

IN THE MATTER between **NPR LIMITED PARTNERSHIP**, Applicant, and **TARA KAIP AND ALEXANDER NORWEGIAN**, Respondents;

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act") as amended;

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 -

TARA KAIP AND ALEXANDER NORWEGIAN

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondents shall pay the applicant rent arrears in the amount of three thousand two hundred eighty nine dollars and thirty four cents (\$3289.34).
2. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondents shall pay the applicant repair and cleaning costs in the amount of one thousand three hundred ninety six dollars and seventy seven cents (\$1396.77).

3. Pursuant to section 45(4)(a) of the *Residential Tenancies Act*, the respondents shall pay the applicant for fuel costs paid on their behalf in the amount of four hundred fifty seven dollars and two cents (\$457.02).
4. Pursuant to section 62(2) of the *Residential Tenancies Act*, the respondents shall pay the applicant compensation for lost rent in the amount of two thousand sixty eight dollars and fifty four cents (\$2068.54).

DATED at the City of Yellowknife, in the Northwest Territories this 20th day of November, 2015.

Hal Logsdon
Rental Officer

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TARA KAIP AND ALEXANDER NORWEGIAN

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: **October 28, 2015**

Place of the Hearing: **Yellowknife, NT**

Appearances at Hearing: **Aya Burshan, representing the applicant**

Date of Decision: **November 19, 2015**

REASONS FOR DECISION

The respondents were served Notices of Attendance by registered mail sent to the rental premises. Canada Post could not confirm delivery but indicated that a notice had been left at the respondents' address indicating where the item could be picked up. Ms Kaip was contacted by the rental officer by telephone before the hearing and informed of the time, date and location of the hearing. She indicated that she did not intend to appear as she had to work. The rental officer attempted to contact Mr. Norwegian by telephone but the telephone number provided by the landlord was no longer in service. Neither party appeared at the hearing. In my opinion, it is not unreasonable to deem the Notices of Attendance served in accordance with section 71(5) of the *Residential Tenancies Act*. The hearing was held in their absence.

The applicant stated that the respondents abandoned the premises on September 23, 2015. The applicant retained the security deposit (\$897.50) and accrued interest (\$0.11) applying it against repair costs (\$1500), steam cleaning (\$200), general cleaning (\$680), removing garbage from unit (\$600), rent arrears and late fees (\$3289.34), administration (\$515.55), GST (\$25.78) and the cost of fuel paid on behalf of the respondents (\$457.02) resulting in a balance owing of \$6370.08. The applicant sought relief in that amount plus an unspecified amount for compensation for lost rent.

The tenancy agreement between the parties was made for a one year term commencing on December 1, 2014 and ending on November 30, 2015. Article 4 of the tenancy agreement sets

out a monthly rent of \$1795 and obligates the tenants to pay for heat, water and hydro (electricity) during the term. Article 6 of the tenancy agreement sets out an additional monthly fee of \$25 for the privilege of keeping a dog on the premises. In my opinion, the pet fee is a component of the monthly rent and is in compliance with the definition of rent contained in the Act.

"rent" includes the amount of any consideration paid or required to be paid by a tenant to a landlord or his or her agent for the right to occupy rental premises and for any services and facilities, privilege, accommodation or thing that the landlord provides for the tenant in respect of his or her occupancy of the rental premises, whether or not a separate charge is made for the services and facilities, privilege, accommodation or thing.

Although it should perhaps more appropriately be included in Article 4 of the tenancy agreement, the pet fees are, in my opinion, part of the rent and permissible.

Emails between the applicant and the respondents, provided in evidence by the applicant, suggest that the respondents left the premises prior to September 23, 2015, leaving others to occupy the premises but without the consent of the landlord or assignment. The tenant ledger indicates that rent was paid to July 30 but no payments were received in August.

On August 18, the applicant contacted Ms. Kaip expressing concern about who was living in the premises and its condition. Ms Kaip responded by email on August 25 stating that she had left the premises two months ago and that Mr. Norwegian had promised her he would have her taken off the tenancy agreement and would deal with all aspects of the house. She stated that she now understood Mr. Norwegian had not done that and wanted her name removed from the tenancy

agreement. She also stated that she had no idea who was living there.

In response to Ms Kaip's email, the applicant advised her on August 25 that a landlord could not remove one tenant from a joint tenancy agreement without their permission of both tenants. The applicant forwarded a request for assignment form to be completed by Ms Kaip and Mr. Norwegian. The applicant testified that the form was never returned.

