

IN THE MATTER between **NWT HOUSING CORPORATION**, Applicant, and
GILBERT NITSIZA AND DEBBIE SIMPSON, 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, **HAL LOGSDON**, Rental Officer,
regarding the rental premises at **WHATI, NT**.

BETWEEN:

NWT HOUSING CORPORATION

Applicant/Landlord

- and -

GILBERT NITSIZA AND DEBBIE SIMPSON

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondents shall pay the applicant repair costs in the amount of two thousand one hundred eighty seven dollars and fifty one cents (\$2187.51).
2. Pursuant to section 45(4)(d) of the *Residential Tenancies Act*, the respondents shall pay the applicant fuel costs in the amount of one thousand one hundred eighty seven dollars and sixty eight cents (\$1187.68).

DATED at the City of Yellowknife, in the Northwest Territories this 13th day of
November, 2013.

Hal Logsdon
Rental Officer

IN THE MATTER between **NWT HOUSING CORPORATION**, Applicant, and
GILBERT NITSIZA AND DEBBIE SIMPSON, Respondents.

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:

NWT HOUSING CORPORATION

Applicant/Landlord

-and-

GILBERT NITSIZA AND DEBBIE SIMPSON

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: September 11, 2013

Place of the Hearing: Yellowknife, NT via teleconference

Appearances at Hearing: Jessica Relucio, representing the applicant
Daniel Korver, witness for the applicant

Date of Decision: November 13, 2013

REASONS FOR DECISION

The respondents were served Notices of Attendance sent by registered mail and confirmed delivered. The respondents failed to appear at the hearing and the hearing was held in their absence.

The applicant stated that the respondents abandoned the rental premises on or about January 4, 2013. The applicant arranged for an agent to check the premises on January 9 and testified that they paid the agent \$78.75 to do that work. The agent reported that the fuel tank was empty and the unit was frozen. The applicant confirmed with the fuel distributor that the last fuel delivery was made on December 11, 2012 and only \$200 worth of fuel was purchased by the respondents. The applicant had the fuel tank filled on January 10, 2013 at a cost of \$1187.68. A delivery slip was provided by the applicant in evidence.

On January 13, 2013 the applicant attempted to inspect the premises but the keys were not available and no inspection was completed. A condition rating report was completed by Mr. Korver on March 26, 2013. Another inspection report was completed by Ms Relucio on April 9, 2013 with Ms Simpson's brother. The reports were provided in evidence along with several photographs of the interior of the unit taken on March 25 and April 16, 2013 and several photos of the exterior taken on May 22, 2013.

A check-in inspection report was provided in evidence by the applicant. The applicant stated that

the unit was new and the respondents were the first occupants. The applicant holds a security deposit of \$500. No statement of the security deposit has been completed by the applicant. The condition rating inspection form identifies repairs which the applicant considers to be necessary due to the tenants' negligence with estimated repair costs. None of the identified repairs have been completed. The total estimated costs are \$4340.

The applicant also alleged that the respondents had failed to pay rent and provided a statement of the rent account in evidence which indicated a balance of rent owing as at January 1, 2013 in the amount of \$897. The applicant testified that no payments of rent had been received since that date.

The applicant sought an order requiring the respondents to pay rent arrears of \$897, repair costs of \$4340, fuel costs of \$1187.68 and inspection costs of \$78.75.

A previous order (file #10-12476) was issued on March 14, 2012 requiring the respondents to pay rent arrears of \$1897. Since that order was issued, the respondents have made one payment of \$1000, leaving a balance of \$897. The applicant has an order for the rent relief requested.

There is no requirement to issue another.

The cost of conducting inspections is a cost of doing business. Relief for the cost of the January 9, 2013 inspection is denied.

The tenancy agreement between the parties required the respondents to pay for the cost of fuel during the term. The applicant testified that the premises were supplied with a full tank of fuel at the commencement of the tenancy. Therefore the respondents were obligated to leave a full tank of fuel when they vacated. The evidence supports the applicant's claim for compensation of \$1187.68.

