

IN THE MATTER between **NORTHERN MANAGEMENT**, Applicant, and **JIM COXFORD**, 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 **INUVIK, NT**.

BETWEEN:

**NORTHERN MANAGEMENT**

Applicant/Landlord

- and -

**JIM COXFORD**

Respondent/Tenant

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 42(3)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant cleaning and repair costs in the amount of two thousand six hundred fifty six dollars and twenty four cents (\$2656.24).
2. Pursuant to section 62(2) of the *Residential Tenancies Act*, the respondent shall pay the applicant compensation for lost rent in the amount of six hundred fifty eight dollars and six cents (\$658.06).

DATED at the City of Yellowknife, in the Northwest Territories this 10th day of March, 2010.

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Hal Logsdon  
Rental Officer

IN THE MATTER between **NORTHERN MANAGEMENT**, Applicant, and **JIM COXFORD**, 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.

BETWEEN:

**NORTHERN MANAGEMENT**

Applicant/Landlord

-and-

**JIM COXFORD**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:** February 24, 2010

**Place of the Hearing:** Inuvik, NT via teleconference

**Appearances at Hearing:** Debbie Mulgrew, representing the applicant  
David Kassem, representing the applicant  
Jim Coxford, respondent

**Date of Decision:** March 10, 2010

### **REASONS FOR DECISION**

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay rent and failing to repair damages to the premises. The applicant sought an order requiring the respondent to pay rent arrears and repair costs, including lost rent due to the time it took to repair the premises.

This tenancy agreement was terminated on December 9, 2009 when the respondent moved out of the premises. There is no evidence that the tenancy agreement was terminated by the tenant's notice, or by mutual agreement so I must conclude that the premises were abandoned on that date.

On December 15, 2009 the applicant served a notice on the respondent informing him of the estimated deductions from his security deposit and accrued interest. When a landlord elects to issue an estimated statement, they are obligated, within 30 days, to issue a final statement of the security deposit and deductions pursuant to section 18(5) of the *Residential Tenancies Act*.

- 18.(4) Where the landlord objects to returning all or part of the security deposit, but is unable to determine the correct amount of the repairs within 10 days after the tenant vacates or abandons the rental premises, the landlord shall**
- (a) deliver to the tenant, within 10 days after the tenant vacates or abandons the rental premises,**
    - (i) an estimated itemized statement of account for the repairs, and**
    - (ii) the estimated balance of the deposit; and**
  - (b) within 30 days after the tenant vacates or abandons the rental premises**

- (i) deliver a final itemized statement of account for the repairs, and**
- (ii) return the final balance to the tenant.**

On February 23, 2010 the applicant issued an itemised invoice for rent arrears to December 9, 2009 (\$495), cleaning and repair costs (\$6321.81), rent from December 10, 2009 to January 15, 2010 (\$2035) utility costs from December 10, 2009 to January 26, 2010 (\$890.14) and GST charged on the repair and utility costs (\$360.60). A statement, also dated February 23, 2010 deducted security deposit and interest (\$1620.73) from the previous invoiced amount, bringing the balance due to \$8481.82. The applicant sought an order requiring the respondent to pay this amount. I note that the applicant failed to comply with the time restrictions of section 18 but, in my opinion, this does not prevent them from seeking relief via an *Application to a Rental Officer*.

The applicant testified that the respondent had paid rent to November 30, 2009 but no rent had been paid for December, 2009. The monthly rent for the premises was \$1700.

The applicant stated that the premises were left in a very unclean state with damages to a kitchen cabinet door, wall damage and window and baseboard damage. The applicant provided photographs of the premises in evidence as well as an invoice from the contractor who completed the cleaning and repairs indicating the hours and days spent by each worker.

The applicant provided invoices for utility costs for the period from December 10, 2009 to January 26, 2009. The respondent was obligated to pay for utilities during the term of the agreement. The applicant stated that the utility costs represented the time during which the

premises were being repaired.

The applicant stated that the premises were not re-rented until January 25, 2009. Mr. Kassem, a shareholder in Northern Management and Millennium Construction, the company who completed the repairs and cleaning, stated that the repairs took longer than expected due to the unavailability of labour during the holiday season.

The respondent did not dispute that the repairs to the baseboards and windows were necessary. He acknowledged keeping two dogs in the premises during the tenancy. The respondent also acknowledged that he had not cleaned the premises and had left bagged garbage and some furniture in the unit.

