

IN THE MATTER between **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, Applicant, and **BARBARA MEMOGANA**, 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 PROPERTY REAL ESTATE INVESTMENT TRUST

Applicant/Landlord

- and -

BARBARA MEMOGANA

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 84(3) and 41(4)(a) of the *Residential Tenancies Act*, the previous order (file # 20-10992, filed on October 1, 2009) is rescinded and the respondent is ordered to pay the applicant rent arrears in the amount of five thousand six hundred sixty five dollars and eight cents (\$5665.08).
- 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 143 Gwich'in Road, Inuvik, NT shall be terminated on May 10, 2010 and the tenants shall vacate the premises on that date unless the rent arrears and the May, 2010 rent in the total amount of seven thousand five hundred fifteen dollars and eight cents (\$7515.08) are paid in full.

DATED at the City of Yellowknife, in the Northwest Territories this 29th day of April, 2010.

Hal Logsdon
Rental Officer

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BETWEEN:

NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST

Applicant/Landlord

-and-

BARBARA MEMOGANA

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: April 23, 2010

Place of the Hearing: Inuvik, NT

Appearances at Hearing: Lee Smallwood, representing the applicant
Matthew Kuptana, representing the applicant

Date of Decision: April 29, 2010

REASONS FOR DECISION

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 were promptly paid.

The applicant provided a statement of the rent account in evidence which indicated a balance of rent owing in the amount of \$5922.55. Included in that amount are six penalties for late rent totalling \$257.47. The monthly rent for the premises is \$1850.

The respondent's representative did not dispute the allegations.

A previous order (file #20-10992, filed on October 1, 2009) ordered the respondent to pay rent arrears in accordance with a schedule which would have retired the debt by November, 2009 and to pay the monthly rent on time. Clearly, this order has been breached.

Section 41(3) of the *Residential Tenancies Act* sets out the allowable penalty for late rent.

41.(3) The penalty referred to in subsection (2) is calculated for each day that the rent is late by multiplying
(a) the rent due,
by
(b) the bank deposit rate on deposit receipts for 30 days, as determined and published by the Bank of Canada in the periodic publication entitled the *Bank of Canada Review*, in effect on January 1 in the year that the late payment is calculated,
and the total is divided by 365.

The applicant has divided the product of the rent arrears and the interest rate by the number of days in the month, resulting in a monthly interest rather than a daily interest, then multiplying the monthly interest by the number of days the rent is late. As well, the interest rate used for 2010 is the 2009 rate which is considerably higher. The result is that the late fees charged are significantly higher than permitted by the Act.

I am not inclined to recalculate the late fees on behalf of the applicant. Suffice it to say that I find the late fees of \$257.47 which were applied to the account in excess of what is permitted. The late fees are denied.

I find the respondent in breach of her obligation to pay rent and find the rent arrears to be \$5665.08 calculated as follows:

Balance as per statement	\$5922.55
Less late rent penalties	<u>(257.47)</u>
Total	\$5665.08

In my opinion there are sufficient grounds to terminate the tenancy agreement unless the rent arrears are promptly paid.

An order shall issue rescinding the previous order and requiring the respondent to pay the applicant rent arrears in the amount of \$5665.08. The tenancy agreement between the parties shall be terminated on May 10, 2010 unless the rent arrears and the May, 2010 rent in the total amount of \$7515.08 are paid in full. I calculate that amount as follows:

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Rent arrears	\$5665.08
May, 2010 rent	<u>1850.00</u>
Total	\$7515.08

Hal Logsdon
Rental Officer