

IN THE MATTER between **NWT HOUSING CORPORATION**, Applicant, and
KYLE CLILLIE, Respondent;

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter
R-5 (the "Act") and amendments thereto;

AND IN THE MATTER of a Hearing before, **HAL LOGSDON**, Rental Officer,
regarding the rental premises at **WRIGLEY, NT**.

BETWEEN:

NWT HOUSING CORPORATION

Applicant/Landlord

- and -

KYLE CLILLIE

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 nine hundred fourteen dollars and sixty eight cents (\$914.68).

DATED at the City of Yellowknife, in the Northwest Territories this 27th day of
September, 2010.

Hal Logsdon
Rental Officer

IN THE MATTER between **NWT HOUSING CORPORATION**, Applicant, and
KYLE CLILLIE, 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:

NWT HOUSING CORPORATION

Applicant/Landlord

-and-

KYLE CLILLIE

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: September 17, 2010

Place of the Hearing: Yellowknife, NT via teleconference

Appearances at Hearing: Lorayne Menicoche Moses, representing the applicant
Chris Hewitt, representing the applicant
Kyle Clillie, respondent

Date of Decision: September 27, 2010

REASONS FOR DECISION

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay rent and by failing to repair damages to the rental premises which were caused by his negligence. The applicant sought an order requiring the respondent to pay the alleged rent arrears and repair costs and terminating the tenancy agreement. The premises are subsidized public housing.

The premises are rented to the respondent for a monthly rent based on the household income. The monthly rent is currently \$101. The tenant is responsible to pay for all utilities including fuel oil, wood, electricity, water and sewer services and garbage disposal. The landlord is obligated to maintain the premises in a good state of repair. The tenancy agreement also obligates the tenant to not leave the premises unoccupied for longer than 24 hours during the period October 1 to April 30 without prior written notice to the landlord.

The applicant provided a copy of the rent statement in evidence which indicated a balance of rent owing as at July 1, 2010 of \$712.68. The applicant testified that since that time the August and September, 2010 rents had come due and no payments had been received, bringing the balance owing to \$914.68.

The applicant testified that the respondent had left the premises unoccupied during which time the plumbing system froze due to fuel exhaustion. The applicant's agent, the Fort Simpson Housing Authority, repaired the premises at a cost of \$5834.81. Two payments totalling \$309

have been applied bringing the balance to \$5525.81. On April 14, 2010 the respondent signed a document acknowledging his indebtedness for the repairs and agreeing to pay the repair costs in monthly installments of \$450.

The applicant also testified that they had served a notice of termination on the respondent, terminating the tenancy agreement on October 31, 2010. A copy of the notice was not available to me as evidence.

The respondent disputed the rent arrears stating that the two payments applied to the repairs, applied on March 19 and April 14, 2010 should have been applied to rent as the agreement to pay was not executed until April 14, 2010.

The respondent also disputed the repair costs, stating that the repairs were not the result of his negligence but a failure of the heating equipment. The respondent acknowledged that he left the premises on December 19, 2009 and returned on December 23, 2009. He stated that his uncle was checking the premises during his absence. The respondent testified that on his return, the central heating system was off but there was fuel in the fuel tank. He also stated that the water system was not frozen at that time. The respondent stated that his uncle told him the central heating system failed on December 22, 2009. The respondent stated that he called the Fort Simpson Housing Authority on December 23, 2009 reporting the problem and asking for repairs to be made. The applicant's staff were not available due to the Christmas holidays.

The respondent testified that he continued to occupy the premises, using the woodstove as primary heat source. He stated that the central heating system was not repaired until April, 2010 and the water system froze sometime between December 23, 2009 and April, 2010. He also stated that in order to effect the repairs, it was necessary to install heaters in the basement where the central heating and domestic water storage were located in order to thaw the frozen water tank. He claims the resultant electricity bill which he had to pay was \$4000. The respondent's position is that the central heating system failed for reasons other than fuel starvation and that the landlord's failure to reasonably respond to the repair of the system, caused the damage and the inflated electrical costs which he was required to pay. I find it unusual that the respondent would acknowledge his responsibility for the repair costs and agree to pay them by installments when he now so strenuously denies that the repair costs are his responsibility. The respondent was not forthcoming when questioned about this.

Section 30 of the *Residential Tenancies Act* sets out the landlord's obligation to repair and section 42 sets out the tenant's obligation to repair damages.

