

IN THE MATTER between **NPR LIMITED PARTNERSHIP**, Applicant, and **TRENA BLANCHARD AND GERALD BLANCHARD**, 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 **YELLOWKNIFE, NT**.

BETWEEN:

NPR LIMITED PARTNERSHIP

Applicant/Landlord

- and -

TRENA BLANCHARD AND GERALD BLANCHARD

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 45(4)(c) of the *Residential Tenancies Act*, the respondents shall pay compensation to the applicant for fuel costs which were paid on behalf of the respondents in the amount of nine thousand three hundred twenty two dollars and eighty cents (\$9322.80).
2. Pursuant to section 45(4)(a) of the *Residential Tenancies Act*, the respondents shall comply with their obligation to pay for fuel during the term of the tenancy.
3. Pursuant to sections 45(4)(e) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as 1453 Gitzel Street,

Yellowknife, NT shall be terminated on June 30, 2014 and the respondents shall vacate the premises on that date unless the respondents establish an account with the supplier of fuel to enable them to pay for fuel during the term of the tenancy in accordance with the tenancy agreement.

DATED at the City of Yellowknife, in the Northwest Territories this 29th day of May,
2014.

Hal Logsdon
Rental Officer

IN THE MATTER between **NPR LIMITED PARTNERSHIP**, Applicant, and **TRENA BLANCHARD AND GERALD BLANCHARD**, 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:

NPR LIMITED PARTNERSHIP

Applicant/Landlord

-and-

TRENA BLANCHARD AND GERALD BLANCHARD

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: May 14, 2014

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Marie Laberge, representing the applicant
Trina Blanchard, respondent

Date of Decision: May 29, 2014

REASONS FOR DECISION

The applicant alleged that the respondents had breached the tenancy agreement by failing to pay for fuel during the term of the tenancy agreement. The applicant sought an order requiring the respondents to comply with their obligation to pay for fuel, pay compensation to the landlord for fuel costs which have been paid on their behalf, and terminating the tenancy agreement and evicting the respondents.

The applicant provided a statement indicating the invoice dates and payments made for fuel delivered to the respondent's premises. Delivery slips indicating the volume of fuel and delivery dates were also provided. The total relief sought was \$9656.62.

The tenancy agreement between the parties commenced on December 1, 2011 and was made for a term of one year. The rent for the premises was set out as \$1885 and the tenants were obligated to pay for fuel, water, electricity telephone and cable.

For reasons unknown to either party, the respondents were unable to establish an account with the fuel supplier and the landlord raised the rent by \$515/month effective December 2, 2011. The respondents did not object to the increased rent.

The applicant filed an application in September, 2013 (file #10-13723) alleging non-payment of rent. The December 2, 2011 rent increase was found to be of no effect as twelve months had not

elapsed since the last rent increase and no written notice of the increase was provided to the tenants. The \$515 monthly increase was denied and no rent arrears were found. The application was dismissed.

The respondent acknowledged that they consented to the \$515 surcharge on the rent when they were unable to establish an account and did not dispute that they had failed to pay the full amount of the surcharge.

The applicant has reversed all of the flat rate rent surcharges of \$515/month and the late payment penalties applied to those payments. They are now seeking the actual payments that were made by the landlord to the supplier on behalf of the respondents. In my opinion, this does not violate the doctrine of *res judicata* as both the amounts and the justification of the amounts are different. The applicant is not simply attempting to recover monies which were charged as rent and denied by claiming that the same monies are compensation for the respondents' breach of their obligation to pay for fuel during the term of the tenancy.

The respondents' failure to establish an account for fuel prevented them from complying with the obligation contained in the tenancy agreement to pay for fuel. This constitutes a breach of the tenancy agreement. Clearly, it would have been irresponsible for the applicant to not protect their property and allow the premises to freeze. Mitigation of loss is required. In my opinion, the applicant is entitled to seek compensation for the actual fuel costs paid on behalf of the respondents and termination of the tenancy agreement pursuant to section 45(4) of the

Residential Tenancies Act.

45. (1) Where in a written tenancy agreement a tenant has undertaken additional obligations, the tenant shall comply with the obligations under the tenancy agreement and with the rules of the landlord that are reasonable in all circumstances.

(4) Where, on the application of a landlord, a rental officer determines that a tenant has breached an obligation imposed by this section, the rental officer may make an order

- (a) requiring the tenant to comply with the tenant's obligation;**
- (b) requiring the tenant to not breach the tenant's obligation again;**
- (c) requiring the tenant to compensate the landlord for loss suffered as a direct result of the breach;**
- (d) authorizing any action that is to be taken by the landlord to remedy the effects of the tenant's breach and requiring the tenant to pay any reasonable expenses directly associated with the action; or**
- (e) terminating the tenancy on the date specified in the order and ordering the tenant to vacate the rental premises on that date.**

Comparing the delivery slips to the list of invoices, I find that the charge of \$610.05 for January 10, 2014 does not relate to the respondents' premises. The correct amount for that month is shown on order #91654273 as \$756.80. I also find that the charge of \$480.57 (order #87942953) corresponds to a delivery on November 11, 2011 which was prior to the commencement of the tenancy agreement and should not be charged to the respondents. Taking these facts into account, I find the cost of fuel paid for by the applicant on behalf of the respondents to be \$9322.80 calculated as follows:

balance as per invoice list	\$9656.62
reverse incorrect invoice	(610.05)
add correct invoice	756.80
less Nov/11 delivery	<u>(480.57)</u>
Total	\$9322.80

I note that the actual cost of fuel as noted above is \$5647 less than the \$515/month over the term

which was originally agreed upon by the parties. As I noted in the previous order regarding this \$515 surcharge, the applicant stopped charging it in March 2013. No explanation was given as to why the charge stopped or how the landlord intended to arrange compensation for fuel. As a consequence, the respondents were unaware of what any future liability would be for fuel that was being paid on their behalf.

I find the respondents in breach of their obligation to pay for fuel during the term of the agreement and find reasonable compensation for fuel paid by the landlord on their behalf to be \$9322.80. An order shall issue requiring the respondents to pay the applicant compensation of \$9322.80 and to comply with their obligation to establish an account and pay for fuel.

Surprisingly, neither the landlord or the tenants appear to have made any effort to determine why an account has not been established. In my opinion, termination of the tenancy is reasonable if the respondents fail to comply with their obligation to establish an account to enable them to pay for fuel to the supplier. The order shall terminate the tenancy on June 30, 2014 unless an account is established to enable the respondents to pay for fuel directly to the supplier in accordance with the tenancy agreement. I leave it to the parties to arrange for an orderly payment of the compensation. An eviction order to be effective on July 1, 2014 unless the account is established shall be issued separately.

Hal Logsdon
Rental Officer