

IN THE MATTER between **NPR Limited Partnership**, Applicant, and **Imara Homes**,
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, **Adelle Guigon**, Deputy Rental Officer,
regarding a rental premises within **the city of Yellowknife in the Northwest Territories**.

BETWEEN:

NPR LIMITED PARTNERSHIP

Applicant/Landlord

- and -

IMARA HOMES

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent must pay to the applicant rental arrears in the amount of \$4,226.47 (four thousand two hundred twenty-six dollars forty-seven cents).
2. Pursuant to sections 42(3)(e) and 45(4)(d) of the *Residential Tenancies Act*, the respondent must compensate the applicant for cleaning and repairs costs to the rental premises known as 1174 Gitzel Street in Yellowknife, Northwest Territories, in the amount of \$3,616.46 (three thousand six hundred sixteen dollars forty-six cents).

DATED at the City of Yellowknife in the Northwest Territories this 9th day of January
2015.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **NPR Limited Partnership**, Applicant, and **Imara Homes**,
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:

NPR LIMITED PARTNERSHIP

Applicant/Landlord

-and-

IMARA HOMES

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	December 16, 2014
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories, by teleconference
<u>Appearances at Hearing:</u>	Metslal Mesgun, representing the applicant Tracy Heslep, witness for the applicant
<u>Date of Decision:</u>	December 16, 2014

REASONS FOR DECISION

An application to a rental officer made by NPR Limited Partnership as the applicant/landlord against Imara Homes as the respondent/tenant was filed by the Rental Office November 12, 2014. The application was made regarding a residential tenancy agreement for the rental premises known as 1174 Gitzel Street in Yellowknife, Northwest Territories. The applicant served a copy of the filed application on the respondent by registered mail signed for November 28, 2014.

The applicant alleged the respondent had accumulated rental arrears, had abandoned the rental premises, had left the rental premises in an unclean state, and had caused damages to the rental premises. They sought an order for payment of rental arrears and compensation for cleaning and repairs. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for December 16, 2014, by teleconference. Ms. Metslal Mesgun appeared representing the applicant. Imara Homes was served a notice of attendance by registered mail signed for December 4, 2014. No one appeared at hearing to represent the respondent. The hearing proceeded in the respondent's absence pursuant to section 80(2) of the *Residential Tenancies Act* (the Act).

Ms. Mesgun testified the respondent had been the named tenant for the rental premises known as 1174 Gitzel Street in Yellowknife, Northwest Territories, since April 1, 2014. In the tenancy agreement the respondent was responsible for paying monthly rent of \$1,800 plus utilities. The last payment received against the respondent's rent account was made August 5, 2014, in the amount of \$1,960, leaving a credit balance of \$297.

Attempts to communicate with the respondent by telephone has resulted in being hung up on and being forwarded to voice mail. Neither telephone calls nor email correspondences have been answered by the respondent. The applicant filed an application with the rental officer requesting payment of rental arrears, termination of the tenancy agreement, and eviction due to substantial breaches of the respondent's tenancy agreement. They attempted personal service of the application November 13, 2014, however, upon arrival at the rental premises there was no response and the exterior suggested there had been no one present in some time. In an effort to

determine whether or not it remained occupied, the applicant entered and discovered the respondent no longer resident in the rental premises. Deeming the respondent had abandoned the rental premises, the applicant reclaimed possession and secured the unit. A mailing address was determined for the respondent in West Vancouver, British Columbia, and the filed application along with supporting additional documentation was forwarded to the respondent by registered mail.

Rental arrears claimed by the applicant include late payment charges applied in accordance with the *Residential Tenancies Act* (the Act) and the *Residential Tenancies Regulations* (the Regulations). The rental arrears including the late payment charges accumulated as of November 30, 2014, total \$5,207.

On November 15, 2014, a move out inspection report was completed on the premises. Along with relatively minor damages, general cleaning, and garbage removal, major damages were documented in the form of water damage to the first floor ceiling below the laundry room. Ms. Tracy Heslep, witness for the applicant, testified when maintenance staff entered the premises the heat had been turned off and the unit was cold. Water was discovered leaking from the dining room ceiling and was tracked to the laundry room. The water line was closed to stop the water flow and further investigation was conducted as it was believed a water pipe had frozen due to the lack of heat in the premises. The leak, which had been occurring for an undetermined period of time prior to discovery, caused substantial damages to the laundry room floor and the dining room ceiling below. The stippling on the dining room ceiling had been saturated to the point of becoming dripping mud, leaving a naked patch along the seam from which the water leaked. As a result, substantial repairs were required.

The applicant also claimed storage fees at a rate of \$100 per month for a leather couch. The couch was the only item of abandoned personal property left by the respondent which had any value and as such the applicant complied with their obligation to store the item for 60 days. The applicant claimed costs as follows:

General cleaning	\$120.00
Carpet cleaning for townhouse	\$800.00
Garbage removal	\$75.00
Materials to repair leak	\$500.00
Labour to repair leak, patching, re-install towel rack, and repair window blind	\$2,000.00
Storage fees	\$200.00
15% admin fee	\$554.25
GST	\$27.71
Total	<u>\$4,276.96</u>

Ms. Mesgun acknowledged a security deposit in the amount of \$980 had been paid on March 28, 2014. Interest calculated against this amount was credited at \$0.53. The applicant retained the total security deposit amount of \$980.53 against the accumulated rental arrears. Ms. Mesgun requested an order for payment of rental arrears and compensation for cleaning and repairs.

Tenancy agreement

The residential lease submitted into evidence by the applicant establishes a residential tenancy agreement between the parties for the rental premises known as 1174 Gitzel Street in Yellowknife, Northwest Territories, for a fixed-term starting April 1, 2014, to May 31, 2015. It was signed by a Mr. Robert Mascott, representing the tenant, on April 3, 2014. I am satisfied a valid tenancy agreement was in place between the parties in accordance with the Act.

Abandonment

Section 1(3) of the Act speaks to the conditions which must be met to determine whether or not a tenant has abandoned the rental premises. Section 1(3)(b) specifically requires that if the tenancy has not been terminated in accordance with the Act, the tenant does not ordinarily live in the rental premises, the tenant has not expressed an intention to resume living in the rental premises, and the rent has not sufficiently been paid then the premises can be considered abandoned. I am satisfied the applicant has appropriately deemed the respondent abandoned the rental premises as of November 13, 2014.

Rental arrears and security deposit

The resident ledger entered into evidence represents the landlord's accounting of charges and payments against the respondent's account. I am satisfied it accurately reflects the monthly rents and payments received. The ledger includes charges for late payment of rent. A review of the amounts so charged satisfies me they were calculated in accordance with the Regulations. I find the respondent has accumulated rental arrears and related charges in the total amount of \$5,207.

The security deposit paid by the respondent on March 28, 2014, in the amount of \$980 must have interest calculated from it in accordance with the Act and Regulations. In determining the respondent abandoned the rental premises as of November 13, 2014, the interest should be calculated to \$0.31 rather than the \$0.53 credited by the applicant. However, the higher interest amount is in the respondent's favour and the applicant expressly consented to paying the higher interest amount to the respondent. The retention of the total security deposit of \$980.53 against the rental arrears is done in accordance with the Act and as such I find the remaining rental arrears to be \$4,226.47.

Cleaning and repairs

The move out inspection and acceptance report submitted by the applicant documents the condition of the rental premises as it was found on November 15, 2014. It includes references to general uncleanliness throughout the premises, including the carpets not being shampooed. Section 21 of Schedule A to the tenancy agreement specifies the tenant's obligation to keep the premises and appliances in a proper state of cleanliness, including to polish and/or shampoo the floors and carpets at the tenant's expense. Section 18 of Schedule B to the tenancy agreement specifies the cost to the tenant if the landlord shampoos the carpets as \$300. Schedules A and B were initialled as agreed to by the tenant's representative. The amount claimed by the applicant for shampooing the carpet was \$800. The applicant explained the rationale for the higher amount as reflecting the size of the premises as compared to most of their other properties; the rental premises in question is a two-story townhouse as opposed to an apartment. However, the parties agreed in writing to a specified amount for shampooing the carpets at the tenant's expense; the applicant acknowledged the agreement and did not dispute reducing the amount of their claim accordingly. The charges for disposing of garbage of \$75 and general cleaning of \$120 are reasonable.

The report documents that the bathroom towel rack had been removed from the wall, that a blackout blind had been installed in one of the bedrooms, and that there were two small holes in the walls. It also documents the laundry room leak as described in testimony by the applicant's representatives. Photographs were provided into evidence of the water damage. Having left the rental premises without notice to or communication with the applicant, I find the claimed damages to be the result of the respondent's negligence. The costs for materials and labour to effect repairs in the total amount of \$2,500 is reasonable.

The applicant's claim for storage fees of the leather couch is inappropriate. Sections 64 and 65 of the Act specify the procedure for dealing with abandoned personal property. In this case, where there is an item of value it must be stored for 60 days. A tenant who pays the landlord the storage and removal costs may claim the item at any time. If the tenant does not claim the item within 60 days the landlord may request permission from a rental officer to dispose of or sell the item. If the landlord sells the item, the proceeds must first be applied to the cost of removal, storage, and sale of the item, and then may be applied to the amount of any order for compensation made in favour of the landlord; any remaining balance must be given to the rental officer to hold for the tenant. A landlord who sells the item must also provide a written report to the rental officer regarding the sale and distribution of proceeds. The couch stored in this case has only so far been stored for approximately one month. The applicant's claim in this application for storage fees is denied.

Sections 7 of the tenancy agreement and 19 of Schedule B to the tenancy agreement both refer to a 20% administration fee to be applied against any costs associated with effecting repairs for which the tenant is responsible. The applicant has chosen to apply a 15% administration fee. Section 5 of the tenancy agreement and Schedule B both reiterate that GST will be applied to any costs associated with effecting repairs for which the tenant is responsible. At hearing, I neglected to adjust the claimed amounts for the administration fee and GST to account for the reduced amount allowed for the carpet shampooing and the denial of the storage fees; I will make that adjustment here and now.

I find the respondent liable for cleaning and repairs costs as follows:

Carpet cleaning	\$300.00
General cleaning	\$120.00
Garbage disposal	\$75.00
Materials and labour to repair leak, patching, replace towel rack, and repair blinds	\$2,500.00
Sub-total	\$2,995.00
15% administrative fee	\$449.25
Sub-total	\$3,444.25
5% GST	\$172.21
Total cleaning and repairs costs	<u>\$3,616.46</u>

An order will issue requiring Imara Homes to pay rental arrears in the amount of \$4,226.47 and to compensate the applicant for cleaning and repair costs in the amount of \$3,616.46.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

Exhibit 1: Resident ledger dated November 10, 2014

Exhibit 2: Applicant's notice to terminate tenancy correspondences to respondent dated June 3, 2014; July 7, 2014

Exhibit 3: Residential lease signed April 3, 2014

Exhibit 4: Move out statement dated November 18, 2014

Exhibit 5: Move out inspection and acceptance report dated November 15, 2014

Exhibit 6: Set of two photographs

Exhibit 7: Resident ledger dated December 16, 2014

Exhibit 8: Move out statement dated December 16, 2014