

IN THE MATTER between **NPR Limited Partnership**, Applicant, and **Darrin Radcliffe**, 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 town of Inuvik in the Northwest Territories**.

BETWEEN:

NPR LIMITED PARTNERSHIP

Applicant/Landlord

- and -

DARRIN RADCLIFFE

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 41(4)(a) and 62(2) of the *Residential Tenancies Act*, the respondent must pay to the applicant rental arrears and compensation for lost future rent in the total amount of \$4,532.90 (four thousand five hundred thirty-two dollars ninety 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 to the rental premises known as Suite No. 12, 20 Tununuk Drive, in Inuvik, Northwest Territories, in the amount of \$650.00 (six hundred fifty dollars).

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 **Darrin Radcliffe**, 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:

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DARRIN RADCLIFFE

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REASONS FOR DECISION

Date of the Hearing: December 11, 2014
Place of the Hearing: Yellowknife, Northwest Territories, by teleconference
Appearances at Hearing: Aru Vashisht, representing the applicant
Date of Decision: December 11, 2014

REASONS FOR DECISION

An application to a rental officer made by NPR Limited Partnership as the applicant/landlord against Darrin Radcliffe as the respondent/tenant was filed by the Rental Office July 15, 2014. The application was made regarding a residential tenancy agreement for the rental premises known as Suite No. 12, 20 Tununuk Drive, in Inuvik, Northwest Territories. The applicant served a copy of the filed application on the respondent by registered mail to the last known address of the respondent; it was deemed served August 1, 2014, pursuant to section 71(5) of the *Residential Tenancies Act* (the Act).

The applicant alleged in the application the respondent had accumulated rental arrears and sought an order for payment. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for December 11, 2014, by teleconference. Ms. Aru Vashisht appeared representing the applicant. Mr. Darrin Radcliffe was sent a notice of attendance by registered mail to his last known address, which was deemed served November 28, 2014, pursuant to section 71(5) of the Act. Mr. Radcliffe did not appear at hearing. The hearing proceeded in his absence pursuant to section 80(2) of the Act.

Ms. Vashisht testified Mr. Radcliffe had been a tenant occupying the rental premises known as Suite No. 12, 20 Tununuk Drive, in Inuvik, Northwest Territories, since November 2011. In December 2013, the landlord received verbal notification from Mr. Radcliffe that family emergencies had arisen and he would be leaving the rental premises, but that for the time being he would retain possession and remain responsible for the rent. Ms. Vashisht was told Mr. Radcliffe was expecting monies from Education, Culture and Employment (ECE), that the rent would continue being paid, and that he would keep in touch with the landlord.

In January 2014 payments against Mr. Radcliffe's rent account ceased being made and rental arrears began accumulating. Occasional communication was received from Mr. Radcliffe, confirming his continued acceptance of responsibility for the rental premises. The last communication received from Mr. Radcliffe was in April 2014 when he requested papers he

claimed he needed for tax purposes and said that he had not been at the premises for some time but would be returning. An address in Winnipeg, Manitoba, was provided at that time. The applicant heard nothing further from Mr. Radcliffe and the rent remained unpaid. At the end of May 2014, after unsuccessful attempts to contact Mr. Radcliffe, the applicant attended the rental premises and found it unoccupied. Various items of personal property had been left behind, but none of the day-to-day items expected to be present where one resides. The refrigerator was found to have rotting food left in it, some items were left in the cupboards, and the premises had not been cleaned. The landlord determined the rental premises had been abandoned. They reclaimed possession and conducted an exit inspection on May 26, 2014. The abandoned personal property was inventoried and stored.

Ms. Vashisht amended the application at hearing to include a request for an order for compensation for cleaning and repairs costs, rental arrears, and loss of one month's future rent. She confirmed the exit inspection report and the inventory of abandoned personal property were both forwarded to Mr. Radcliffe at the Winnipeg address provided.

Tenancy agreement

The lease agreement entered into evidence by the applicant establishes a residential tenancy agreement between the parties for the rental premises known as Suite No. 12, 20 Tununuk Drive, in Inuvik, Northwest Territories, starting November 1, 2011. The tenancy agreement was originally signed for a six-month fixed-term, after which it automatically renewed as a monthly tenancy pursuant to section 49(1) of the Act. I am satisfied a valid tenancy agreement was in place between the parties in accordance with the Act.

Abandoned premises and personal property

The applicant testified no written notice to terminate the tenancy agreement was given by the respondent at any time, and that in fact they were repeatedly advised by the respondent of his intention to return to the rental premises and his acceptance of responsibility for the rent. They were also provided with a forwarding address, the rent had not been paid, and attendance at the rental premises in May 2014 revealed it had not been occupied in some time.

