

IN THE MATTER between **Mohammed Quaid Uddin**, Applicant/Respondent, and
NPR Limited Partnership, Respondent/Applicant;

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,
regarding a rental premises located within the **city of Yellowknife in the Northwest
Territories**.

BETWEEN:

MOHAMMED QUAID UDDIN

Applicant/Respondent/Tenant

- and -

NPR LIMITED PARTNERSHIP

Respondent/Applicant/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 45(a) and (b) of the *Residential Tenancies Act*, the tenant must comply with his obligation to maintain the ordinary cleanliness of the rental premises, and must not breach that obligation again.
2. Pursuant to section 45(4)(d) of the *Residential Tenancies Act*, the tenant must compensate the landlord for the costs of cleaning the rental premises in the amount of \$1,440.00 (one thousand four hundred forty dollars).

3. Pursuant to section 34(2)(c) of the *Residential Tenancies Act*, the landlord must compensate the tenant for disturbing the tenant's enjoyment and possession of the rental premises in the total amount of \$500.00 (five hundred dollars).

DATED at the City of Yellowknife in the Northwest Territories this 5th day of October, 2015.

Adelle Guigon
Deputy Rental Officer

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REASONS FOR DECISION

<u>Date of the Hearing:</u>	September 9, 2015
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	Mohammed Quaid Uddin, tenant Aya Burshan, representing the landlord Alexandra Washburn, witness for the landlord Marie-Louise Laberge, witness for the landlord Janaki Balakrishnan, witness for the tenant
<u>Date of Decision:</u>	September 25, 2015

REASONS FOR DECISION

An application to a rental officer made by Mohammed Quaid Uddin as the applicant/tenant against NPR Limited Partnership as the respondent/landlord was filed by the Rental Office August 20, 2015. The application was made regarding the residential tenancy agreement for the rental premises known as #6, 5023 - 48 Street, in Yellowknife, Northwest Territories. The tenant personally served a copy of the filed application on the respondent August 20, 2015.

An application to a rental officer made by NPR Limited Partnership as the applicant/landlord against Mohammed Quaid Uddin as the respondent/tenant was filed by the Rental Office September 3, 2015. The application was made regarding the residential tenancy agreement for the rental premises known as #6, 5023 - 48 Street, in Yellowknife, Northwest Territories. The landlord served a copy of the filed application on the tenant by email deemed received September 6, 2015, pursuant to section 4(4) of the *Residential Tenancies Regulations* (the Regulations).

The tenant alleged the landlord had failed to keep the rental premises secure during his absence, had inappropriately moved his personal property, and that some personal property was missing. An order was sought for compensation for lost personal property.

The landlord alleged the tenant had failed to maintain the ordinary cleanliness of the rental premises which aggravated an ongoing cockroach infestation and requested an order for compensation for cleaning the rental premises, termination the tenancy agreement, and eviction.

Evidence submitted for both applications is listed in Appendix A attached to this order.

A hearing was scheduled for September 9, 2015, in Yellowknife, Northwest Territories. Mr. Mohammed Quaid Uddin appeared as applicant. Ms. Aya Burshan appeared representing the respondent. The parties agreed to hear both applications concurrently at this hearing.

Tenancy agreement

There was no dispute between the parties that a written tenancy agreement is in place between them for the rental premises known as #6, 5023 - 48 Street, in Yellowknife, Northwest Territories. The tenancy commenced September 1, 2012.

Landlord's disturbance of tenant's enjoyment and/or possession

The tenant filed an application to a rental officer under section 34 of the *Residential Tenancies Act* (the Act), which states that a landlord shall not disturb a tenant's possession or enjoyment of the rental premises or residential complex.

The tenant gave the landlord written notice in July 2015 of the family's impending one-month holiday, indicating they would be departing July 15th, and granting the landlord permission to enter the premises for the purposes of any required maintenance. The tenant was aware of the landlord's ongoing efforts to remedy a long-term cockroach infestation in the residential complex.

