

IN THE MATTER between **NUMAC CORPORATION**, Applicant, and **JAMIE RIVERA**, 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 **YELLOWKNIFE, NT**.

BETWEEN:

**NUMAC CORPORATION**

Applicant/Landlord

- and -

**JAMIE RIVERA**

Respondent/Tenant

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondent shall pay the applicant repair costs in the amount of two thousand three hundred thirty six dollars and twenty five cents (\$2336.25).

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

---

Hal Logsdon  
Rental Officer

IN THE MATTER between **NUMAC CORPORATION**, Applicant, and **JAMIE RIVERA**, 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:

**NUMAC CORPORATION**

Applicant/Landlord

-and-

**JAMIE RIVERA**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:** May 4, 2011

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

**Appearances at Hearing:** Kathy Yurris, representing the applicant  
Mohamad El Hariri, representing the respondent  
Jamie Rivera, respondent

**Date of Decision:** May 12, 2011

### **REASONS FOR DECISION**

The applicant alleged that the respondent had caused damage to the premises by leaving the patio doors open long enough during cold weather to permit the dishwasher to freeze and allow water to escape. The applicant sought an order requiring the respondent to pay for the clean-up and repair costs in the amount of \$2716.35.

The applicant stated that she attended the premises on January 22, 2011 after receiving a call from the caretaker of the building regarding a flood in the respondent's apartment. She stated that when she arrived the apartment was extremely cold and there was considerable flooding. She stated that she could not recall if the patio doors were open when she arrived but she believed the apartment was cold because they had been left open. The water escape was limited to the respondent's apartment.

A plumbing and heating firm was contracted that day to undertake repairs. Their invoice, submitted in evidence contained the following observations:

1. It was cold in the apartment and the floor was flooded.
2. Dishwasher pump selonord (sic) was frozen and had split allowing water to escape.
3. The thermostat would not engage the zone valve and there were signs of burnt wires on the thermostat.

The invoice itemizes the following work performed for a cost of \$380.10

1. Thermostat changed
2. Zone valve changed

The applicant stated that the dishwasher was repaired by another company.

The applicant provided another invoice in evidence for the flood clean-up, outlining work undertaken for a cost of \$2336.25.

The respondent's representative submitted that the dishwasher began smoking and the respondent opened the patio doors and went to get the caretaker. The respondent at first acknowledged that he opened the doors but later testified that he did not know how they were opened. When questioned about the water, the respondent stated that it was hot. In all likelihood, the "smoke" described by the respondent was steam from the escaping hot water.

The respondent's apartment is on the second floor of a three story building and has apartments on both sides. Therefore only one of the six surfaces of the apartment is an outside surface. On the outside wall is a balcony with opening patio doors. The built-in dishwasher is in the kitchen on the opposite side of the apartment from the outside wall. It sits next to a warm wall shared with the adjoining apartment.

The damaged dishwasher part, actually called a water fill valve, is constructed of plastic. I am advised by the repair shop that they are not subject to splitting except by freezing. Therefore I must conclude from the evidence that the water escape was a result of freezing temperatures in the premises.

Were the freezing temperatures the result of some negligent act of the respondent or were they caused by some other reason? The plumbing and heating contractor's invoice suggests that the heating zone in the apartment had failed. If a zone valve was not operating, assuming it is a normally closed valve, there would be no heat in at least part of the apartment. Could the heating zone failure have allowed the temperature to drop below freezing, splitting the dishwasher water fill valve? In my opinion, no. The location of the apartment in the building would prevent a rapid cooling of the apartment even if the heating zone failed. The area in which the dishwasher is located would be even slower to cool. It is doubtful that the area where the dishwasher is located would reach the freezing point until many hours or perhaps days after the failure of the heating zone. Clearly the respondent would have noticed that the unit was gradually cooling and would have notified the caretaker prior to the temperature reaching the freezing point. There is no evidence to suggest the respondent had been away from the premises for any significant period of time.

It is more likely that the patio doors were left open, allowing frigid air to move across the floor and freeze the dishwasher fill valve. The temperature near the floor could reach the freezing point rapidly if the patio doors were opened.

On the balance of probabilities, I find that the water escape was caused by the freezing of the dishwasher fill valve which was caused by the patio doors being left open too long. I find the respondent liable for the clean-up costs of \$2336.25. I do not find any evidence that the malfunction of the zone valve or thermostat was caused by any negligent act. These failures

appear to have been caused by normal wear and tear. Although the "burnt wires" on the thermostat are not usual, there is no indication they were damaged by the respondent. Therefore the repair costs of \$380.10 are denied.

An order shall issue requiring the respondent to pay the applicant the clean-up costs in the amount of \$2336.25.

---

Hal Logsdon  
Rental Officer