

IN THE MATTER between **NPR Limited Partnership/Gerry Cheezie**, Applicant, and
Gerry Cheezie/Northern Properties, 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 **city of Yellowknife in the Northwest Territories**.

BETWEEN:

NPR LIMITED PARTNERSHIP/GERRY CHEEZIE

Applicants/Landlord/Tenant

- and -

GERRY CHEEZIE/NORTHERN PROPERTIES

Respondents/Tenant/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the tenant Gerry Cheezie must pay to the landlord NPR Limited Partnership rental arrears in the amount of \$851.35 (eight hundred fifty-one dollars thirty-five cents).

DATED at the City of Yellowknife in the Northwest Territories this 27th day of February
2015.

Adelle Guigon
Deputy Rental Officer

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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/GERRY CHEEZIE

Applicant/Landlord/Tenant

-and-

GERRY CHEEZIE/NORTHERN PROPERTIES

Respondent/Tenant/Landlord

REASONS FOR DECISION

<u>Date of the Hearing:</u>	February 18, 2015
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	Metslal Mesgun, representing the landlord Gerry Cheezie, tenant
<u>Date of Decision:</u>	February 18, 2015

REASONS FOR DECISION

An application to a rental officer made by NPR Limited Partnership as applicant/landlord against Gerry Cheezie as respondent/tenant was filed by the Rental Office January 14, 2015, and assigned file number 10-14512. The landlord served a copy of the filed application on the tenant by email sent January 14, 2015; it was deemed received January 17, 2015, pursuant to section 4(4) of the *Residential Tenancies Regulations* (the Regulations).

An application to a rental officer made by Gerry Cheezie as the applicant/tenant against Northern Properties as the respondent/landlord was filed by the Rental Office January 19, 2015, and assigned file number 10-14517. The tenant served a copy of the filed application on the landlord by personal service January 19, 2015.

Both applications were made regarding a residential tenancy agreement for the rental premises known as #213 Sandstone South, 492 Range Lake Road, in Yellowknife, Northwest Territories.

The landlord alleged the tenant had vacated the rental premises without notice and before the end of the fixed-term period, and claimed lost rent for one month. The landlord also made a claim for compensation for cleaning costs. The tenant alleged the landlord improperly withheld the security deposit and requested its return to him.

A hearing was scheduled for February 18, 2015, in Yellowknife, Northwest Territories. Ms. Metslal Mesgun appeared representing the landlord. Mr. Gerry Cheezie appeared as tenant. As both applications were made regarding the same tenancy agreement they were heard together. The parties acknowledged at hearing that NPR Limited Partnership and Northern Properties are the same company recognized as the landlord in this matter.

The parties had entered into a fixed-term tenancy agreement starting August 1, 2014, and ending July 31, 2015. The tenancy agreement was signed by both parties and included Schedule "A" Landlord's Rules and Regulations, Schedule "B" List of Deductions Against Security Deposits, and Schedule "C" Acknowledgement/Consent which were all initialled and/or signed by the tenant. Section 4 of the tenancy agreement identified the monthly rent as \$1,415 due the first of each month.

The landlord claimed they learned of the tenant's departure from the rental premises when he called them January 2, 2015, to tell them he had finished moving out; the keys were returned to the landlord January 5, 2015. The landlord had not received written notice of the tenant's intention to vacate the rental premises. An exit inspection was completed in the tenant's absence. The landlord completed a move out statement with the following charges:

Rental arrears as of December 31, 2014	\$110.00
January 2015 rent	\$1,415.00
Improper notice/lease break fee	\$1,415.00
Late payment penalties	\$34.00
Carpet steam cleaning	\$300.00
Cleaning - 1 hour labour	\$40.00
Four light bulbs	\$12.00
15% Administration fee	\$52.80
GST	\$2.64
Sub-total - Charges	\$3,271.44
Less Security deposit	\$707.65
Total remaining charges claimed	\$2,673.79

