File #10-12615

IN THE MATTER between **NPR LIMITED PARTNERSHIP**, Applicant, and **JOANNE CHARNEY**, 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:

NPR LIMITED PARTNERSHIP

Applicant/Landlord

- and -

JOANNE CHARNEY

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 24th day of April, 2012.

Hal Logsdon
Rental Officer

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IN THE MATTER between **NPR LIMITED PARTNERSHIP**, Applicant, and **JOANNE CHARNEY**, 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:

NPR LIMITED PARTNERSHIP

Applicant/Landlord

-and-

JOANNE CHARNEY

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing:	**April 11, 2012**
Place of the Hearing:	**Yellowknife, NT**
Appearances at Hearing:	**Maigan Lefrancois, representing the applicant** **Joanne Charney, respondent** **Mira Hall, representing the respondent**
Date of Decision:	**April 24, 2012**

REASONS FOR DECISION

The applicant alleged that the respondent had breached the tenancy agreement by failing to repair damages to the rental premises and by disturbing other tenants in the residential complex. The applicant sought an order requiring the respondent to pay repair costs and terminating the tenancy agreement and evicting the respondent.

The applicant provided a statement of account in evidence which indicated a balance of repair costs owing in the amount of $3676.25. The invoice for the repairs, totalling $3885 was also provided in evidence. Since the repair costs were charged, two payments totalling $208.75 have been made by the respondent, bringing the balance owing to $3676.25. A handwritten note dated December 16, 2011 addressed to the landlord and signed by the respondent stated, "As of Jan 1, 2012 I will start paying $200 per month until all damages are paid." Photographs of the damages were also provided in evidence.

The applicant provided two email complaints from another tenant in the residential complex concerning alleged disturbances caused by the respondent. The first complaint, dated November 22, 2011 complained that the "neighbours upstairs" were "very noisy" and were "fighting every weekend". Neither the apartment number, names of the neighbours nor the dates and times of the alleged disturbance were noted. The applicant served a notice to the respondent on November 22, 2011 warning her about the incident.

The second complaint, dated March 2, 2012 identified the source of the alleged disturbances as the respondent's apartment and noted fighting and parties. The complainant stated that he called the police. Again, no dates or times of the alleged incident(s) were noted. On March 2, 2012 the applicant served a Notice of Early Termination on the respondent seeking possession on March 2, 2012. The original application, filed on January 13, 2012 for non-payment of rent was amended on March 5, 2012 to include termination of the tenancy agreement for disturbance.

The applicant had no direct knowledge of the alleged disturbances.

The respondent disputed that the damages to the apartment were caused by her or by someone she permitted in the premises. She stated that she was in Fort Good Hope when Paul Rivard broke into her apartment and caused the damage. She stated that she did not permit Mr. Rivard to occupy in the apartment during her absence nor did she give him or anyone else keys to enter the premises. She provided a letter to the applicant signed by six persons attesting that she was in Fort Good Hope on September 14, 2011 the date of the incident. She stated that Mr. Rivard had been charged and convicted and ordered to pay $4485 in restitution. A copy of the *Restitution Order* was provided in evidence.

The respondent denied causing any disturbance and provided a letter sent to the applicant dated November 24, 2011 denying that there had been any disturbance from her apartment. She noted in the letter that there was a disturbance in the apartment next door on November 18, 2011 and the RCMP attended.

Section 42 of the *Residential Tenancies Act* obligates a tenant to repair damages to the premises and residential complex.

> **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.**
>
> **(2) Ordinary wear and tear of rental premises does not constitute damage to the premises.**
>
> **(3) Where, on the application of a landlord, a rental officer determines that a tenant has breached the obligation imposed by this section, the rental officer may make an order**
>
> **(a) requiring the tenant to comply with the tenant's obligation;**
>
> **(b) prohibiting the tenant from doing any further damage;**
>
> **(c) requiring the tenant to compensate the landlord for loss suffered as a direct result of the breach;**
>
> **(d) authorizing any repair or other action that is to be taken by the landlord to remedy the effects of the tenant's breach;**
>
> **(e) requiring the tenant to pay any reasonable expenses directly associated with the repair or action; or**
>
> **(f) terminating the tenancy on the date specified in the order and ordering the tenant to vacate the rental premises on that date.**

In my opinion, on the balance of probabilities, I can not reasonably conclude that the damage to the premises was caused by the willful or negligent conduct of the tenant or a person she permitted in her apartment. Mr. Rivard was found to be the perpetrator of the mischief and ordered to pay restitution for the damage. The respondent disputed her liability for the damages in October, 2011. Nevertheless she was sent an invoice for the damages in November, 2011. In December, 2011 she agreed to pay for the damages but stated that she did so only because she thought she would be evicted if she did not agree to pay. In my opinion, she has only agreed to pay. She has not agreed that the damages were caused by her or that she permitted Mr. Rivard to enter her apartment. I can not find sufficient evidence to support a breach of section 42 which is a

prerequisite for the issuance of a remedy. The request for relief for the repair costs is denied.

The unsworn evidence regarding the alleged disturbances is so vague that it is difficult to rebut. The applicant has no direct knowledge of the alleged incidents, or their nature, or the dates on which they allegedly occurred. The respondent has, under oath, denied the allegations. In my opinion, the applicant has not provided sufficient evidence on which to conclude that the respondent has caused the disturbances.

The application shall be dismissed.

Hal Logsdon
Rental Officer