Upon the tenant's return to the rental premises on August 19th, he discovered the door to his apartment was unlocked. When he entered the apartment he discovered all of his personal possessions and most of his furniture had been moved into the two bedrooms. An invoice from the landlord had been left in the apartment for him, charging him for cleaning expenses. He did not observe any of the landlord's staff around, nor did anyone return his calls until the next morning.

The tenant immediately filed an application to a rental officer, claiming the landlord's failure to ensure his apartment was secure resulted in personal property going missing. The claimed items were valued at a total amount of \$2,180. He disputed that the landlord had the right to move all of his property in the manner they did, and that by doing so they have disturbed his possession and enjoyment of the rental premises.

At hearing, the tenant submitted an updated written statement, including a list of additional items claimed missing and valued at \$1,750. The tenant also claimed costs of \$1,500 for having "other people" replace all his property.

Ordinary cleanliness

The landlord defended their actions, explaining that moving the property was necessary to facilitate cleaning the entire rental premises. The cockroach infestation in the residential complex had been an ongoing problem for some time, which the landlord had been making efforts with an exterminator to resolve. The efforts consisted of regular applications of gel bait throughout the

building. All residents were notified in writing prior to each visit by the exterminator of preparations which were required to facilitate the extermination efforts, including moving all items from the kitchen cupboards and counter top and placing them on the dining table covered with a piece of cloth or plastic sheet. Ongoing cleaning requirements between treatments was also identified in the notice, including sealing all food items, vacuuming the carpets and floors thoroughly, and cleaning up any dead cockroaches as they appear. These actions were cited as necessary because cockroaches will feed not only on the open food but also on dead cockroaches.

A treatment was scheduled for July 21, 2015. When the exterminator entered with a member of the landlord's staff he confirmed that the tenant had prepared the unit by emptying the cupboards and counter tops onto the dining table and covering the items with a sheet. However, the exterminator also noted that the tenant had never cleaned up the dead cockroaches.

In acknowledgement that the tenant had left the premises for holidays, the landlord exercised their permission to enter the premises to clean up the cockroaches and prepare the unit for treatment. Upon entering, they determined the tenant had not only failed to clean up the dead cockroaches as required but also had failed to maintain the ordinary cleanliness of the rental premises. As such, a full cleaning of the premises was necessary. Eight employees entered the premises on July 31, 2015, to fully prepare the premises for treatment and bring the premises to a state of ordinary cleanliness. To facilitate this work, they cleaned the bedrooms first, then moved all the property except the couch from the rest of the premises into the bedrooms. Open food containers were found under the sheet on the dining table and under the dining table, and in the fridge. Live and dead cockroaches were found throughout the apartment, including in and around the fridge and freezer. The written statements and testimony of the landlord's cleaning staff identified the rental premises as "disgusting", with old open food left out, dirty walls and floors, unclean appliances, and cockroaches falling out of the fridge and bathroom cupboards. All food was thrown out; everything else was packed in boxes and/or bags and placed in the bedrooms. The floors, walls, carpets, windows, bathroom, closets, cupboards, and appliances were all thoroughly cleaned. The landlord did not return the property to its original placement. Two employees returned to the apartment regularly to clean up the dead cockroaches between treatments.

The landlord prepared an invoice for cleaning the rental premises and subsequent visits to clean up the dead cockroaches while the tenant was gone. Although eight employees attended the rental premises to clean on July 31st, the landlord only charged the tenant for two of those employees' time at a rate of \$40 per hour for 16 hours totalling \$1,280. Four subsequent visits (August 10th, 12th, 14th, and 18th) to clean up the dead cockroaches were charged out at \$40 each totalling \$160. The invoice totalled \$1,440.

Prior to the landlord's cleaning efforts, the exterminator had noted in his treatment reports to the landlord that this rental premises continued to be heavily infested with cockroaches. At treatments subsequent to the landlord cleaning the rental premises, on August 3rd and 19th, the exterminator noted the rental premises was well prepared for treatment, acknowledged the removal of dead cockroaches, and that all food had been removed. The infestation of cockroaches was noticeably reduced at each of these two visits.

