72. The combined principal and interest held by the respondent is therefore \$816.72. An order shall issue requiring the respondent to return the security deposit and accrued interest to the applicant.

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Hal Logsdon  
Rental Officer