After the premises were discovered abandoned, an inventory of abandoned personal property and a final statement were sent to the respondents and an application was filed. Mr. Norwegian sent several emails to the applicant in early October stating that he had lost his job in April and had moved out. He stated that he had requested to be taken off the tenancy agreement and was replaced by another tenant. The applicant testified that no request for assignment was received from the respondents.

It appears from the emails, that other persons were living with the respondents and were left to occupy the premises without assignment or the landlord's permission. I can find no evidence that suggests that the tenancy agreement between the applicant and the respondents was terminated except by abandonment in September, 2015 or that there was any assignment agreement or consent to assignment given by the landlord. Therefore I conclude that the respondents continued to be joint tenants from the commencement of the tenancy agreement on December 1, 2014 to September 24, 2015 when the premises were discovered abandoned.

Rent Arrears

The applicant provided a statement of account in evidence which indicated a balance of rent and penalties for late rent owing in the amount of \$3289.34. The applicant has credited the account with seven days of rent and pet fee to reflect the abandonment date of September 24 rather than the full month's rent for September. I find the statement to be in order and find the respondents liable for rent arrears of \$3289.34.

Repair and cleaning costs

The applicant completed a check-in inspection on December 1, 2014 which was signed by both parties and completed a check-out inspection report on September 24, 2015 in the absence of the respondents. Copies of the inspection reports were provided in evidence. An itemised list of damages and repair costs was also provided. Comparing the two inspections reports and the itemised list of repairs, I find the repair and cleaning costs to be reasonable with the following exceptions:

1. Two labourers were hired to remove "garbage" from the premises as well as two cleaners to do general cleaning. The inspection report certainly supports the need for general cleaning and the amount charged should be sufficient to cover the usual disposal of items of no value. There is no evidence to justify two labourers to remove an unusual amount of garbage or large items other than abandoned personal property. Any expense for the removal of abandoned personal property is recoverable from the tenants or owner prior to the release of the property or through sale after disposal approval has been obtained. In my opinion the \$600 garbage

removal cost is not reasonable.

2. The check-in report indicates that the wall surfaces in both the living room and the bedroom were damaged at the commencement of the tenancy agreement. The damages were again noted on the check-out inspection report. There is no evidence to support that the wall damages were caused by the tenants during the term of the tenancy agreement. The patch and paint costs for the living room (\$170) and bedroom (\$170) are not supported by the evidence
3. There is a \$120 charge for the repair of a window seal. There is no notation of this damage on the inspection reports. The repair cost of \$120 is not supported by evidence.

The claimed repair costs of \$1500 shall be reduced to \$1040 and the \$600 garbage removal cost is denied

Repair costs claimed	\$1500
Less patch/painting	(340)
Less window seal	<u>(120)</u>
Adjusted repair costs	\$1040

Fuel

The written tenancy agreement sets out the tenants' obligation to pay for fuel during the term of the agreement. The check-out inspection report indicates that the fuel tank was not full at the end of the tenancy but does not indicate the volume of fuel in the tank at the commencement of the tenancy. The applicant has indicated that all fuel tanks are filled at the commencement of the tenancy where the tenant is responsible for fuel during the term of the agreement. The applicant

provided a delivery slip showing that the fuel tank was filled on September 30, 2015 costing \$457.02. On the balance of probabilities, I find the respondents liable for the fuel which was purchased on their behalf and find the cost of \$457.02 to be adequately documented.

Compensation for lost rent

The applicant testified that the premises had been shown to all prospective tenants looking for a unit of that size and configuration and to date, had not been re-rented. In my opinion, the applicant has taken reasonable steps to mitigate the loss created by the abandonment of the premises and is entitled to compensation for lost rent of \$2068.54 calculated as follows:

September 23-30 rent	\$418.83
September 23-30 pet deposit	5.83
October 1-28 rent	1621.20
October 1-28 pet deposit	<u>22.68</u>
Total	\$2068.54

Summary

Taking into account the retained security deposit and adjustments to the administration fee and GST charged, I find an amount owing to the applicant of \$7211.67. Calculated as follows:

Rent arrears	\$3289.34
Repair costs	1040.00
Steam cleaning	200.00
General cleaning	680.00
Fuel	457.02
Administration	356.55
GST	17.83
Compensation for lost rent	2068.54
Security deposit	(897.50)
Interest on deposit	<u>(0.11)</u>
Total	\$7211.67

Applying the retained security deposit first to the repair costs, an order shall issue requiring the respondents to pay the applicant rent arrears of \$3289.34, repair and cleaning costs of \$1396.77, fuel costs of \$457.02 and compensation for lost rent of \$2068.54.

Hal Logsdon
Rental Officer