File #20-13297

IN THE MATTER between **BRUCE HANBIDGE**, Applicant, and **NIRRIE KISTAN**, Respondent;

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act"); as amended,

AND IN THE MATTER of a Hearing before, **HAL LOGSDON**, Rental Officer, regarding the rental premises at **INUVIK, NT.**

BETWEEN:

BRUCE HANBIDGE

Applicant/Landlord

- and -

NIRRIE KISTAN

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant rent arrears and penalties for late rent in the amount of seven thousand nine hundred eleven dollars ($7911.00).

2. Pursuant to section 28(b) of the *Residential Tenancies Act*, the respondent shall pay the applicant compensation for interfering with the applicant's right of entry in the amount of two hundred seventy five dollars ($275.00).

3. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondent shall pay the applicant repair costs in the amount of one hundred eighteen dollars and sixty two cents ($118.62).

4. Pursuant to section 41(4)(c) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as 26 Tuma Drive, Inuvik, NT shall be terminated on March 31, 2013 and the respondent shall vacate the premises on that date.

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

Hal Logsdon
Rental Officer

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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:

BRUCE HANBIDGE

Applicant/Landlord

-and-

NIRRIE KISTAN

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing:	**March 6, 2013**
Place of the Hearing:	**Yellowknife, NT via teleconference**
Appearances at Hearing:	**Bruce Hanbidge, applicant** **Nirrie Kistan, respondent**
Date of Decision:	**March 12, 2013**

REASONS FOR DECISION

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay rent, failing to repair damages to the premises, interfering with his lawful entry, changing locks without his permission and by requesting unnecessary repairs to the premises. The applicant sought an order requiring the respondent to pay the alleged rent arrears and penalties for late rent and compensation for the other alleged breaches.

RENT

The applicant alleged that the respondent had failed to pay any rent for the months of January, February or March, 2013. The monthly rent for the premises is $2600. The applicant sought relief in the amount of $7800 plus applicable penalties for late rent.

The respondent did not dispute the allegations.

I find the respondent in breach of her obligation to pay rent and find rent arrears in the amount of $7800. I find applicable penalties for late rent, calculated to the date of the hearing to be $111.

REPAIR COSTS

The applicant alleged that the respondent had caused the deck to collapse by storing heavy objects on it and by allowing the accumulation of snow on the deck. The applicant provided photographs of the deck in evidence which showed where the deck had pulled away from the

house. The photographs also showed some large cardboard containers which were alleged to contain heavy items.

The respondent denied storing any heavy objects on the deck, stating that the cardboard containers were unpacked before they were stored on the deck. She stated that she had some interim repairs made to the deck at her expense because she was concerned that the partially collapsed deck posed a hazard.

The photographs of the deck clearly indicate that the joists are butted to the ledger and end-nailed through the ledger with only two nails per joist. There are no joist hangers used and there is no support at the joist end. This is not acceptable deck construction. There is no conclusive evidence that the deck was overloaded and in my opinion, the deck failure was the result of inadequate construction. The applicant's request for relief is denied.

ENTRY

The applicant alleged that he had arranged to have the roof re-shingled during the summer of 2012. The applicant stated that he attempted to negotiate a reasonable time to have the work done but could not get the respondent to agree to a date. The applicant stated that he served the tenant with a notice stating the dates he intended to have the work done. The tenant objected to the dates but provided no alternate dates. When the contractor attempted to undertake the work, the tenant would not permit them to proceed. The email correspondence between the parties was provided in evidence. The applicant stated that he was charged $275 by the contractor for their

time and equipment rental costs. He sought relief in that amount plus costs of $9.30 for registered mail costs for service of a notice.

The respondent did not dispute the allegations but stated that she had been very ill and could not tolerate the noise that would be associated with the work. She stated that she had been in and out of the hospital that summer.

