File #10-12812 and #10-12862

IN THE MATTER between **CYNTHIA GRANDEJAMBE**, Tenant, and **WADE FRIESEN**, Landlord;

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:

CYNTHIA GRANDEJAMBE

Tenant

- and -

WADE FRIESEN

Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the tenant shall pay the landlord rent arrears in the amount of five thousand three hundred forty eight dollars and sixty cents ($5348.60).
2. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the tenant shall pay the landlord repair costs in the amount of three hundred three dollars and fifty seven cents ($303.57).

DATED at the City of Yellowknife, in the Northwest Territories this 16th day of August, 2012.

Hal Logsdon
Rental Officer

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BETWEEN:

CYNTHIA GRANDEJAMBE

Tenant

-and-

WADE FRIESEN

Landlord

REASONS FOR DECISION

Date of the Hearing:	**May 23, 2012 continued on June 13, 2012 and concluded on July 4, 2012**
Place of the Hearing:	**Yellowknife, NT**
Appearances at Hearing:	**Cynthia Grandejambe, Tenant** **Wade Friesen, Landlord** **Norbert Watchepece, witness for the landlord (June 13)**
Date of Decision:	**August 16, 2012**

REASONS FOR DECISION

The tenant filed an *Application to a Rental Officer* on April 13, 2012 alleging that the landlord had breached his obligation to provide and maintain the premises in a good state of repair and seeking monetary compensation of $5000.

On April 26, 2012 an order was issued by an Environmental Health Officer pursuant to section 11(1) of the *Public Health Act* prohibiting human habitation of the premises until certain remedial repairs and cleaning were completed by the landlord. The landlord filed an *Application to a Rental Officer* that day alleging that the tenant had failed to pay rent and water costs and had damaged the premises. The landlord sought monetary relief of $7638.14 plus a then unspecified amount of compensation for repair costs.

The landlord's application named Cynthia Grandejambe and Dion Ouelette as respondents. In fact, Mr. Ouelette is not a party to the tenancy agreement. The style of cause of the order reflects the true parties to the tenancy agreement.

Since both matters pertained to the same premises and the same tenancy agreement, the matter was heard at a common hearing and a single order issued.

The tenant testified that she vacated the premises on May 1, 2012. The landlord claimed that the tenant stayed in possession until about May 3, 2012 and an invoice provided by the tenant

indicated that she hired movers to move her personal effects on May 3, 2012. In any case, the landlord took possession of the premises on May 8, 2012. There is no evidence to suggest that the tenant intended to return to the premises if the public health order was satisfied or that the tenancy agreement was terminated in accordance with the *Residential Tenancies Act*.

The tenant provided a notice served on her by the landlord dated April 1, 2012 demanding payment of rent arrears of $6150 and stating that the tenancy agreement would be “terminated immediately” unless payment was made on or before April 8, 2012. She acknowledged in her application that she owed $5000 in rent and would “like that to be the compensation”.

The tenant outlined numerous deficiencies with the premises and provided photographs in evidence. She stated that the premises used an excessive amount of fuel and electricity due to it’s poor condition and older less efficient appliances and equipment. The tenant indicated that she had analysed the fuel and electrical consumption of the premises but had lost the figures. She stated that the premises had frozen on numerous occasions and the landlord had not attended to the problem in a timely manner. The tenant stated that the stove had only two working burners and the kitchen sink faucet had been removed by the landlord for repair and had never been replaced, requiring her to haul water from the bathroom to wash dishes. She stated that there was a defective light fixture in the porch and that the furnace was old and dangerous and needed to be replaced.

The tenant stated that the water meter was broken and that as a result every bill reflected a

consumption of 34 cubic metres rather than the actual consumption. She submitted that 34 cubic metres was considerably more than her household would normally use. She stated that she had notified the landlord of the broken meter but he had failed to have it repaired resulting in her paying an excessive cost for water during the entire term of the tenancy. She acknowledged that she had not paid the full amount of the water billed to her during the term and that some of the water arrears had been transferred to the landlord's tax account.

The tenant stated that there had not been an inspection report done at the commencement of the tenancy in August, 2010. The landlord acknowledged that no report had been completed.

The landlord acknowledged that there had been freeze ups but stated that he had responded to each incident promptly. He also stated that some of the problems were caused by the mobile home park's water and sewage system and were beyond his control as a landlord. The landlord acknowledged that he had removed the kitchen faucet and stated that he had simply forgotten to replace it. He denied that the furnace was inadequate or dangerous and stated that it had been regularly serviced. He also acknowledged that some of the stove burners were inoperative and had not been repaired. He stated that the tenant had failed to notify him of many of the problems with the premises.

