

IN THE MATTER between **NPR LIMITED PARTNERSHIP**, Applicant, and
MARILYN TUTT, 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 **YELLOWKNIFE, NT.**

BETWEEN:

NPR LIMITED PARTNERSHIP

Applicant/Landlord

- and -

MARILYN TUTT

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant rent arrears and late payment penalties in the amount of eight hundred forty four dollars and sixty one cents (\$844.61).

DATED at the City of Yellowknife, in the Northwest Territories this 10th day of
February, 2015.

Hal Logsdon
Rental Officer

IN THE MATTER between **NPR LIMITED PARTNERSHIP**, Applicant, and
MARILYN TUTT, 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-

MARILYN TUTT

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: January 7, 2015

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Metslal Mesgun, representing the applicant (by
telephone)
Marilyn Tutt, respondent (by telephone)

Date of Decision: February 7, 2015

REASONS FOR DECISION

The application was filed on November 12, 2014. The applicant testified that the respondent abandoned the premises on November 25, 2014. The applicant retained the security deposit (\$795) and interest (\$.39), applying it against rent arrears and late payment penalties (\$2965) resulting in a balance owing to the applicant of \$2169.61. The rent arrears include the November, 2014 rent prorated to November 25, 2014. The applicant sought monetary relief in that amount.

The tenancy agreement between the parties was made for a one year term ending on May 31, 2015.

The respondent disputed the amount owing testifying that she vacated the premises on October 31, 2014. She stated that she was advised that she would have to assign the premises. She stated that she sought the assignment of the tenancy agreement to be effective on October 31, 2014 and provided the request to the applicant. The respondent stated that she moved her possessions from the apartment on October 31, 2014. She provided an invoice for the moving expenses in evidence. She stated that she tried to return the apartment keys to the applicant on October 31 but the applicant refused to take them.

The respondent stated that she was out of town until November 6, 2014. When she returned, she was advised by the applicant that her request for assignment was refused. She stated that the

landlord again refused to take the keys to the apartment and was told that she would have to give 30 days notice and pay the rent until December 31, 2014.

The respondent provided an undated written notice to the applicant advising them that she had vacated the premises on October 31, 2014 and attached a letter from her physician stating that her medical condition prevented her from paying the rent. The respondent stated that she provided the documents to the landlord sometime in November. The applicant acknowledged that they had received written notice on November 12, 2014 stating that the respondent had vacated the premises on October 31, 2014.

The respondent testified that she was contacted by the landlord in November to arrange for access to the apartment and conduct a check-out inspection. The applicant acknowledged that a check-out inspection was conducted on November 25, 2014.

The respondent could have terminated the tenancy agreement by notice in accordance with sections 53(1)(a) and 55(1).

53. (1) Notwithstanding any other provision of this Act,

(a) where a tenant dies or the health and physical condition of the tenant deteriorates and the tenant is unable to pay the rent, or

(b) where a spouse of a tenant dies and the income of the surviving spouse is insufficient to pay the rent, the tenant, his or her heirs, assigns or legal or personal representative may terminate the tenancy agreement by giving notice, in accordance with section 55.

55. (1) A notice of termination from a tenant to a landlord must

- (a) be in writing;**
- (b) be signed by the tenant or an agent of the tenant;**
- (c) identify the rental premises to which the notice applies; and**
- (d) state the date on which the tenancy is to terminate.**

However, the respondent failed to provide any written notice to the landlord until November 12, 2014. Clearly, the notice must be given in writing and in advance, not retroactively. Therefore, the tenancy agreement was terminated on November 12, 2014 by the respondent's notice.

It is clear from the evidence that the landlord was aware that the tenant had given up possession of the rental premises on October 31, 2014 when the respondent attempted to return the keys to the apartment and was told that she would have to give written notice and would be held responsible for rent until December 31, 2014. There was no evidence to support any mitigation of loss of rent during November, 2014 provided by the applicant. Compensation for lost rent in November is not supported by the evidence.

I find the respondent in breach of her obligation to pay rent and find rent arrears to October 31, 2014 to be \$844.61 calculated as follows:

Rent and late fees as per ledger to October 31, 2014	\$1605.00
Late fees to date of hearing	35.00
Less Security deposit	(795.00)
Less interest on security deposit	<u>(0.39)</u>
Amount owing applicant	\$844.61

An order shall issue requiring the respondent to pay the applicant rent arrears and penalties for late rent in the amount of \$844.61.

Hal Logsdon
Rental Officer