

IN THE MATTER between **NPR LIMITED PARTNERSHIP**, Applicant, and **IAN KIKOAK AND MARY FIRTH**, 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 **INUVIK, NT**.

BETWEEN:

NPR LIMITED PARTNERSHIP

Applicant/Landlord

- and -

IAN KIKOAK AND MARY FIRTH

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 41(4)(a) and 83(2) of the *Residential Tenancies Act*, the respondents shall pay the applicant rent arrears in the amount of two thousand five hundred eight dollars (\$2508.00). The respondents shall pay the rent arrears in two installments as follows:
 - a) A payment of one thousand dollars (\$1000.00), payable on or before January 13, 2012 and,
 - b) a payment of one thousand five hundred eight (\$1508.00), payable on or before January 27, 2012.
2. Pursuant to sections 41(4)(c) and 83(2) of the *Residential Tenancies Act*, the tenancy

agreement between the parties for the premises known as Apartment 206, 20 Bootlake Road, Inuvik NT shall be terminated and the respondents shall vacate the premises,

- a) on January 13, 2012 unless a payment of one thousand dollars (\$1000.00), is paid to the applicant on or before that date and,
- b) on January 27, 2012 unless a payment of one thousand five hundred eight dollars (\$1508.00), is paid to the applicant on or before that date.

DATED at the City of Yellowknife, in the Northwest Territories this 10th day of January, 2012.

Hal Logsdon
Rental Officer

IN THE MATTER between **NPR LIMITED PARTNERSHIP**, Applicant, and **IAN KIKOAK AND MARY FIRTH**, 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-

IAN KIKOAK AND MARY FIRTH

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: January 5, 2012

Place of the Hearing: Inuvik, NT

Appearances at Hearing: Bright Lubansa, representing the applicant
Ian Kikoak, respondent

Date of Decision: January 5, 2012

REASONS FOR DECISION

The applicant alleged that the respondents had breached the tenancy agreement by failing to pay rent and sought an order requiring the respondents to pay the alleged rent arrears and terminating the tenancy agreement and evicting the respondents.

The applicant provided a statement of the rent account which indicated a balance of rent owing in the amount of \$2690.50. The monthly rent for the premises is \$975.

The respondent did not dispute the allegations and stated that he could pay \$1000 on January 13, \$1500 on January 27 and the remainder on February 10.

The statement indicates that a security deposit of \$1000 was debited to the account and paid in full. This amount is \$25 more than the tenancy agreement requires as a security deposit and is also in breach of section 14 of the *Residential Tenancies Act*.

- 14. (1) No landlord shall require or receive a security deposit from a tenant other than**
- (a) in the case of a weekly tenancy, an amount equal to the rent for a period not exceeding one week; or**
 - (b) in the case of a tenancy other than a weekly tenancy, an amount equal to the rent for a period not exceeding one month.**

Therefore, the additional payment of \$25 which was credited to the security deposit should have been credited to rent.

The statement also indicates that a “disturbance fee” of \$150 plus \$7.50 GST was charged to the respondents. The applicant justified this charge as compensation to the landlord for having to attend the premises to investigate a noise complaint. The applicant provided no evidence supporting this cost. The applicant argued that repeated disturbances resulted in increased costs to a landlord to attend premises and assist police that would not normally be incurred in the day to day operation of the business. I respectfully disagree.

The compensation remedy contained in section 43 of the Act is not intended to reimburse a landlord for increased costs to attend premises when there is a disturbance complaint. Section 43(3)(c) is distinguished from compensation remedies in other parts of the Act in that it permits compensation to persons other than the landlord. It is not, in my opinion, intended to compensate the landlord for extraordinary operating costs due to the day to day operation of the business caused by the tenant’s breach. It is, in my opinion, a penalty, and therefore prohibited pursuant to section 13. The requested relief is denied.

13. A tenancy agreement must not contain any provision to the effect that a breach of the tenant’s obligation under the tenancy agreement or this Act results in the whole or any part of the remaining rent becoming due and payable or results in a specific sum becoming due and payable, and a provision of this kind is of no effect.

I find the respondents in breach of their obligation to pay rent and find the rent arrears to be

\$2508 calculated as follows:

Balance as per statement	\$2690.50
Less excess security deposit	(25.00)
Less “disturbance fee”	<u>(157.50)</u>
Total	\$2508.00

In my opinion, there are sufficient grounds to terminate the tenancy agreement unless the rent arrears are promptly paid. An order shall issue requiring the respondents to pay the applicant the rent arrears in two payments. A payment of \$1000 shall be paid on January 13, 2012 and the tenancy agreement shall be terminated on that day unless that payment is made. A final payment of \$1508 shall be paid on January 27, 2012 and the tenancy agreement shall be terminated on that day unless that payment is made.

Eviction orders to be effective on January 14, 2012 and January 28, 2012 unless the ordered payments are made shall be issued separately.

Hal Logsdon
Rental Officer