The rental premises was rented to a new tenant as of February 1, 2015. The landlord provided the new tenant's resident ledger as evidence. The landlord clarified the "improper notice/lease break fee" was a charge for loss of future rent when a fixed-term tenancy agreement is broken. It was pointed out at hearing that the rent for January had already been charged on the statement and there is no lost rent for February due to having new tenants for February 1, 2015. It was further noted at hearing that future rent cannot be charged until it becomes due and there is no provision in the *Residential Tenancies Act* for charging "lease break fees". As such, the amount of \$1,415 for "improper notice/lease break fee" was deducted from the charges claimed. The landlord requested an order for payment of rental arrears and cleaning costs in the total adjusted amount of \$1,258.79.

The tenant claimed he had provided written notice of his intention to vacate the rental premises when he paid his December rent on November 28, 2014. He admits to being curious when he did not receive any notices from the landlord to show his apartment, but did not further communicate with the landlord regarding the matter. The tenant had removed all his property from the premises and cleaned it, including shampooing the carpet, by the end of day December 31st. The landlord's office was closed for New Year's Day, so the tenant contacted them January 2, 2015, to confirm he had left the premises. He was advised that day that the landlord was not aware he was intending to leave and that the rent for January was due. He attended the office January 5th to return the keys and also provided another copy of the written notice he provided November 28th. A copy of that notice dated November 27, 2014, was provided into evidence by both the tenant and the landlord; the landlord's copy included the signatures of three of the landlord's representatives acknowledging receipt January 5, 2015. The tenant argued the landlord had all of December to find a new tenant for January 1st and that he should not be held responsible for the January rent. He further argued that his reasons for ending the tenancy early were because he could not afford the rent and he felt he was forced into the tenancy because there was no other affordable housing available to him in the community.

The tenant disputed the cleaning charges claimed by the landlord. He testified to cleaning the rental premises completely, including shampooing the carpet, and that he replaced all of the light bulbs before leaving; one light bulb was left on a shelf in the storage room because he did not have a stool to reach the socket on the ceiling. He provided a receipt for the carpet cleaning post-hearing. The tenant requested the return of his security deposit in full.

Tenancy agreement

The tenancy agreement dated August 1, 2014, establishes a 12-month fixed-term tenancy agreement between the parties for the rental premises known as #213 Sandstone Apartments, 492 Range Lake Road, in Yellowknife, Northwest Territories. The parties did not dispute the validity of the tenancy agreement. I am satisfied a valid tenancy agreement was in place between the parties in accordance with the Act.

A tenancy agreement is a contract between a landlord and tenant for the right to occupy a rental premises. The terms of the contract are set out in the agreement and by signing the agreement the parties are acknowledging and accepting the terms, and agreeing to comply with them. The tenant referred in his written reasons for application (attached to the application to a rental officer) to section 3 of the Act which restricts a landlord from distraining for rent payable on the goods and chattels of a tenant. The tenant further provided Webster's definition of 'distrain' as to force or compel to satisfy an obligation by means of distress. The tenant's argument against his responsibility for the January rent was partly made on feeling forced to enter into the tenancy agreement to secure housing even though he could not afford the rent for the housing in question, causing him great distress. He argued he had no choice but to accept this rental premises because there was no other affordable housing available to him in the community. That situation is not the landlord's fault. The landlord is not obligated to reduce the monthly rent to accommodate a tenant's income. The tenant is not obligated or forced to enter into the agreement with the landlord. The requirement to pay rent in exchange for the right to occupy a rental premises does not constitute distraint on the goods and chattels of a tenant. I am not satisfied the landlord has breached section 3 of the Act, as was suggested by the tenant.