The respondent disputed the requirement to clean up the dog faeces on the porch because the mess was not caused by his dogs. He also disputed the alleged damages to the cupboard door, stating that it “just fell apart” due to the dryness and inferior construction. The respondent stated that the walls required only minor patching as there were no large holes or major damage. He stated that other properties operated by the landlord remained vacant after he moved out and he didn’t understand how the landlord could claim lost rent. The respondent stated that he felt the contractor’s invoice for cleaning and repairs was unreasonable for the work performed and thought that his retained security deposit and interest should be adequate compensation for the landlord.

The evidence supports the fact that the respondent occupied the premises for 9 days in December, 2009 yet paid no rent for the month of December, 2009. I find rent arrears for those nine days to be \$493.55 calculated as follows:

$$(\$1700/31 \text{ days}) \times 9 \text{ days} = \$493.55$$

Examining the contractor's statement of labour hours expended on the repairs and cleaning, the patching and painting represents over 85% of the total costs. The photographic evidence supports the requirement to paint the walls, baseboards, trim and window sills. All are scuffed and filthy. There are several small holes and dings on the walls. The applicant stated that the premises were last re-painted in June, 2007 making the paint two and a half years old. Given a useful life of 5 years, the landlord has enjoyed 50% of the useful life of the paint. Therefore the tenant should pay for 50% of the repainting costs.

I find the remainder of the cleaning and repair costs to be reasonable. I do not accept that the cupboard door spontaneously fell apart or that the respondent had no responsibility to keep his porch free of dog faeces because they did not belong to his dog. Adjusting the contractor's invoice for cleaning and repairs to reflect the depreciated painting costs results in an adjusted cleaning and repair cost of \$3783.42 calculated as follows:

<u>Description</u>	<u>Original Cost</u>	<u>Depreciated Cost</u>
Carpenter	\$340.00	\$340.00
Painter	5100.00	2550.00
Labourer	300.00	300.00
Steam Sheen	225.00	225.00
Terr. Floor (Paint)	301.37	150.69
10% mark-up on expenses	<u>55.44</u>	<u>37.57</u>

Subtotal	\$6321.81	\$3603.26
GST	<u>316.09</u>	<u>180.16</u>
Total	\$6637.90	\$3783.42

The applicant stated that due to the time it took to complete the work, they were unable to show or re-rent the premises. Although I accept that the horrible condition of the premises made it impossible to show until the cleaning and repairs were completed, I can not accept that it took 37 days to complete the work (December 10, 2009 to January 15, 2010). The time sheet for the repair crew indicates that no work was started until December 16, 2009 and the painting, which accounted for most of the cost did not commence until December 28, 2009. The time sheet indicates that all the work was completed by January 9, 2010. My review of the time sheet suggests that the work could have been completed in 8.5 days. The work could have been completed well before the holidays commenced. Taking into consideration weekends and the wait time between coats of paint, etc., in my opinion, the premises could have been shown to prospective tenants 12 days after abandonment. The applicant provided no evidence regarding his efforts to mitigate the loss of rent from December 10, 2009 to January 15, 2010 relying solely on the time it took to repair the premises to support his claim for lost rent. I find reasonable compensation for lost rent to be 12 days or \$658.06 calculated as follows:

$$(\$1700/31 \text{ days}) \times 12 \text{ days} = \$658.06$$

The respondent was obligated to pay for utilities during the term of the tenancy agreement and paid these amounts directly to the supplier. Section 62 of the *Residential Tenancies Act* limits compensation on abandonment to loss of rent.

**62.(1) Where a tenant abandons a rental premises, the tenancy agreement is terminated on the date the rental premises were abandoned but the tenant remains liable, subject to subsection 9(2), to compensate the landlord for loss of future rent that would have been payable under the tenancy agreement.**

Utility costs are not rent. The landlord is responsible for utilities until the premises are re-rented.

The applicant's request for compensation for utilities is denied.

Applying the retained security deposit and interest first to rent arrears, I find the respondent liable for repair and cleaning cost of \$2656.24. I also find the respondent liable for lost rent in

December, 2009 in the amount of \$658.06. I calculate these amounts as follows:

Security deposit & interest	\$1620.73
Rent arrears (December 1-9/09)	(493.55)
Repairs and cleaning	<u>(3783.42)</u>
Due applicant	\$2656.24
Compensation for lost rent (12 days)	\$658.06

An order shall issue requiring the respondent to pay the applicant repair and cleaning costs of \$2656.24 and compensation for lost rent in the amount of \$658.06.

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Hal Logsdon  
Rental Officer