Section 26(2) of the *Residential Tenancies Act* sets out the right of the landlord to enter rental premises for specific purposes, one of them being to carry out their obligations under the Act. Maintenance of the premises is one of those obligations. Written notice of the intended dates and times of entry are required and the tenant may object provided they indicate reasonable alternate dates and times. The respondent did not provide any alternate dates. I find the respondent breached her obligation and find the compensation requested to be a direct result of that breach. I find the amount of $275 to be reasonable but deny the registered mail costs of $9.30. These are a normal cost of doing business.

LOCK CHANGE

The applicant alleged that the respondent had altered the locking system on the premises. He stated that he had received a complaint from the respondent about problems with the locking system in November, 2011 and asked a locksmith to attend to it. He stated that he was told by the locksmith that locks were a problem in the winter and that it would correct itself.

The applicant stated that he was not invoiced by the locksmith. In July, 2012 the applicant was informed by his plumber that he was unable to gain access to the house with the key that was provided to him by the applicant. The applicant made inquiries of the respondent but did not receive a reply. The applicant also contacted the locksmith who stated that he had never changed the locks on the house. The applicant then made arrangements with the locksmith to change the locks and provide the respondent with the new keys. After the locks had been changed the applicant received the following email from the locksmith:

> "I went over and saw Nirrie. She said that the last time I was there I did rekey the locks. I did not send you a bill so that you would know. I can't seem to find the record of keying so that I can make some keys for you . I thought that I did give Plumb Crazy [the plumber] a set of keys and will check with them. Nirrie was very friendly and said she did not replace the locks after I rekeyed."

The applicant sought relief for the cost of the lock change in the amount of $441.

The respondent denied ever changing locks to the premises. She acknowledged that she complained about the locks in November and submitted that they were changed at that time. She presumed that the work was done on the instructions of the applicant.

The locksmith's recollection of events appears to be somewhat muddy. Given the evidence, I cannot conclude that the respondent changed the locks. It would appear at least as likely that the locksmith changed the locks in November, 2011 at the request of the landlord and neglected to inform him, invoice him, or provide him with a set of keys.

UNNECESSARY REPAIRS/INSPECTIONS

The applicant stated that the respondent reported to him that the stairs were in poor condition and required repair. He stated that he engaged a contractor who inspected the stairs in November, 2012 and reported that the stairs would be safe until next year. The applicant was charged $129.25 for the inspection and sought relief for those costs.

The respondent stated that several people who used the stairs felt that they were dangerous. She stated that she was not a carpenter and was therefore unable to accurately assess the soundness of the stairs but felt it prudent to advise the landlord because she did not was want anyone to be injured on the property.

In my opinion, the contractor's assessment that the stairs would not require repair until next year does not imply that the respondent's concern about their safety was frivolous or vexatious. Certainly, if repairs are required next year, the stairs must have been near the end of their safe useful life. It appears to me that the respondent had a valid concern regarding the stairs and the applicant was well served by her observations. The applicant's request for relief is denied.

The applicant alleged that the respondent reported a faulty fluorescent fixture in the kitchen when all that was required was the replacement of the fluorescent tube. The applicant engaged a contractor who charged him $231.08 to test the fixture and replace two tubes. The applicant sought relief in this amount.

The respondent stated that she saw sparks and heard a noise when the light failed which led her to believe that there was a more serious electrical problem. She stated that because of the spark and noise, she did not attempt to change the tube, for fear of electrical shock. The applicant stated that the electrician advised him that fluorescent tubes often make a popping sound when they burn out.

