

IN THE MATTER between **JOHN MARZALIK**, Applicant, and **NPR LIMITED PARTNERSHIP**, 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:

**JOHN MARZALIK**

Applicant/Tenant

- and -

**NPR LIMITED PARTNERSHIP**

Respondent/Landlord

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 18.1(b) of the *Residential Tenancies Act*, the respondent shall return a portion of the retained security deposit in the amount of eight hundred forty five dollars and thirteen cents (\$845.13).

DATED at the City of Yellowknife, in the Northwest Territories this 30th day of March, 2012.

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Hal Logsdon  
Rental Officer

IN THE MATTER between **JOHN MARZALIK**, Applicant, and **NPR LIMITED PARTNERSHIP**, 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:

**JOHN MARZALIK**

Applicant/Tenant

-and-

**NPR LIMITED PARTNERSHIP**

Respondent/Landlord

**REASONS FOR DECISION**

**Date of the Hearing:** March 21, 2012

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

**Appearances at Hearing:** John Marzalik, applicant  
Rosetta Morales, representing the respondent

**Date of Decision:** March 30, 2012

### **REASONS FOR DECISION**

The tenancy agreement was made in writing between the respondent and the applicant as sole tenant. The applicant worked out of town for extended periods of time and his partner, KD, occupied the premises in his absence. KD was well known to the landlord as the applicant's partner. In March, 2011 due to security reasons, it became necessary to change the locks to the building and individual apartments. All tenants were notified of the date this would be done and advised to pick up new keys at the landlord's office. The applicant was not in town and KD was provided with the replacement keys.

The applicant did not return to the premises until July, 2011 although he continued to pay the monthly rent. The applicant moved out on July 31, 2011 without giving notice. The respondent retained the security deposit (\$1275), accrued interest (\$5.13) applying it against carpet cleaning (\$300), general cleaning (\$100), replacement of laundry cards and passes (\$35), an NSF returned cheque charge (\$50) and compensation for the August, 2011 rent (\$1310) leaving a balance owing to the respondent of \$514.87. The respondent turned the matter over to a collection agency and the applicant paid the collection agency the \$514.87.

The applicant submitted that because the respondent gave the keys to a person other than himself, the tenancy agreement was terminated and he was relieved of any liability. The applicant sought an order requiring the respondent to return the security deposit and to reimburse him for the \$514.87 he paid to the collection agency.

In my opinion, there was no breach by the landlord when they provided keys to KD. It was well known to the respondent that she occupied the apartment with the applicant, the applicant was not in town and the respondent had no knowledge of any change in their relationship if, in fact, there had been a change at that time. It would have been unreasonable to deny her access given the information the respondent had. In any case, a breach by one of the parties to a tenancy agreement does not have the effect of terminating the tenancy agreement or relieving either party of any liability.

The applicant was not present at the check out inspection. There is no evidence that he was denied an opportunity to be present. He did sign the check-in inspection report at the commencement of the tenancy.

Although the applicant stated that the apartment was clean at the end of the tenancy agreement, the photographic evidence and check-out report indicate otherwise. In my opinion, the general cleaning and carpet cleaning charges are reasonable.

The inspection report indicates that the parking pass and laundry card were not returned. I find the replacement costs for these items to be reasonable.

It appears that the \$50 NSF charge is with respect to a stop payment on the preauthorized August, 2011 rent. Since there was no rent due in August, 2011 as the applicant was no longer in possession, this charge is unreasonable and shall be denied.

The respondent is well aware that compensation for lost rent can not be deducted from a security deposit as it is not arrears of rent or a cost of damage repair. Rather than file an *Application to a Rental Officer* for this relief, they have assigned it to a collection agency. Nevertheless it was still deducted from the deposit and I must deny it.

Deducting the lawful deductions from the security deposit and interest, I find an amount owing to the applicant of \$845.13 calculated as follows:

|                      |              |
|----------------------|--------------|
| Security deposit     | (\$1275.00)  |
| Interest             | (5.13)       |
| Carpet cleaning      | 300.00       |
| General cleaning     | 100.00       |
| Pass/card            | <u>35.00</u> |
| Amount due applicant | \$845.13     |

I have no jurisdiction to order the respondent to pay the amount that the applicant paid voluntarily to the collection agency. There is no section of the Act that would permit me to order such relief.

An order shall issue requiring the respondent to return a portion of the retained security deposit in the amount of \$845.13.

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Hal Logsdon  
Rental Officer