The landlord denied that the tenant had notified him of the broken water meter and noted that since the water account was in the tenant's name he would not have known about it otherwise. He denied ever being notified by the tenant that the meter was not working. In the notes to the

tenant's utility account, provided in evidence by the landlord, the following entry was made by the City of Yellowknife Financial Services Supervisor on September 12, 2011.

> [Cynthia] asked about how to get the meter fixed, both owner and Northlands not responding to her calls. I directed her to Scot to arrange for Doug to review set up, so she can decide if she wants to hire a contractor.

The landlord provided a summary of rent that had come due and payments made which indicated a balance of rent owing in the amount of $5348.60. Included in the payments noted, were four credits totalling $700 for labour contributed by the tenant and/or her partner. The tenant disputed the amount alleged owing. She produced a statement from the *Income Security Program* and a bank draft receipt in evidence. Both payments had been accounted for on the landlord's statement. She stated that she and her partner had done work which had not been credited to rent but provided no evidence of any agreement concerning the arrangement. She also stated that she had provided unspecified payments on unspecified dates for which she had no proof because the landlord did not issue any receipts.

The landlord filed a financial report on June 5, 2012 which indicated the following amounts owing to him for water bills:

Water transfer for 2011	$1191.24
Water transfer for August to December, 2010	295.90
Water from January 2012 to current	417.40
Water for April & May, 2012 @ $137.82	275.64

The landlord stated that unpaid water bills were transferred to his taxes in 2010 and 2011. He

provided a statement of his tax account, a statement of the tenant's water account and two notices from the mortgagee of the property in evidence.

The tenant disputed the amounts transferred to the landlord's tax account and provided a current statement of her water account in evidence which indicated only one transfer of water arrears to taxes totalling $1191.24. This is consistent with both the tax statement and the mortgagee's notice. Although a balance of $295.90 is shown on the tenant's water account as at December 31, 2010, there is no transfer to taxes indicated. Furthermore, the indicated transfer on the landlord's tax statement does not agree with the mortgagee's notice.

The tenant's water account remains in her name and according to the City of Yellowknife has a current balance of $302.16. The last levy of water cost was in April, 2012 and all of the amounts and penalties owing have accrued in 2012.

The landlord provided photographs of the exterior of the premises and a photograph showing a missing section of drywall. He alleged that the siding had been scratched and chewed by the tenant's dogs and the skirting damaged by the dogs chewing and digging holes. He provided a statutory declaration sworn by Tiarella Hanna, who was an adjacent neighbour of the tenant, stating that she witnessed the tenant's dogs digging holes and significantly damaging the siding and skirting of the premises. A un-itemized estimate for repairs to skirting, siding and drywall was provided indicating a total cost to repair of $1821.82. The landlord sought relief in that amount.

The tenant acknowledged that her dog chewed a portion of the corner skirting but denied that any other damage was done by the dog. The photographic evidence certainly indicates that one corner of skirting was damaged. Although the photographs show that there are numerous holes dug in the ground around the skirting, it does not appear that the skirting has been significantly damaged.

The tenant denied doing any damage to the siding. She acknowledged that her dog had pawed the siding above the dog house but stated that the marks were simply dirt and not permanent damage to the surface. She noted that there was no inspection report done at the commencement of the tenancy agreement and felt that any permanent damage to the siding was present prior to her occupancy. The photographic evidence clearly shows that the area of siding by the dog house is dirty but it is not clear that the siding is scratched. There are several photographs showing cracks in the siding and damaged siding corners.

The tenant acknowledged that her dog had damaged the drywall but stated that it was limited to the one wall in the addition. She stated that she had removed the damaged drywall and the repair would only involve the replacement of a single sheet of material.

The landlord provided photographs of the carpet and linoleum flooring and an un-itemized estimate for the replacement of both totalling $2640.02. The landlord sought relief of $3190.44 but provided no other documentation to support this amount. The landlord stated that the carpet and linoleum was ruined by the tenant. His witness testified that he viewed the premises before

the tenancy commenced and found the carpet in reasonable condition. The landlord's witness stated that at that time the linoleum was worn but not ripped. The landlord stated that the carpet was installed in 2009 and the linoleum was new in 2008. The photographs show significant stains to the carpet and the linoleum is ripped, exposing large areas of sub-floor. The landlord stated that the sub-floor was damaged by dog faeces and urine.

The tenant stated that the carpet was stained at the commencement of the tenancy agreement and in any case had to be removed to comply with the public health order.

The landlord stated that the sliding windows in the premises had been broken as well as a double pane sealed unit. Photographs of the damaged windows and an itemized quotation for repairs was provided in evidence. The landlord sought relief of $919.30.

The tenant stated that she did not know how the sealed unit was broken. She stated that she was away from the premises and on her return found the window broken. She stated that she reported the broken window to the landlord. The landlord acknowledged that he was advised of the broken sealed unit but felt it was the responsibility of the tenant to repair since the tenant was in possession of the premises at the time.

The landlord sought relief of $300 for cleaning of the premises. The photographs show an unclean stove and refrigerator as well as debris in the yard and throughout the house.

The landlord stated that the tenant's electricity account was disconnected on April 25, 2012 and charges for electricity reverted to his name. He provided a picture of the meter and a document from the supplier in evidence. He stated that he had calculated the charges for electricity between April 25 and the date the tenant left the premises. He sought relief of $87.04. He did not present his calculations in evidence.

The tenant stated that she had the electricity disconnected on May 1, 2012 and provided the request for disconnection document provided to the supplier in evidence. The document showed the requested disconnect date as May 1, 2012.

The landlord sought relief for work he had done for the tenant after she had run out of fuel. He stated that he attended the premises on seven occasions during the term to bleed the oil supply to the furnace. He stated that he had not invoiced the tenant previously or demanded payment for his services until now. He stated that he had charged $55/hour for his services and sought relief of $385.

Finally, the landlord sought compensation for lost rent of $500 and stated that he was unable to re-rent the premises due to the extensive damages that were done.

ANALYSIS AND CONCLUSIONS

I find no evidence to conclude that fuel or electrical consumption for the premises was excessive. The tenant provided no comparative information regarding fuel or electricity consumption or any

evidence linking excessive consumption to any failure of the landlord to repair the premises. The photographic evidence provided by both parties certainly shows a unit in disrepair but the degree to which this has caused excessive consumption has not been demonstrated. The causes of the disrepair are also unclear. Is the perceived excessive fuel or electrical consumption caused by the landlord's failure to maintain and repair or by damage caused by the tenant? Without some evidence as to the condition of premises at the commencement of the tenancy and some comparative fuel and electrical costs, it is impossible to tell. While the tenant may be correct in claiming that the appliances and equipment in the premises are old and not as efficient as new ones, it is not the landlord's obligation to provide modern appliances and equipment, only ones which meet applicable codes and are in good working order. The tenant has not demonstrated any loss in this area and in my opinion, no compensation is warranted.

It is clear from the evidence that the water meter was inoperative during the entire term of this tenancy and that the tenant was charged a flat rate rather than one based on the actual volume of water consumed. Was the landlord aware of the broken meter? The tenant claims he was and the landlord denies he had any knowledge of the faulty meter. The notes on the City of Yellowknife account suggest that the tenant advised them that she had notified the landlord. In my opinion, on the balance of probabilities, the evidence suggests that the landlord was notified by the tenant.

Did the broken meter result in billings that were higher than they would have been if the meter was functioning properly? A comparison of other water billings and an inquiry to the City of Yellowknife suggest that consumption of 25 cubic metres of water/month is typical. The flat

rate charged if the meter is inoperative is clearly designed to induce the customer to get the meter repaired.

The complete water account indicates that $2895.50 was billed to the tenant's account. Taking into consideration the flat rate surcharges which are on each water bill, reducing the consumption portion of the bill from 34 to 25 cubic metres/month reduces the total amount from $2895.50 to $2333.99, a reduction of approximately 19%.

During the term the tenant paid $1412.69 on the account and $1191.24 was transferred to the landlord's taxes. Had the total billings actually been $2333.99 the account would have had a credit balance.

Total billings	$2333.99
Tenant's total payments	(1412.69)
Transferred to taxes	(1191.24)
Credit	($269.94)

In my opinion, reasonable compensation to the tenant for failure to repair the water meter is $269.94.

The landlord also sought compensation for the water charges that were transferred to his taxes. The complete water account provided in evidence shows only one transfer of $1191.24 to taxes on December 31, 2011. No transfer is indicated on this statement for 2010. The current balance on the account remains the responsibility of the tenant. The transferred amount of $1191.24 would have been 19% lower had the landlord maintained the water meter in working condition.

Therefore, in my opinion, reasonable compensation to the landlord is $964.90 (81% x $1191.24).

There is insufficient evidence to conclude that the freeze-ups of the premises resulted in any financial loss to the tenant or that the landlord failed to attend to the problems in a timely manner. It would appear that some of the problems with freezing were the result of problems with the water and sewer system in the condominium park and were outside the landlord's control. Compensation for these events is denied.