The landlord claims the tenant's failure to maintain the ordinary cleanliness of the rental premises directly contributed to and aggravated the cockroach infestation in the building. The tenant has been repeatedly notified of the requirements to facilitate successful treatment against the cockroaches, and while he has complied with preparation requirements for each treatment he received notice of, he has not complied with either the between-treatment requirements to clean up the dead cockroaches and keep all food sealed or the general tenant obligation to maintain the ordinary cleanliness of the rental premises. As such, the landlord has suggested a direct correlation between the tenant's actions (or lack thereof) and the continued infestation.

Prior to the July 31st visit to the rental premises, there is no indication that any inspections of the rental premises for the ordinary state of cleanliness were made, nor was the tenant notified that he may be in breach of his obligation to maintain the ordinary cleanliness of the rental premises.

Securing the rental premises

The landlord confirmed that at each of the exterminator's visits a representative of the landlord attends the building with them and unlocks the areas being treated so that the exterminator has the necessary access. The main doors to the residential complex remain secure, and the landlord's representative remains in the building while the treatment is being done. The apartments remain unlocked until the exterminator is finished.

The building, including the tenant's rental premises, was being treated August 19th when the tenant returned from holidays. The exterminator had in fact completed treating the tenant's premises by that time, but remained in the building treating other areas. The landlord's on-site representative noted the tenant's return to the rental premises and determined it unnecessary to attend the premises to lock the door. The landlord's on-site representative did not observe any unusual activity taking place in the residential complex during the treatment.

Reportedly missing items

The eight employees who attended to clean the rental premises each reviewed the original list of items claimed missing by the tenant and between them were able to account for where all the items were stored when they cleaned the apartment.

At hearing, the tenant confirmed that he had not in fact sorted through the moved property or returned it all to its respective places either when the application to a rental officer was first drafted or by the time of this hearing. Photographs the tenant provided into evidence which were taken of the rental premises after the tenant's return from holidays show property stored in the bedrooms. Items claimed missing, such as the computer monitor and television, in fact are identifiable in those very photographs.

Findings

Missing property

With respect to the alleged missing property, the tenant was not able to substantiate the claimed items were actually missing or when they might have disappeared. Not having actually completed going through the boxes, bags, and drawers, or even moving the property back to its place, the tenant cannot make a reasonable determination of what is missing. As such, I cannot make a finding that the landlord is liable for the loss of the property. The tenant's claim for property valued at \$3,680 is denied.

Food

With respect to the frozen and dry food kept in the freezer, the tenant is claiming that food was sealed and it was unnecessary for the landlord to throw it out. The landlord's cleaning crew provided statements and testimony that the cockroach infestation had breached the fridge and freezer, and that the majority of the food was expired. The cleaning crew's instructions were to throw away all the food to ensure no further aggravating factors were present to detract from the extermination efforts. In consideration of the presence of both cockroaches and food in the fridge, it seems reasonable to me to err on the side of caution by presuming the food may likely be contaminated and was better disposed of. The tenant's claim for the frozen and dry food valued at \$250 is denied.

Ordinary cleanliness

With respect to the ordinary cleanliness of the rental premises, section 45(2) of the Act requires the tenant to maintain the ordinary cleanliness of the rental premises which the tenant has exclusive use of. In my opinion, 'ordinary cleanliness' means to regularly clean. This includes: cleaning all appliances; sweeping, mopping, and vacuuming the floors; wiping down the walls, counters, and cupboards; washing the windows; and cleaning the bathroom. In cases such as this which involve additional aggravating factors such as cockroach infestations, which cannot be found to be the tenant's fault, the obligation to maintain the ordinary cleanliness of the rental premises includes more frequent efforts to clean up as instructed so as to facilitate the successful eradication of the infestation.

Neither the landlord not inspecting the rental premises for ordinary cleanliness nor the tenant not being notified that he may not be complying with his obligation to maintain ordinary cleanliness negate the tenant's responsibility to comply with that obligation.

