

IN THE MATTER between **WILLIAM ROBINS AND CHRISTA ROBINS**, Tenants,
and **NORTHERN PROPERTY LIMITED PARTNERSHIP**, Landlord;

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 **INUVIK, NT**.

BETWEEN:

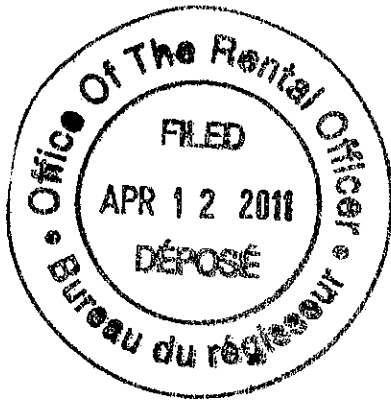
WILLIAM ROBINS AND CHRISTA ROBINS

Tenants

- and -

NORTHERN PROPERTY LIMITED PARTNERSHIP

Landlord



ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18.1(b) of the *Residential Tenancies Act*, the landlord shall return the security deposit and accrued interest to the tenants in the amount of one thousand four hundred seventy five dollars and twelve cents (\$1475.12).

DATED at the City of Yellowknife, in the Northwest Territories this 12th day of April,
2011.



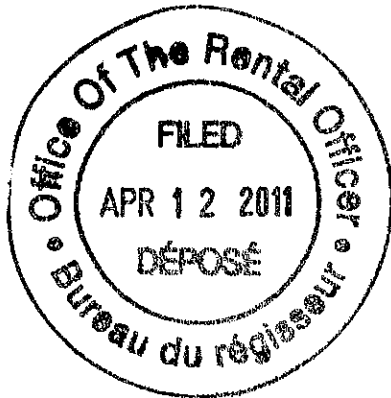
Hal Logsdon
Rental Officer

IN THE MATTER between **WILLIAM ROBINS AND CHRISTA ROBINS**, Tenants,
and **NORTHERN PROPERTY LIMITED PARTNERSHIP**, Landlord.

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:



WILLIAM ROBINS AND CHRISTA ROBINS

Tenants

-and-

NORTHERN PROPERTY LIMITED PARTNERSHIP

Landlord

REASONS FOR DECISION

<u>Date of the Hearing:</u>	April 5, 2011
<u>Place of the Hearing:</u>	Inuvik, NT via teleconference
<u>Appearances at Hearing:</u>	William Robins, Tenant Lee Smallwood, representing the landlord
<u>Date of Decision:</u>	April 12, 2011

REASONS FOR DECISION

The tenants filed an application on February 17, 2011 seeking an order for the return of the security deposit. On February 24, 2011 the landlord filed an application seeking an order for compensation for loss of rent. Both applications refer to the same tenancy agreement and rental premises. With the consent of the parties, both matters were heard at a common hearing.

Mr. Robins' application did not name Christa Robins as joint tenant or applicant. The operating name of the landlord has also changed since that application was made. The style of cause of the order reflects both the joint tenants and the current name of the landlord.

The tenant stated that a security deposit of \$1475 was provided to the landlord. The tenant testified that they moved out at the end of January, 2011 because there was mould in the premises which was affecting the family's health. The tenant testified that the landlord retained the security deposit and did not provided him with any statement of the deductions. The tenant stated that the premises were left in a clean, undamaged condition and rent had been paid in full. The tenant sought an order requiring the landlord to return the security deposit.

The landlord alleged that the tenants failed to give proper notice and that he was unable to re-rent the premises until March, 2011. The landlord sought an order requiring the tenants to pay compensation for lost rent in the amount of \$1550.

The tenancy agreement between the parties was made for a one year term commencing on

November 1, 2010. The tenancy agreement requires a security deposit of \$1450 but the ledger clearly shows and the landlord acknowledges that \$1475 was collected. The monthly rent for the premises was set out in the tenancy agreement as \$1450 but the ledger indicates that an additional monthly parking charge of \$100 has been applied since the commencement of the agreement.

