

IN THE MATTER between **Dorothy Jill Westerman**, Applicant, and **NPR Limited Partnership**, 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 city of Yellowknife in the Northwest Territories**.

BETWEEN:

DOROTHY JILL WESTERMAN

Applicant/Tenant

- and -

NPR LIMITED PARTNERSHIP

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 30(4)(d) and 34(2)(c) of the *Residential Tenancies Act*, the landlord must compensate the tenant for loss suffered in the amount of \$800.00 (eight hundred dollars).

DATED at the City of Yellowknife in the Northwest Territories this 23rd day of November 2015.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Dorothy Jill Westerman**, Applicant, and **NPR Limited Partnership**, 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:

DOROTHY JILL WESTERMAN

Applicant/Tenant

-and-

NPR LIMITED PARTNERSHIP

Respondent/Landlord

REASONS FOR DECISION

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

Place of the Hearing: **Yellowknife, Northwest Territories**

Appearances at Hearing: **Dorothy Jill Westerman, applicant**
 Aya Burshan, representing the respondent
 Colleen Wellborn, representing the respondent

Date of Decision: **November 18, 2015**

REASONS FOR DECISION

An application to a rental officer made by Dorothy Jill Westerman as the applicant/tenant against Northern Properties as the respondent/landlord was filed by the Rental Office September 22, 2015. The application was made regarding a residential tenancy agreement for the rental premises known as #11, 5023 - 48 Street, in Yellowknife, Northwest Territories. The applicant personally served a copy of the filed application on the respondent September 24, 2015.

The applicant alleged the respondent had failed to comply with their obligation to maintain the rental premises and residential complex in a good state of repair and fit for habitation, and by disturbing the tenant's enjoyment and possession of the rental premises and residential complex. An order was sought for compensation of rent, compensation for off-site storage fees, and a transfer to another pet-friendly apartment with the same rent. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for October 28, 2015, in Yellowknife, Northwest Territories. Ms. Dorothy Jill Westerman appeared as applicant. