

IN THE MATTER between **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, Applicant, and **MARLENE GREENE**, 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 -

MARLENE GREENE

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 three thousand one hundred fifteen dollars and sixty five cents (\$3115.65).

DATED at the City of Yellowknife, in the Northwest Territories this 20th day of May, 2010.

Hal Logsdon
Rental Officer

IN THE MATTER between **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, Applicant, and **MARLENE GREENE**, 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 PROPERTY REAL ESTATE INVESTMENT TRUST

Applicant/Landlord

-and-

MARLENE GREENE

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
Marlene Greene, respondent

Date of Decision: May 20, 2010

REASONS FOR DECISION

This tenancy was terminated on March 31, 2010. The applicant provided a statement of the account in evidence which indicated a balance owing of \$3580.92. The statement indicates that the security deposit (\$1450) and accrued interest (\$27.20) were retained and applied against rent arrears (\$5058.12) resulting in a balance owing to the applicant of \$3580.92. The applicant sought an order requiring the respondent to pay this amount. Included in that amount are four charges of \$75 for returned cheques and late rent penalties totalling \$361.80.

The respondent disputed the balance owing, questioning the application of the NSF fees and the penalties. She also stated that she was charged a "holding fee" for the premises.

The tenancy agreement between the parties sets out a fee for returned cheques of \$75. The applicant stated that this amount was reasonable given the bank charges and the landlord's administrative costs to process the item. In my opinion, the charge is not unreasonable.

I can find no evidence of a "holding fee". The statement of account does not include any such fee and the rent charged coincides with the period the tenant was entitled to occupy the premises.

The penalty for late rent is set out in section 41 of the *Residential Tenancies Act*.

41.(2) A tenant who pays his or her rent later than the dates specified by the tenancy agreement is liable to a penalty.

(3) The penalty referred to in subsection (2) is calculated for each day that the

rent is late by multiplying
by (a) the rent due,
(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 due and interest rate by 30 or 31 rather than 365, resulting in a monthly interest rather than an annual interest. As well the applicant has used an incorrect interest rate for 2010. The resultant penalties are not consistent with the Act and are therefore denied.

The ledger indicates that a security deposit of \$1550 was collected by the applicant although only \$1450 was applied to the rent arrears. The applicant acknowledged the error and confirmed that the security deposit principal was, in fact, \$1550. This error also affects the interest that is due on the security deposit. I find the interest to be \$30.67.

I find the respondent in breach of her obligation to pay rent and find rent arrears of \$4696.32 calculated as follows:

| | |
|----------------------------|-----------------|
| Rent arrears as per ledger | \$5058.12 |
| Less penalties | <u>(361.80)</u> |
| Total | \$4696.32 |

Applying the security deposit and accrued interest, I find an amount owing to the applicant of \$3115.65 calculated as follows:

| | |
|------------------|-----------|
| Security deposit | \$1550.00 |
| Interest | 30.67 |

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| | |
|------------------------|------------------|
| Rent arrears | <u>(4696.32)</u> |
| Amount owing applicant | \$3115.65 |

An order shall issue requiring the respondent to pay the applicant rent arrears in the amount of \$3115.65.

Hal Logsdon
Rental Officer