

IN THE MATTER between **NPR LIMITED PARTNERSHIP**, Applicant, and
ROBERTA SIMMONDS, 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 -

ROBERTA SIMMONDS

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondent shall pay the applicant repair costs in the amount of four hundred forty one dollars (\$441.00) on or before June 30, 2013.

DATED at the City of Yellowknife, in the Northwest Territories this 9th day of April,
2013.

Hal Logsdon
Rental Officer

IN THE MATTER between **NPR LIMITED PARTNERSHIP**, Applicant, and
ROBERTA SIMMONDS, 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-

ROBERTA SIMMONDS

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: April 3, 2013

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Connie Diener, representing the applicant
Maigan Lefrancois, representing the applicant
Kenny Balsillie, witness for the applicant
Roberta Simmonds, respondent
Jeannette Savoie, representing the respondent

Date of Decision: April 9, 2013

REASONS FOR DECISION

The applicant alleged that the respondent had blocked the toilet on repeated occasions and had failed to pay for the service calls to unclog the fixture. The applicant also alleged that the respondent had called to report that there was no heat in her apartment but a service call confirmed that the heat was operating normally. The applicant also alleged that the respondent had failed to pay rent.

The applicant sought an order requiring the respondent to pay the costs of these service calls pursuant to section 42 of the *Residential Tenancies Act*, an order requiring the respondent to pay the alleged rent arrears and terminating the tenancy agreement pursuant to section 41 and an eviction order pursuant to section 63.

Prior to the hearing the rental officer requested the applicant to provide work orders for the repair costs. The documents received were provided to the respondent's counsel.

The applicant provided a statement of account in evidence which indicated a balance owing of \$2683. The balance consists of \$1176 for repair costs, \$1409 for rent and \$98 for penalties for late rent. The applicant withdrew their request for the late rent penalties stating that they do not charge penalties to tenants who are receiving full income assistance. The applicant also provided a photograph of the clogged toilet in evidence.

The applicant's witness testified that he had attended the premises on numerous occasions to unclog the toilet. He stated that the fixture had to be replaced on October 17, 2012 when he was unable to unclog it. He stated that the toilet was taken to the dump and broken to reveal a makeup case stuck in the trap. He acknowledged that he did not see the case himself. Two labourers removed the toilet from the apartment and took it to the dump. The witness stated that on other occasions, he was able to unclog the toilet with a plumber's snake and it appeared that it was simply clogged with an excessive amount of toilet paper. However, the witness stated that he was able to retrieve what appeared as a Christmas decoration on one occasion and provided the object in evidence.

On questioning, the applicant's witness was unable to say on what dates he attended the premises but he testified that he had never attended the premises more than once on any given day. He also stated that after unclogging the toilet each time he checked it for proper operation. He stated that it filled and flushed normally. The witness testified that on one occasion, he discovered that the water supply valve had been shut off.

The applicant's witness testified that he attended the premises due to a complaint about the heat. He stated that he checked the thermostat and the zone valve for proper operation and found them to be operating normally. He stated that the radiation was hot when the thermostat called for heat.

The respondent provided a Financial Case Report from the *Income Assistance Program* which indicated that a cheque in the amount of \$1410 had been mailed directly to the applicant for the

April, 2013 rent. The amount does not appear on the applicant's statement. It is reasonable to assume that this payment is in transit or has been received but not yet posted. The payment will eliminate the rent arrears if the penalties are reversed.

The respondent denied clogging the toilet and stated that the toilet malfunctioned because it was not filling up properly. She stated that she had witnesses to contact by telephone but they were not available when called. The respondent also testified that the heat was not controllable which was why she reported the problem.

A toilet is a reasonably simple device consisting of a one piece porcelain bowl with a cast-in trap and ducts for the flush water to enter. It is bolted to the floor and connected to a large diameter pipe with a wax seal which carries sewage away from the building. The trap in the fixture is designed to allow the contents of the bowl to exit while leaving a volume of fresh water in the bowl which creates a seal to prevent sewer gasses from entering the premises. The second component of a toilet is the tank which is connected to the bowl and holds the flush water which is released into the bowl on flushing and automatically refills after a flush.

If a toilet is clogged, the bowl will fill with water but cannot escape due to an obstruction, usually in the trap. Continued flushing will cause the bowl to overflow. If the flushing mechanism fails to release the water in the tank or the tank is not filling, the bowl will not be full. Most of the bowl contents will drain, leaving only a small amount in the trap and bowl.

The photographic evidence clearly indicates a clogged toilet which is confirmed by the applicant's witness. Clogged toilets are almost always the tenant's responsibility to repair since they are inevitably caused by the introduction of inappropriate objects in the toilet or the excessive use of toilet paper. The evidence clearly indicates that the toilets which were repaired by Mr Balsillie were clogged.

Mr. Balsillie testified that he did not attend the respondent's apartment more than once on any given day, yet the work orders, invoices and statement all show three repairs on December 27, 2012. The three work orders which initiated the work show that three calls were received about a clogged toilet on December 27, 2012 at 11:52 AM, 11:54 AM and 11:57 AM. Each one generated a work order which was completed by Mr. Balsillie and three charges of \$105 were charged to the respondent. It would appear that only one repair was made. The two additional charges totalling \$210 are denied.

The charges for invoices #164 (\$52.50), #028 (\$52.50), #054 (\$105), #055 (\$52.50) and #056 (\$105) are also denied. None of these invoices are supported by work orders nor do they indicate what work was done or who performed the work.

There is also a charge of \$105 posted to the statement on March 26, 2013 referencing invoice #063. There was no corresponding invoice or work order provided in evidence to indicate the nature of the work or who performed it. This charge is also denied.

I find the documented work performed by Mr. Balsillie to unclog the respondent's toilet to be the responsibility of the respondent. I find the charges to be reasonable. These charges total \$441.

Invoice #163	WO 45265	\$283.50
Invoice #169	WO 53195	105.00
Invoice #008	WO 53779	<u>52.50</u>
TOTAL		\$441.00

In my opinion the charge of \$52.50 charged on invoice #024 should not be charged back to the respondent. While it may be true that the heating system was working satisfactorily, the respondent may have perceived it otherwise. The service call was not necessary to repair any damage done by the respondent. In my opinion, there is not sufficient evidence to consider this single request for assistance to be frivolous or vexatious.

I find the respondent in breach of her obligation to unclog the toilet. An order shall issue requiring the respondent to pay the applicant the repair charges of \$441. Given, that the respondent is receiving assistance, the respondent shall have until June 30, 2013 to pay this amount in full.

The application for termination relies on a breach of section 41. The late payment of the rent does not in my opinion, justify the termination of the tenancy agreement. The request for termination and eviction is denied.

Hal Logsdon
Rental Officer