30.(1) A landlord shall

- (a) provide and maintain the rental premises, the residential complex and all services and facilities provided by the landlord, whether or not included in a written tenancy agreement, in a good state of repair and fit for habitation during the tenancy; and**
- (b) ensure that the rental premises, the residential complex and all services and facilities provided by the landlord comply with all health, safety and maintenance and occupancy standards required by law.**

42.(1) A tenant shall repair damage to the rental premises and the residential complex caused by the wilful or negligent conduct of the tenant or persons who are permitted on the premises by the tenant.

Since the respondent was both obligated to not leave the premises unoccupied for more than 24 hours without written notification to the landlord and was responsible for the provision of fuel during the term of the tenancy agreement, allowing the premises to run out of fuel would constitute both a breach of the tenancy agreement and negligence by the respondent.

It is apparent that the respondent was in breach of his obligation to not leave the premises unoccupied without notice to the landlord. However, the damages do not appear to be the direct result of this breach as the water system appears to have frozen after the respondent returned to the community.

There was no evidence other than the applicant's testimony that fuel starvation was the cause of the freezing and consequent damage. None of the applicant's representatives appearing at the hearing checked the fuel level to determine if there was any fuel in the tank. Similarly, the Technical Officer's email report read into evidence at the hearing, does not mention fuel starvation as the cause of the damages, but indicates that he found the water system frozen on January 5, 2010. The work orders, completed by the Housing Authority do not name the cause of the damage or identify it as tenant damage. The respondent testified that there was fuel in the tank when he returned on December 23 but he had no direct knowledge of the fuel level when the heat presumably failed, as he was not in the community.

Fuel starvation is certainly not the only reason why an oil fired heating system would stop working. However, if there was another cause such as a faulty control, a broken electrode or a malfunctioning fuel pump, one would expect to see the cost of these parts on the work orders. The work orders list only a domestic water pump, copper plumbing materials and a coil assembly with pump. It is possible that the pump on the coil assembly malfunctioned which would result in a failure of the central heating system but it is also possible that the pump was damaged by freezing due to fuel starvation and had to be replaced for that reason.

In my opinion, the evidence does not conclusively demonstrate that the failure of the heating system was the result of fuel starvation nor does the evidence suggest that the respondent's failure to not leave the premises unoccupied directly led to the damages. In my opinion, the applicant has not, on the balance of probabilities, demonstrated that the damages were caused by a wilful or negligent act of the respondent. The applicant's request for relief for repair costs is therefore denied.

However, regardless of the cause of the heating system failure, it is clear from the respondent's testimony that the heat was off on December 23, 2009. The Technical Officer's report confirms that the water system was frozen on January 5, 2010. The evidence also suggests that the tenant informed the landlord's agent on December 23, 2009 that the heat was off and that the system was not frozen at that time. Thirteen days passed before the landlord responded to the problem.

Section 5 of the *Residential Tenancies Act* sets out a landlord or tenant's obligation to mitigate

damage.

5.(1) Where a landlord or tenant is liable to the other for damages as a result of a breach of a tenancy agreement or this Act, the landlord or tenant entitled to claim damages shall mitigate his or her damages.

Even if I could determine that the damages were due to the respondent's failure to provide sufficient fuel, the applicant, having been notified of the situation, and certainly aware that the premises could sustain significant damage, had a duty to protect their property. While I realize the situation arose at an awkward time, one would expect some system of on-call response would exist to address problems which arose during holiday periods.

Why did the respondent acknowledge his liability for the repair costs? It seems logical that Mr. Clillie was willing to shoulder the repair costs until the additional costs for electricity to run the heaters became known. At that time he no doubt began to question his responsibility for the costs which he was unable to pay. The respondent noted that he had difficulty paying the electrical costs and the rent and was advised by the applicant to pay the electrical costs first to avoid disconnection.

I find the respondent in breach of his obligation to pay rent and find the rent arrears to be \$914.68. In my opinion, the payments of \$309 which were applied to repair costs are reasonable given the respondent's acknowledgement of liability, regardless of the date of that acknowledgement.

The applicant has served a notice of termination on the respondent, terminating the tenancy

agreement on October 31, 2010. Although I have not seen the notice, I assume it relates, in part to non-payment of rent. Therefore I need not order the termination of the tenancy agreement as I assume the notice will be sufficient. An order shall issue requiring the respondent to pay the applicant rent arrears in the amount of \$914.68.

Hal Logsdon
Rental Officer