Section 1(3) of the Act speaks to the conditions required to deem a tenant has abandoned the rental premises. The landlord in this case appears to have essentially been 'led on' by the tenant: although the tenant claimed continued responsibility for the rental premises and expressed his intention to return, he did not in fact pay any rent since December 4, 2013. The respondent's communication with the applicant was limited at best and has been non-existent since April 2014. Not having heard from the respondent in at least a month's time, the applicant exercised their right to enter the premises approximately May 25, 2014, in accordance with section 27(1) of the Act. Based on their observance of the condition of the rental premises and the failure of the respondent to pay rent for several months, the applicant deemed on reasonable grounds that the respondent had abandoned the rental premises. They reclaimed possession on May 26, 2014, and conducted an exit inspection of the rental premises on that day.

Sections 64 and 65 of the Act speak to the disposition of abandoned personal property. The applicant prepared an inventory of the personal property which remained in the rental premises and stored it in accordance with that section. Having exceeded 60 days since the property was deemed abandoned and having not heard from the respondent in any regard, I give permission for the applicant to dispose of the stored personal property as they see fit pursuant to section 65(1) of the Act.

Cleaning and repairs

The entry and exit inspection report entered into evidence establishes that both written entry and exit inspections were completed in accordance with the Act. The entry inspection was completed November 2, 2011, with the respondent present as evidenced by his signature. There were only two existing defects noted at the time: a hole in the wall near the living room closet and minor scrapes to the bathtub/shower - neither of these items are being claimed now by the applicant.

The exit inspection was completed May 26, 2014, in the respondent's absence. On that day the rental premises was noted to be dirty throughout, the kitchen exhaust hood and fan were removed from the wall and the hole covered by cardboard, the living room ceiling and walls around the main window were 'bubbling' from possible water damage, there were cigarette burns in the living room carpet, the main bathroom fan was not working, and some light bulbs were either missing or burned out. The applicant further testified to discovering subsequent to the exit inspection damage to the kitchen wall under the window.

The applicant submitted a claim only for the kitchen wall repair in the amount of \$150, the general cleaning in the amount of \$250, and the removal and disposal of garbage from the rental premises in the amount of \$250. These actions were effected during the month of June 2014. The claims were granted, and I find the respondent liable for the cost of cleaning and repairs to the rental premises in the total amount of \$650.

Rental arrears, security deposit, lost future rent

The resident ledger entered into evidence represents the landlord's accounting of monthly rent and payments received against the respondent's rent account. I am satisfied the ledger accurately reflects the status of the respondent's rent account.

The lease agreement specifies the monthly rent at \$850; a notice of rent increase was given to the respondent November 20, 2013, advising him the monthly rent would be increasing to \$900 as of March 1, 2014.

The applicant testified to advertising the availability of the rental premises and showed the rental premises to prospective tenants. Having deemed the premises abandoned May 26, 2014, and needing to do substantive cleaning and repairs negating obtaining new tenants for the month of June, the applicant claimed lost rent for the month of June in the amount of \$900.

As of December 4, 2013, the respondent's rent account held a credit of \$6.00. Since then, the respondent failed to make any further payments towards his rent. Late payment charges were applied against the rent account, calculated by the applicant in accordance with the Act and the *Residential Tenancies Regulations* (the Regulations). The rental arrears accumulated as of May 31, 2014, are \$4,484.

The security deposit of \$850 was made by the respondent November 1, 2011, at the commencement of the tenancy agreement. Interest on the security deposit calculated to May 26, 2014, is \$1.10. The applicant applied the total security deposit of \$851.10 against the rental arrears in accordance with the Act. The total remaining rental arrears are calculated as follows:

Rental arrears to May 31, 2014	\$4,484.00
Lost rent for June 2014	\$900.00
Sub-total	\$5,384.00
Less security deposit	\$851.10
Total remaining rental arrears	<u>\$4,532.90</u>

An order will issue requiring Mr. Darrin Radcliffe to pay rental arrears in the amount of \$4,532.90 and to compensate the landlord for the costs of cleaning and repairs in the amount of \$650.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

Exhibit 1: Amendment to lease agreement made May 30, 2013

Exhibit 2: Resident ledger dated August 18, 2014

Exhibit 3: Lease agreement made November 2, 2011

Exhibit 4: Applicant's notice of rent increase dated November 20, 2013

Exhibit 5: Entry and exit inspection report

Exhibit 6: Inventory of abandoned personal property and storage report