Termination of the tenancy agreement, rental arrears, and security deposit

The landlord provided into evidence a written notice from the tenant of his intention to vacate the rental premises December 31, 2014. The notice was dated by the tenant November 27, 2014; it was signed as received by the landlord January 5, 2015. The tenant claims he provided the written notice with his payment for December's rent on November 28, 2014, but there is no substantiation that it was received by the landlord before January 5, 2015.

Section 51(1) of the Act specifies a tenant may only terminate a tenancy agreement *at the end of a fixed-term* by giving at least 30 days' written notice to the landlord. Should a tenant choose to leave the rental premises before the end of the fixed-term they remain responsible for the rent until the landlord is able to get new tenants or until the end of the fixed-term, whichever comes first. Section 5(2) of the Act requires a landlord to mitigate their losses by renting the rental premises again as soon as is practicable. The landlord cannot do this until they are aware it is

necessary. As there is no substantive proof that the landlord received the written notice from the tenant until January 5, 2015, the landlord cannot be held accountable to mitigate their losses prior to that date. The landlord was able to mitigate any further loss of rent by renting the rental premises to a new tenant as soon as practicable, that being February 1, 2015. I find the tenant liable for the January 2015 rent.

Section 18(4) of the Act permits a landlord to retain the security deposit at the end of a tenancy against rental arrears. The tenancy in this case did not effectively end until January 31, 2015, the day before the new tenant took possession. As of January 31, 2015, the tenant had accumulated rental arrears in the amount of \$1,559. The landlord's retention of the security deposit of \$707.65 against the accumulated rental arrears is appropriate and results in an outstanding amount of \$851.35.

Cleaning and repairs

The landlord has claimed costs associated with cleaning the rental premises, shampooing the carpets, and replacing four light bulbs. The landlord has provided a move-out inspection report which is neither dated nor signed by either party. The tenant has claimed he did clean the premises and he shampooed the carpet; a receipt from dated January 2, 2015, for the carpet cleaning shampooer and cleaning solution was provided into evidence. The landlord defined the cleaning charge of \$40 as being for a general dusting and wiping down of the apartment, which is a standard procedure when a tenant vacates the rental premises.

Section 45(2) of the Act requires a tenant to maintain the rental premises in a state of ordinary cleanliness. Section 21 of Schedule "A" to the tenancy agreement also requires a tenant to keep the premises and appliances in a proper state of cleanliness, as well as to keep the carpets shampooed at their own expense. It further requires a tenant to leave the rental premises in a clean and good condition at the end of the tenancy. Section 18 of Schedule "B" to the tenancy agreement lists the costs of shampooing the carpet at \$300 and identifies that the tenant has the option to shampoo the carpet themselves in which case they must provide the landlord with a copy of the receipt. Both Schedule "A" and Schedule "B" are initialled by the tenant.

I have no evidence before me suggesting that the rental premises was left in a less than ordinary state of cleanliness. The landlord did not dispute the tenant's testimony that he replaced all the light bulbs in the rental premises before leaving. And in accordance with Schedule "B" to the tenancy agreement, the tenant has provided proof of shampooing the carpet himself. The charges totalling \$407.44 claimed by the landlord for cleaning and repair costs are denied.

An order will issue requiring Mr. Gerry Cheezie to pay rental arrears in the amount of \$851.35.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Resident ledger dated January 14, 2015
- Exhibit 2: Move out statement dated January 14, 2015
- Exhibit 3: Tenancy agreement dated August 1, 2014
- Exhibit 4: Move out inspection and acceptance report
- Exhibit 5: Tenant's notice to vacate dated November 27, 2014, received by landlord January 5, 2015
- Exhibit 6: Tenant's notice to vacate dated November 27, 2014
- Exhibit 7: Resident ledger dated February 18, 2015 - for Gerry Cheezie
- Exhibit 8: Move out statement dated February 18, 2015
- Exhibit 9: Resident Ledger dated February 18, 2015 - for Sam Roberts
- Exhibit 10: Receipt dated January 2, 2015, for carpet cleaner rental and cleaning solution