In my opinion, there were reasonable grounds for the respondent to suspect a fault in the fixture. Perhaps what she saw was not, in fact, a spark but her observations certainly justify an inspection. Tenants are responsible for the replacement of light bulbs and fluorescent tubes. Therefore, in my opinion, the applicant should pay for the inspection and the respondent should pay for the tubes and labour to replace them. I find this amount to be $118.62 calculated as follows:

2 tubes @$2.88	$5.76
1 hour labour @ $105	105.00
Shop surcharge @ 2%	2.21
GST	5.65
Total	$118.62

The applicant alleged that the respondent reported problems with the heat and had the Environmental Health Officer conduct two inspections which indicated that the heat was inadequate. The applicant arranged to have a heating contractor attend the premises on February 8, 2012 who reported that the temperature in the premises was warm. The contractor reported that he adjusted the boiler temperature and checked the boiler. The applicant was charged $315 for this work. The respondent later filed an application seeking termination of the tenancy

agreement due the landlord's failure to adequately maintain the heat (File #20-13040, filed on December 7, 2012). The premises were inspected by the Environmental Health Officer and the Rental Officer prior to the hearing and found to be adequately heated. The application was dismissed. The applicant sought relief for the $315 he paid for the heating contractor's work.

I am confident that the Environmental Health Officer's temperature measurements were accurate and that the heat in the premises during his first two inspections was inadequate. The applicant implies that the respondent took steps to ensure that the temperature in the premises was low when the first two inspections took place and that the "independent and unannounced" inspection by his contractor revealed the true condition of the heating system. In my opinion, it is equally as probable that the adjustments to the boiler temperature made by the contractor on February 8, 2012 led to a rise in temperature in the premises which was documented by both the Environmental Health Officer and the Rental Officer during their joint inspection in December, 2012. I do not find the respondent's complaint to be frivolous or vexations and must deny the applicant's request for relief.

YARD WORK

The applicant alleged that the respondent had failed to maintain the yard in a reasonable state. He alleged that the grass was never cut and the flower beds were never maintained. He estimated that he would have to spend two days to restore the yard to a reasonable condition at a cost of $480.

The respondent stated that she had cut the grass and that there were no flower beds to speak of in the yard.

There was no evidence provided to indicate the condition of the yard at the time of the hearing. The yard is now covered in snow and completely obscured. There was no photographic evidence or inspection report to indicate the condition of the years at the commencement of the tenancy agreement. In my opinion, this matter is best dealt with at the end of the tenancy as there is no evidence at this time to determine if there has been any breach of the tenant's obligation to reasonably maintain the yard. The applicant's request for relief is denied.

FENCE

The applicant alleged that the fence surrounding the yard was leaning and that the respondent had failed to advise him of this. The applicant argued that as a consequence, the fence had continued to deteriorate without his knowledge. He estimated the cost of this additional damage to be $647.93.

Section 30 of the Act obligates a landlord to maintain the rental premises. The fence has not been damaged by the tenant. The damage is the result of normal wear and tear. Section 30(5) states that a tenant shall give reasonable notice to the landlord of any substantial breach of the landlord's obligation to repair that comes to the attention of the tenant. This is not set out as an enforceable obligation of the tenant. There are no remedies that can be applied if the tenant fails to notify the landlord of a breach. It is intended as a mechanism simply to inform the landlord of specific repairs and maintenance that arise. The applicant's request for compensation is denied.

EXPENSES

The applicant sought compensation for his time and expenses to prepare his case and file the application, including service costs. He has also sought the cost of a fax to the RCMP seeking their assistance. These are, in my opinion, costs of doing business. This tribunal has always expected parties to pay their own preparation costs, legal costs and service costs. I shall not make an exception in this case.

The applicant did not seek termination of the tenancy agreement but stated that he now wished to do so. The respondent, who sought the termination of the agreement in her previous application consented to an order terminating the tenancy agreement on March 31, 2013. Section 83 of the Act permits a rental officer to issue an order that was applied for or could have been applied for. Given the consensus of both parties that the tenancy agreement should be terminated and the fact that the parties can not quicky execute a mutual agreement in writing, an order would seem reasonable.

An order shall issue requiring the respondent to pay rent arrears and penalties for late rent in the amount of $7911, compensation for interfering with the applicant's right of entry in the amount of $275 and repair costs regarding the kitchen light of $118.62. The tenancy agreement between the parties shall be terminated on March 31, 2013.

Hal Logsdon
Rental Officer