

IN THE MATTER between **Deborah Webster and Uwe Naeher**, Applicants, and
Judith Beach and Donald Beach, Respondents;

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, **Adelle Guigon**, Deputy Rental Officer,
regarding a rental premises within **the City of Yellowknife in the Northwest
Territories**.

BETWEEN:

DEBORAH WEBSTER and UWE NAEHER

Applicants/Landlords

- and -

JUDITH BEACH and DONALD BEACH

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the Respondents shall pay to the Applicants rental arrears and late payment penalties in the amount of \$21,104.72 (twenty-one thousand one hundred four dollars seventy-two cents).

2. Pursuant to section 41(4)(c) of the *Residential Tenancies Act*, the tenancy agreement between the Applicants and Respondents regarding the rental premises known as 138 Niven Drive in Yellowknife, Northwest Territories, is terminated effective July 31, 2013, and the Respondents shall vacate the premises on or before that date.

DATED at the City of Yellowknife, in the Northwest Territories this 25th day of July 2013.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Deborah Webster and Uwe Naeher**, Applicant, and **Judith Beach and Donald Beach**, 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 **Adelle Guigon**, Deputy Rental Officer.

BETWEEN:

DEBORAH WEBSTER and UWE NAEHER

Applicants/Landlords

-and-

JUDITH BEACH and DONALD BEACH

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	July 12, 2013
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories, via Teleconference
<u>Appearances at Hearing:</u>	Deborah Webster, the Applicant
<u>Date of Decision:</u>	July 22, 2013

REASONS FOR DECISION

Application

This Application to a Rental Officer regarding the rental premises known as 138 Niven Drive in Yellowknife, Northwest Territories, was submitted by the Applicants, Deborah Webster and Uwe Naeher, and filed by the Rental Office on May 30, 2013. The Applicants served a copy of the filed application package on the Respondents, Judith Beach and Donald Beach, by registered mail signed for on June 3, 2013.

In their application, the Applicants sought payment of rental arrears, payment of late payment penalties, payment of future rent on time, termination of the tenancy agreement, and eviction.

The following evidence was included in the application package:

- Exhibit 1: Rental Agreement effective May 1, 2011
- Exhibit 2: Accounting Statement as of May 28, 2013
- Exhibit 3: Notice of Failure to Pay Rent dated February 11, 2013
- Exhibit 4: Three NSF Cheques
- Exhibit 5: Two CIBC NSF Notices
- Exhibit 6: Notification of Closure of Respondent's TD Bank Account dated April 30, 2013

On June 17, 2013, the Applicants submitted the following evidence:

- Exhibit 7: Notice of Failure to Pay Rent dated June 6, 2013

On July 5, 2013, the Applicants submitted the following evidence:

- Exhibit 8: Respondents' E-mail Reply to the Applicants dated June 6, 2013
- Exhibit 9: Notice of Failure to Pay Rent dated July 5, 2013
- Exhibit 10: Notice of Rent Increase dated March 30, 2013, effective July 1, 2013

On July 11, 2013, the Respondents submitted the following evidence:

- Exhibit 11: Respondents' Written Statement dated July 14, 2013

Exhibit 12: 16 Repairs and Call-out Invoices

On July 11, 2013, the Applicants submitted the following evidence:

Exhibit 13: Landlords' Rental Premises Expenses for March 1 to July 12, 2013

Exhibit 14: Revised Accounting Statement to July 11, 2013

On July 12, 2013, the Applicants' submitted the following evidence:

Exhibit 15: Respondents' E-mail to the Applicants Regarding the Premises Walkthrough dated April 5, 2011

Exhibit 16: E-mail Conversation Regarding Respondents' Repeated Entry into Rental Premises Prior to Occupancy, dated from May 13 to May 24, 2011

On July 15, 2013, the Applicants submitted the following evidence:

Exhibit 17: Set of 24 Photographs of the Interior of the Rental Premises

On July 19, 2013, the Respondents submitted the following evidence:

Exhibit 18: Written Reply Submission

On July 21, 2013, the Applicants submitted the following evidence:

Exhibit 19: E-mail Reply Submission

Hearing

A hearing was scheduled for July 12, 2013, via teleconference as the Applicants reside outside the Northwest Territories. The Applicants were represented at hearing by Ms. Deborah Webster. The Respondents were personally served with the notice of hearing on June 18, 2013. The Respondents notified the Rental Office on July 11, 2013, both verbally and in their written submission, that they would not be attending the telehearing. The hearing proceeded in their absence.