The parties agreed that the stove burners were not operational during the tenancy agreement and that the kitchen sink had no faucet. I accept the tenant's testimony that the sink was without water from October 2011 to the end of the tenancy. In my opinion, reasonable compensation for the loss of these facilities is $825, calculated as follows:

Kitchen sink	6 months x $50/month	$300
Stove	21 months x $25/month	525
Total		$825

There is not sufficient evidence to conclude that the siding was permanently damaged by the tenant's dog. The obvious damage appears to be a small crack on the siding and some damaged corners. Without an inspection report outlining the condition of the premises at the commencement of the tenancy agreement, I can not conclude that the damages were done during the term of the tenancy.

There is not sufficient evidence to conclude that any of the skirting was damaged except the

corner area acknowledged by the tenant. In my opinion, this area could be repaired for $200.

The drywall damage in the addition appears limited to a single wall. In my opinion, reasonable compensation for this repair is $150.

The public health order required the removal of all materials which had been contaminated by the escape of sewage. This would undoubtedly include the replacement of all the carpeted areas. While it may or may not be the case that the carpets were significantly damaged by the tenant, it is nevertheless the case that the sewage escape necessitated their removal and replacement. The linoleum however was obviously ripped during the term of the tenancy agreement and is the result of the tenant's negligence. The contractor who provided the estimate for the landlord advised that the cost of the linoleum including the installation of new sub-floor was $648. Given the age of the linoleum and assuming a useful life of ten years, I find reasonable compensation for the replacement of the linoleum and sub-floor to be $389, calculated as follows:

$648 x (6 years/10 years) = $389 (rounded)

There was a $550 difference between the estimate provided for the flooring and the relief sought by the landlord. The landlord offered no evidence to support this additional cost or how it was calculated. It is therefore denied.

Section 42 of the *Residential Tenancies Act* obligates a tenant to repair damages caused by them or persons they permit on the premises or in the 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.

The tenant testified that the damage to the sealed pane window was caused by vandalism and that she reported this damage to the landlord. The landlord acknowledged that he was told that the window was damaged by unknown persons. Clearly damage done by vandalism is not the responsibility of the tenant to repair. The repair costs of that window are therefore denied. The tenant acknowledged that the other breakage was done by her or persons she permitted in the premises. The cost of these window repairs is documented. I find compensation of $545.50 to be reasonable.

The landlord sought compensation of $300 for cleaning the premises. There is little doubt that the premises were left in a very unclean state. The public health order required the landlord to clean and disinfect all of the affected areas which included most of the unit. The order also prohibited occupation of the premises until the order was satisfied although it appears the tenant continued to occupy the premises until at least May 1, 2012. In my opinion, the tenant should have made some effort to clean the areas unaffected by the order, particularly the appliances which were particularly dirty. In my opinion, reasonable compensation to the landlord is $150.

The evidence does not support the landlord's claim for electricity from April 25 to May 8, 2012. The landlord claims that his evidence indicates that the account was transferred to his name on April 25 but the tenant's request for disconnect clearly indicates that she requested disconnection on May 1, 2012 which is consistent with the move-out date given by the tenant. The landlord's

request for relief is denied.

The landlord's request for relief for his service calls is also denied. There is no indication that he invoiced the tenant for these services and it appears he has only demanded compensation now. There was no evidence regarding the dates that these service calls were made or that he intended to charge for the services when they were rendered.

The landlord's request for $500 compensation for lost rent is denied. The landlord's claim is based on his inability to re-rent the premises due to the extensive repairs that were necessary. Much of this required work was the result of the public health order and would have had to be undertaken regardless. The order was not lifted until May 14, 2012. While it is true that the premises were abandoned, in my opinion, the circumstances that forced the tenant to leave the premises make compensation for lost rent on abandonment unreasonable.

SUMMARY OF COMPENSATION ORDERED

To Landlord:

Skirting repairs	$200.00
Drywall repairs	150.00
Linoleum	389.00
Window repairs	545.50
Cleaning	150.00
Rent arrears	5348.60
Water	964.90
Less security deposit	(1000.00)
Less interest	(0.89)
Total	$6747.11

To Tenant:	
Water	269.94
Stove and kitchen faucet	825.00
Total	$1094.94
Total due to landlord	$5652.17

Applying the security deposit, interest and compensation to the tenant first to water compensation and repair costs, I find rent arrears of $5348.60 and repair costs of $303.57. An order shall issue requiring the tenant to pay the landlord rent arrears of $5348.60 and repair costs of $303.57.

Hal Logsdon
Rental Officer