I find the evidence provided in support of the repair costs to be inadequate. Despite the fact that this matter was heard eight months after the respondents moved out, all of the repair costs remain estimates and it is clear from the testimony that a full assessment of the damages remains to be done. For example, there are costs sought, both for labour and material, to inspect the sewer tank and water tank for damage. Surely this assessment could have been completed during the summer of 2013. I also question why the inspection costs should be the responsibility of the respondents or what possible material costs could be associated with the inspection.

In my opinion, the evidence does not support the \$720 in cleaning costs outlined in the condition rating report. Although Ms Relucio testified that the premises were extremely dirty and her inspection report supports that allegation, the photographs do not indicate the need for that amount of cleaning. As well, it is questionable that \$160 of materials would be required for cleaning purposes, even if purchased in Whati.

The costs associated with repair/replacement of the traps, taps and sinks is not supported by the evidence. It is clear from the testimony of Mr. Korver that it has not been determined if the p-

traps are damaged or not. Mr. Korver stated that the p-traps would be routinely replaced whether they had been frozen or not because they had been "stressed" by the freezing. I see no reason to replace a p-trap that is not leaking nor do I accept the material cost of \$20 for a p-trap set out in the estimate.

The re-caulking of the vanity and kitchen counters, if necessary, would usually be the result of normal wear and tear rather than freezing. There is no evidence to support that the caulking was damaged due to the negligence of the respondents.

The *Residential Tenancies Act* requires a landlord who intends to withhold all or part of a security deposit to prepare a final itemized statement of repair costs.

- 18. (7) A landlord who intends to withhold all or a portion of a security deposit, a pet security deposit or both shall, within 10 days after the day a tenant vacates or abandons the rental premises,**
 - (a) give written notice to the tenant of that intention; and**
 - (b) subject to subsection (9), return the balance of the deposit or deposits to the tenant.**
- (8) A notice must include**
 - (a) an itemized statement of account for the deposit or deposits;**
 - (b) a final itemized statement of account for any arrears of rent that the landlord is claiming; and**
 - (c) subject to subsection (9), a final itemized statement of account for any repairs that the landlord is claiming.**
- (9) A landlord who is unable to determine the correct amount of the cost of repairs within 10 days after the day a tenant vacates or abandons the rental premises, shall**
 - (a) include with the notice referred to in subsections (7) and (8) an estimated itemized statement of account for any repairs; and**
 - (b) within 30 days after the day the tenant vacates or abandons**

the rental premises,

- (I) give the tenant a final itemized statement of account for any repairs that the landlord is claiming, and**
- (ii) return the balance of the deposit or deposits to the tenant.**

(10) Notwithstanding paragraphs (7)(b), (8)(c) and (9)(b), if there is significant damage to the rental premises and the landlord is unable to determine the correct amount of the cost of repairs within 30 days after the tenant vacates or abandons the rental premises, the 30-day period under paragraph (9)(b) is extended to 45 days.

In my opinion, the March 26 condition rating report constitutes, at best, an estimated statement.

There being no final statement, I find the applicant in breach of section 18. However, the application was made pursuant to section 42 and in my opinion, it is not unreasonable to consider the following repair costs which in my opinion are reasonable:

- a) Replacement of one stove element and drip pan - \$50
- b) Door replacement as per estimate - \$420
- c) Toilet tank replacement as per estimate - \$120
- d) Replacement of hot water tank - \$1320
- e) Replacement of water pump - \$590
- f) General cleaning - \$200

Taking into account the security deposit and accrued interest I find the respondents responsible for repair and cleaning costs totalling \$2187.51 calculated as follows:

Total repair and cleaning costs allowed	\$2700.00
Security deposit	(500.00)
Accrued interest	<u>(12.49)</u>
Total	\$2187.51

An order shall issue requiring the respondents to pay the applicant repair costs of \$2187.51 and

fuel costs of \$1187.68.

Hal Logsdon
Rental Officer