Submissions

At hearing Ms. Webster reiterated their request for rental arrears to be paid, for future rent to be paid on time, and to terminate the tenancy and evict the tenants. Referencing her accounting statements, she identified several instances where the monthly payments received were less than the rent payable. There were four receipts for repairs submitted in 2011 by the tenants which the landlords accepted and deducted from the rent payable, however, there were several subsequent occurrences where the rent was not paid in full and no corresponding repairs receipts were received to account for the discrepancies. Ms. Webster further pointed out that the rent monies were received late for every month except June 2011, November 2011, and April 2012, and that as of this hearing the rent for March, April, May, June, and July 2013 remained outstanding.

The Respondents' written submissions did not speak to the rental arrears directly, rather they spoke to the condition of the rental premises when they took possession and subsequent repairs and maintenance which were required over the term of the tenancy for which they paid out of pocket. Ms. Webster responded at hearing that the premises were in good condition when they walked through with Dr. Donald Beach in early April 2011. No written check-in inspection report was made or submitted for consideration. She reiterated that the tenancy agreement the parties signed identified the tenants as responsible for the maintenance of the premises and annual inspections and cleaning of the utility systems.

Submissions made subsequent to the hearing spoke primarily to the condition of the unit rather than the rental arrears, except where the Respondents acknowledged the significant rental arrears and offered to enter into a payment plan to resolve them, and where the Respondents indicated they would be vacating the premises on July 31, 2013. The Respondents requested that their security deposit be applied against the rental arrears. The Applicants at hearing requested that the security deposit be held to apply against any tenant damages that may be found upon the tenants' departure from the premises rather than against the rental arrears.

I reserved my decision pending receipt of final written submissions by the parties and made my decision on July 22, 2013, as follows.

Determination

I accept the rental agreement as reflecting a valid tenancy which commenced May 1, 2011, to end April 30, 2014.

In consideration of the application as it was initiated, I have determined that the matter at hand is the rental arrears and only the rental arrears. The allegations regarding the condition of the premises before, during, and after the tenancy appear to be complex and controversial, and they will require proper consideration with all the relevant evidence and arguments. It will be more appropriate to consider any dispute regarding the condition of the premises and tenant damages when both parties have an opportunity to collect said evidence and make full arguments and defence, therefore, I will not be considering those matters in this decision. The parties may submit new applications at a later date to specifically address those issues.

The accounting statements submitted by the Applicants reflect the payments made by the Respondents since the commencement of the tenancy and also contain the Applicants' calculations of late payment penalties. The Respondents did not dispute this statement. I accept that it is an accurate reflection of the payments received. I further acknowledge that the late payment penalty calculations fall within the maximum requirements established by section 3 of the *Residential Tenancies Regulations* (the Regulations).

The Applicants notified the Respondents of an increase of the monthly rent from \$4,050 to \$4,500 on March 30, 2013, which was to become effective July 1, 2013. This was accepted by the Respondents in their E-mail of June 6, 2013. Section 47 of the *Residential Tenancies Act* (the Act) has been satisfied and I accept the rental increase effective July 1, 2013, as valid.

I find the Respondents owe rental arrears in the amount of \$24,465.20 plus late payment penalties in the amount of \$694, for a total amount owing of \$25,159.20.

The security deposit of \$4,050 was received by the Applicants on May 16, 2011. Calculation of the interest to apply to the security deposit in accordance with section 2 of the Regulations is \$4.48. The total security deposit plus interest of \$4,054.48 will be applied against the rental arrears in accordance with section 18 of the Act, thereby resulting in a total amount owing for rental arrears and late payment penalties of \$21,104.72.

I further find that termination of the tenancy agreement as a result of non-payment of rent is justified in this instance, as evidenced by the substantial amount of rent outstanding and the continued requirement for the landlords to mitigate their costs to maintain the utilities, facilities, and services to the rental premises. An eviction order is also justified in the event the tenants do not vacate the premises as required.

Order

An order will issue requiring the Respondents to pay to the Applicants rental arrears and late payment penalties in the amount of \$21,104.72 and terminating the tenancy effective July 31, 2013. An order for eviction will follow under separate cover.

Adelle Guigon
Deputy Rental Officer