

IN THE MATTER between **NPR LIMITED PARTNERSHIP**, Applicant, and **JON JAQUE AND LAUREL JAQUE**, Respondents;

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 **YELLOWKNIFE, NT**.

BETWEEN:

**NPR LIMITED PARTNERSHIP**

Applicant/Landlord

- and -

**JON JAQUE AND LAUREL JAQUE**

Respondents/Tenants

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 42(3)(c) of the *Residential Tenancies Act*, the respondents shall pay the applicant repair costs in the amount of four thousand six hundred forty three dollars and sixty three cents (\$4643.63).

DATED at the City of Yellowknife, in the Northwest Territories this 10th day of May, 2011.

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Hal Logsdon  
Rental Officer

IN THE MATTER between **NPR LIMITED PARTNERSHIP**, Applicant, and **JON JAQUE AND LAUREL JAQUE**, Respondents.

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:

**NPR LIMITED PARTNERSHIP**

Applicant/Landlord

-and-

**JON JAQUE AND LAUREL JAQUE**

Respondents/Tenants

**REASONS FOR DECISION**

**Date of the Hearing:** April 13, 2011

**Place of the Hearing:** Yellowknife, NT

**Appearances at Hearing:** Rosetta Morales, representing the applicant  
Randy Steele, witness for the applicant  
Howard Sansone, witness for the applicant  
Jon Jaque, respondent  
Laurel Jaque, respondent

**Date of Decision:** May 10, 2011

### **REASONS FOR DECISION**

The applicant alleged that the respondents had permitted the premises to run out of fuel, causing considerable damage due to freezing. The applicant sought an order requiring the respondents to pay repair costs in the amount of \$4643.63.

The tenancy agreement between the parties obligates the tenants to pay for the cost of utilities directly to the supplier. A copy of the tenancy agreement was provided by the applicant in evidence.

On January 11, 2011 Mr. Jaque contacted the applicant by email and requested that the oil tank fill pipe be lengthened. Mr. Jaque stated that his fuel supplier was having difficulty filling the oil tank and had suggested that the filler pipe length was the source of the problem. The respondent replied that her engineer would come to the premises on Monday (January 17) to attend to the work. The work was completed.

The respondents left on vacation on January 19, 2011. On their return on or about January 30, 2011, they discovered the premises were frozen. Mr. Jaque stated that the supplier delivered fuel to the premises on January 25, 2011.

The applicant's witness, Mr. Steele, stated that he attended the premises on January 30, 2011 and confirmed the premises were frozen. He stated that he had to bleed the oil line to restart the

furnace, indicating that the furnace had run out of fuel. Mr. Steele stated that the oil tank was full.

The tenancy agreement appears to have been terminated by mutual agreement on or about February 10, 2011. The applicant retained the security deposit and interest applying it to repair costs and issued a statement indicating a balance owing of \$4643.63.

The respondents submitted that the applicant should have been aware of the problem through their own due diligence when purchasing the property. The respondents provided photographs of other units in the residential complex showing that all but one appear to have longer fill pipes. The applicant stated that they have only extended the respondents' fill pipe. There is no evidence indicating whether the former owner extended the pipes or whether the photographs represent the original installations.

The respondents also provided a letter dated April 11, 2011 from another tenant in the residential complex indicating that she has experienced the same problem. The photograph of her unit shows that it also has a short fill pipe. The writer states that she reported the problem to the former owner who did not make any alterations to the fill pipe. The writer states that she has again experienced the problem and has reported it to the applicant. The letter does not indicate a date that the problem was reported to the landlord. The letter indicates that the applicant has created a work order to address the issue.

The respondents also provided an email from a former fuel delivery driver outlining the problem with short fill pipes.

I have not been able to find any code that sets out the permissible length of these fill pipes. Mr. Steele was also unaware of any code dealing with this installation but acknowledged that, in his opinion, the fill installation did not meet a "best practices" standard of the trade.

Section 30(1) of the *Residential Tenancies Act* outlines a landlord's obligation to maintain rental premises.

**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.**

Section 30(5) requires the tenant to give notice of any substantial breach that comes to their attention.

**30. (5) A tenant shall give reasonable notice to the landlord of any substantial breach of the obligation imposed by subsection (1) that comes to the attention of the tenant.**

Section 42(1) sets out the tenant's obligation to repair damages.

**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.**

In my opinion it is not reasonable to assume that the applicant would have discovered the fill pipe problem without notice from the respondents. It does not appear to be a code violation or a problem that would be readily noticed through a pre-purchase inspection and it would be equally unlikely for the vendor to bring it to the applicant's attention. There is no evidence to conclude that the problem was previously addressed by the applicant or reported by other tenants prior to January, 2011. The respondent's request for the alteration was handled in a prompt manner and it appears to have solved the problem.

In my opinion, the respondents were negligent by failing to ensure that the tank had sufficient fuel in it before leaving for vacation. It is clear that the furnace ran out of fuel sometime between January 19, 2011 when the respondents left for vacation and January 25, 2011 when the next fuel delivery was made. If the fuel level had been checked and the tank filled before the respondents left on vacation the incident would have been avoided.

I find the respondents responsible for the remaining repair costs. I find the accounting in order and the costs claimed adequately documented and reasonable. An order shall issue requiring the respondents to pay the applicant the remaining repair costs of \$4643.63.

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Hal Logsdon  
Rental Officer