

IN THE MATTER between **NPR LIMITED PARTNERSHIP**, Applicant, and
TOMMY ESAU, 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 **INUVIK, NT.**

BETWEEN:

NPR LIMITED PARTNERSHIP

Applicant/Landlord

- and -

TOMMY ESAU

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 62(2) of the *Residential Tenancies Act*, the respondent shall pay the applicant compensation for lost rent in the amount of one thousand two hundred thirty two dollars and forty six cents (\$1232.46).

DATED at the City of Yellowknife, in the Northwest Territories this 21st day of March,
2014.

Hal Logsdon
Rental Officer

IN THE MATTER between **NPR LIMITED PARTNERSHIP**, Applicant, and
TOMMY ESAU, 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-

TOMMY ESAU

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: February 12, 2014

Place of the Hearing: Inuvik, NT

Appearances at Hearing: Aru Vashisht, representing the applicant

Date of Decision: March 21, 2014

REASONS FOR DECISION

The respondent was served with a Notice of Attendance sent by registered mail and confirmed delivered. The respondent failed to appear at the hearing and the hearing was held in his absence. The application was also successfully served on the respondent by the applicant.

The parties entered into a one year term tenancy agreement which expired on July 31, 2013 and was renewed as a monthly agreement. The applicant stated that they discovered the premises abandoned on December 12, 2013 and took possession. The applicant retained the security deposit (\$1350) and accrued interest (\$1.54), applying it against cleaning (\$300), steam cleaning (\$200), rent arrears and penalties for late rent (\$3434), two invoices for electricity (\$103.82) and administration charges (\$10.37) leaving a balance owing of \$2696.65. The applicant sought monetary relief of that amount.

The applicant provided a statement of account, inspection reports, photographs and two invoices for electricity in evidence.

The two invoices for electricity cover the period October 9, 2013 to November 25, 2013 and show very low electrical consumption. Both are in the name of the applicant. The NWT Power Corporation's representative advised that the respondent's account was closed on October 8, 2013. The Corporation's representative advised that they had a standing agreement with the applicant that any account closed by a tenant would immediately result in an account being

opened for the premises in the landlord's name. The representative from the Corporation could not confirm if the landlord had been notified that the respondent's account had been closed but the dates on the invoices indicate that they were received by the applicant on November 18 and December 11. The representative confirmed that the account remained in the name of the applicant from October 9, 2013 to January 30, 2014 when a new tenant established an account for the premises. This information was provided to the applicant prior to the determination of this matter and they were given an opportunity to speak to the matter.

Section 1(3) of the *Residential Tenancies Act* sets out the criteria for abandonment of rental premises.

- 1. (3) For the purposes of this Act, a tenant has abandoned the rental premises and the residential complex where the tenancy has not been terminated in accordance with this Act and**
 - (a) the landlord has reasonable grounds to believe that the tenant has left the rental premises; or**
 - (b) the tenant does not ordinarily live in the rental premises, has not expressed an intention to resume living in the rental premises, and the rent the tenant has paid is no longer sufficient to meet the tenant's obligation to pay rent.**

There is no evidence that the tenancy agreement was terminated by the tenant's notice, by mutual agreement or by order. It seems clear from low consumption shown on the electrical invoices that the respondent was not living in the premises after October 8, 2013. There is no evidence that the respondent expressed any intention to resume living in the premises and the October rent, due on October 1, was unpaid. Therefore, on the balance of probabilities, I find the premises were abandoned on October 8, 2013.

Pursuant to section 62(1) of the Act, the tenancy agreement was terminated on October 8 by virtue of the abandonment.

62. (1) Where a tenant abandons a rental premises, the tenancy agreement is terminated on the date the rental premises were abandoned but the tenant remains liable, subject to section 5, to compensate the landlord for loss of future rent that would have been payable under the tenancy agreement.

Therefore, the charges the landlord has applied for November and December can not be considered rent but may, subject to section 5, be considered compensation for lost rent.

- 5. (1) Where a landlord or tenant is liable to the other for damages as a result of a breach of a tenancy agreement or this Act, the landlord or tenant entitled to claim damages shall mitigate his or her damages.**
- (2) Without limiting subsection (1), where a tenant terminates a tenancy agreement, contravenes a tenancy agreement, or vacates or abandons rental premises, other than in accordance with this Act or the tenancy agreement, the landlord shall rent the rental premises again as soon as is practicable and at a reasonable rent in order to mitigate the damages of the landlord.**

In my opinion, the applicant could not have been expected to commence action immediately after October 8 to mitigate loss of rent when they were unaware that the tenant had abandoned the premises. However, a landlord cannot simply ignore evidence of abandonment and continue to charge rent. At what point should have the applicant have become aware of the abandonment?

The statement of account indicates that the respondent paid the rent regularly and frequently carried a credit balance until October 1, 2013 when he suddenly ceased to pay any rent at all. The first invoice for electricity received by the landlord on November 18, 2013 indicated a consumption of only 19 KWH. Surely, this was a strong indication that the tenant was no longer

living in the apartment yet the applicant failed to follow-up to see if the respondent was still in possession.

In my opinion, the landlord should have discovered the apartment abandoned earlier than December 12 but given the failure of the respondent to give any notification to the applicant that he had given up possession, I believe compensation for lost rent for November is reasonable. The \$1350 charged as December rent is not rent at all and in my opinion is not reasonable to consider it as compensation for lost rent.

The respondent was only obligated to pay for electricity during the term of the tenancy agreement. As the agreement was terminated by abandonment on October 8, that obligation was extinguished after that date. The electrical costs and administration fees claimed by the applicant are therefore denied.

I find the penalties sought for late rent to reasonable based on the outstanding balance of the October rent from October 1, 2013 to present.

Based on the inspection reports and photographic evidence, I find the charges for cleaning and steam cleaning to be reasonable.

In summary I find the respondent liable to pay compensation for lost rent to the applicant in the amount of \$1232.46 calculated as follows:

- 6 -

Rent arrears and penalties as at October 8/13	\$734.00
Cleaning and steam cleaning	500.00
Less security deposit and interest	(1351.54)
Subtotal	(\$117.54)
Compensation for lost November rent	<u>1350.00</u>
Amount owing applicant	\$1232.46

An order shall issue requiring the respondent to pay the applicant compensation for lost rent in the amount of \$1232.46.

Hal Logsdon
Rental Officer