Although the landlord argued that the premises were not abandoned, the tenants clearly gave up possession, notifying the landlord and returning the keys, without terminating the tenancy in accordance with the Act. That is the definition of abandonment contained in section 1(3) of the *Residential Tenancies Act*.

The tenant submitted that the tenancy agreement was terminated pursuant to article 6.01 of the tenancy agreement.

DESTRUCTION OR DAMAGE

In the event the premises, or the building of which the premises form a part, shall be wholly or partially destroyed or damaged to such an extent that a reasonable Landlord would not repair the damage or a reasonable Tenant would not be willing to remain a Tenant, this Lease shall terminate as at the date of such destruction or damage.

This element of the tenancy agreement, rightly refers to the common law doctrine of frustration of contract and is not, in my opinion, applicable to this matter. The premises have not been destroyed or damaged to any significant extent.

The tenant submits that the health of his family was endangered by the existence of mould in the apartment and that he had no choice but to leave when it appeared to him that the landlord was not going to seriously address the situation. The tenant provided no medical evidence. He stated

that he had called *Environmental Health* but they didn't return his call. He certainly could have filed an *Application to a Rental Officer* requesting that the tenancy agreement be terminated by order but he did not, stating that the matter was too urgent and that he simply had to leave.

I find that the tenants abandoned the premises on January 31, 2011. The tenants gave up possession on that date, the tenancy agreement was not terminated in accordance with the Act, nor was the tenancy agreement frustrated.

Section 18(4) of the *Residential Tenancies Act* sets out what may be deducted from a security deposit.

18.(4) A landlord may, in accordance with this section, retain all or a part of a security deposit, a pet security deposit or both for arrears of rent owing from a tenant to the landlord in respect of the rental premises, and for repairs of damage to the premises caused by the tenant or a person permitted on the premises by the tenant.

The February, 2011 rent is neither arrears of rent nor repair costs. It is compensation for the alleged loss of the February, 2011 rent on the abandonment of the premises. It can not be deducted from a security deposit. Therefore the landlord should have returned the security deposit (\$1475) and accrued interest (\$0.12) to the tenants.

A landlord claiming compensation for lost rent must demonstrate that the losses were real and that reasonable steps were taken to mitigate the loss.

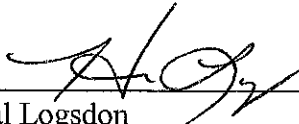
The landlord outlined that when an apartment becomes vacant it is placed on their availability list

and shown to all prospective tenants inquiring about apartments of that particular size and location. The landlord could not state how many times the premises were shown to prospective tenants but stated that the apartment was only shown at the end of February, 2011 and was re-rented in March, 2011. He stated that few prospective tenants inquire about apartments until the end of a month and that the vacancy rate was currently quite high in the community. The landlord did state that the premises were left in a clean state and were ready to rent immediately.

I find it curious that the landlord's application is dated February 18, 2011 some time before the apartment was re-rented or, according to the landlord's testimony, even shown to prospective tenants. How could the landlord have known at that time that the February rent would be lost in full? Since only three months of a twelve month term had elapsed, why would the landlord make the application so early? The rent losses could have been much greater than simply one month. The landlord did not name a certain date when the apartment was re-rented, stating only that it was re-rented in March. Why would the landlord not claim the full amount of the loss right to the day the apartment was re-rented?

In my opinion, a landlord should be able to name a date certain that the premises were re-rented, provide some information concerning the number of times and dates the premises were shown and provide some vacancy rate information within their own portfolio. Simply stating a process does not provide evidence that the process was followed. In my opinion, the landlord has not provided sufficient evidence of the loss or efforts to mitigate that loss. The compensation requested is therefore denied.

An order shall issue requiring the landlord to return the retained security deposit and interest to the tenants in the amount of \$1475.12.



Hal Logsdon
Rental Officer