

IN THE MATTER between **MELODY NICE**, 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 **INUVIK, NT**.

BETWEEN:

MELODY NICE

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 a portion of the retained security deposit to the applicant in the amount of seven hundred twenty five dollars and fifty nine cents (\$725.59).

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

Hal Logsdon
Rental Officer

IN THE MATTER between **MELODY NICE**, 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.

BETWEEN:

MELODY NICE

Applicant/Tenant

-and-

NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: June 15, 2010

Place of the Hearing: Yellowknife, NT via teleconference

Appearances at Hearing: Melody Nice, applicant
Lee Smallwood, representing the respondent

Date of Decision: June 18, 2010

REASONS FOR DECISION

The applicant asked that her name on any order be “Melody Nice” rather than “Melody Nice-Paul”. The full name of the respondent is “Northern Property Real Estate Investment Trust” rather than “Northern Property REIT”. The style of cause of the order shall reflect these names.

The tenancy agreement between the parties was terminated on February 28, 2009. The respondent applied the security deposit (\$1550) and accrued interest (\$34.78) to cleaning (\$185), carpet replacement (\$874.53), G.S.T (\$60.92) and administration (\$158.93), returning the remainder of \$305.40 and an overpayment of rent of \$5.38 to the applicant.

The applicant disputed the deductions for the bedroom carpet replacement stating that the carpet was not actually replaced after she vacated. The applicant acknowledged that she spilled wine on the bedroom carpet, causing a light stain. A letter from the tenant who rented the apartment after the applicant left, stated that the carpet was cleaned but not replaced after the applicant vacated the premises. The letter also states that the carpets were old and worn. The applicant agreed with the new tenant’s assessment of the carpets.

The respondent acknowledged that the carpets were not immediately replaced. However he provided an estimate of renovations on the apartment, purchase orders for materials, and time sheets which indicated that repairs, including carpet replacement, were undertaken in April and May, 2010.

With all due respect to both parties the issue here is not whether the carpet was replaced in a timely manner or at all, but rather was the damage done by the tenant and if so, are the repair or replacement costs reasonable. There may be valid reasons why it is impractical to make a repair immediately after the tenant vacates the premises but an accurate repair cost can be determined. That should not delay the settlement of the security deposit or deny the landlord the right to set off the repair costs against the security deposit.

The carpet in the bedroom was stained by the spillage of wine by the applicant's own admission. That is damage caused by negligence. It is the tenant's obligation to repair the damage. In determining if the costs are reasonable, there are two factors to consider. First, are the material and installation charges what a person familiar with such work would reasonably expect? Second, was the condition and age of the carpet such that a depreciated cost should be considered?

The landlord's itemized list of repairs notes that the bedroom carpet was stained with wine and at \$41/sq. yd. cost \$874.53. No labour appears to have been included. That would seem to indicate that 21 and 1/3 square yards of carpet were used.

On another document provided by the landlord in evidence the carpet cost is noted as \$13.16/sq. yd including freight and 66 square yards necessary. The respondent stated that the latter document was an estimate for the replacement of the carpet in one bedroom and the living room only. The estimated price is \$868.56. No labour appears to be included in that figure.

A purchase order for the carpet lists a price of \$12.16/sq. yd and a freight bill indicates that the freight to Inuvik would add less than a dollar to the cost per square yard.

Time sheets entered in evidence by the landlord indicate that the apartment underwent significant renovation in April and May, 2010, including replacement of doors, range hood replacement, carpet replacement and painting. The labour for floor preparation and carpet laying is noted as 24 hours @ \$25/hour.

The respondent testified that the bedrooms were approximately 10' x 12' in size and that the living room area was approximately 14' x 18' in size. There are two bedrooms in the apartment and the carpeted area includes the two bedrooms and the living room.

The \$41/sq. yd. cost noted on the landlord's itemised statement appears unreasonably high in light of the figure of \$13.16 on the estimate. The figure of \$13.16 is also consistent with the purchase order and freight invoice.

In my opinion, the amount of \$874.53 sought for the replacement of the bedroom carpet is not supported by the evidence provided by the respondent. Using the respondent's material cost of \$13.16/ sq. yd. and their labour costs results in a replacement cost of the bedroom carpet of only \$390.90.

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<u>Material</u>	
15 sq. yds. @ \$13.16/sq. yd.	\$197.40
<u>Labour</u>	
7.74 hours @ \$25/hour	<u>193.50</u>
Total	\$390.90

Considering the condition and age of the carpet, I note that both the applicant and the tenant who rented the apartment after the applicant vacated, agreed that the carpet was old and worn. The respondent did not know the age of the carpet but stated that they only replaced carpet when it was damaged or worn out. The check-in inspection report completed in August 2008 indicates faded sections in the living room. Certainly the carpets were not new at that time. Although somewhat arbitrary, I am going to assume that the carpets were at least three years old. Given a ten year useful life the replacement cost of the carpet should be reduced by 30% resulting in a depreciated replacement cost of \$273.63.

Adjusting the carpet replacement cost, I find an amount owing to the applicant of \$725.59, calculated as follows:

Security deposit	\$1550.00
Interest	34.78
Cleaning	(185.00)
Carpet replacement	(273.63)
GST	(22.93)
Administration	(72.23)
Subtotal	\$1030.99
Plus rent cr.	<u>5.38</u>
Total	\$1036.37
Less amt. Returned	<u>310.78</u>
Amount owing applicant	\$725.59

An order shall issue requiring the respondent to return a portion of the retained security deposit to the applicant in the amount of \$725.59.

Hal Logsdon
Rental Officer