I am satisfied the landlord's evidence establishes the condition of the rental premises as of July 31st in a less than ordinary state of cleanliness to such a degree that it contributed to the existing cockroach infestation. Even without the cockroach infestation, the floors, fridge, walls, windows, bathroom, and closets had not been kept clean by the tenant. The landlord's efforts to clean the rental premises were necessitated not only by the unclean state itself, but also by the unclean state contributing to the cockroach infestation they were trying to eradicate. I find the tenant has failed to comply with his obligation to keep the rental premises in a state of ordinary cleanliness and the landlord's costs of \$1,440 for cleaning the rental premises reasonable.

Disturbance of tenant's enjoyment/possession

With respect to the replacement of the tenant's property within the rental premises, the tenant's failure to comply with his obligation to maintain the ordinary cleanliness of the rental premises does not absolve the landlord from their obligation not to disturb the tenant's enjoyment or possession of the rental premises. While moving the tenant's property may have been necessary to return the rental premises to a state of ordinary cleanliness, necessitated to facilitate extermination of the cockroach infestation, returning the property to its place after cleaning would not have aggravated the extermination process and would have returned the premises to an enjoyable state for the tenant's return. By leaving the property stored in the bedrooms the landlord has failed to comply with their obligation not to disturb the tenant's enjoyment and possession of the rental premises.

The tenant has claimed \$1,500 for "other people" to return his property to its rightful place in the rental premises. The tenant testified that the property has not yet been replaced, nor did he provide a quote for said services. The rental premises in question is a two-bedroom unit. In my opinion, the claim of \$1,500 for the replacement of the property to its original place within the rental premises is excessive. I am satisfied that compensation is due to the tenant for the landlord's breach of enjoyment/possession. I find reasonable compensation, based on two competent persons taking four hours to replace the property, to be \$300 plus \$200 for the inconvenience to the tenant for a total compensable amount of \$500.

Termination of the tenancy agreement and eviction

The landlord requested termination of the tenancy agreement and eviction as a consequence of the tenant's failure to comply with his obligation to maintain the ordinary cleanliness of the rental premises. Having found that there has been no communication or effort to resolve the issue of ordinary cleanliness of the rental premises between the parties prior to July 31st, I am not satisfied that termination of the tenancy agreement and eviction are justified consequences for someone who has not been given fair opportunity to resolve an issue he may not have realized required action.

Order

An order will issue requiring the tenant to comply with his obligation to maintain the ordinary cleanliness of the rental premises and not breach that obligation again, and to compensate the landlord for cleaning costs in the amount of \$1,440.

An order will also issue requiring the landlord to compensate the tenant for disturbing the tenant's enjoyment and possession of the rental premises in the amount of \$500.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: NPR Limited Partnership invoice number 2015-YKN-89 dated August 13, 2015
- Exhibit 2: Tenant's statement of missing items
- Exhibit 3: Tenant's travel notice correspondence to landlord dated July 2, 2015
- Exhibit 4: Set of nine photographs submitted by landlord
- Exhibit 5: Written statements of Albert Bernhardt, Jonathan Wall, Michelle Krutko, Robin Papik, Stewart Hodgins, Hellen Leaman, Alexandra Washburn, and Connie Lane dated August 21, 2015
- Exhibit 6: Written statement of Ivan Beaulieu dated August 24, 2015
- Exhibit 7: Tenant's written statement received September 9, 2015
- Exhibit 8: Set of 44 photographs submitted by tenant
- Exhibit 9: Alta Pest Control Ltd.'s preparation sheet for cockroach treatment
- Exhibit 10: Article posted August 24, 2015, from CBC.ca entitled, "Northern Property REIT left door unlocked, alleges tenant"
- Exhibit 11: Screen shots of August 24, 2015, article and related comments from CBC.ca
- Exhibit 12: Email between Mitchel Wiles (CBC) and Kathryn Smith (NPR) dated August 21, 2015
- Exhibit 13: Emails from Alta Pest Control reporting on treatments at the residential complex on:
November 18, 2014; March 10, 2015; May 22, 2015; June 5, 2015; June 30, 2015; July 21, 2015; August 3, 2015; August 19, 2015; September 2, 2015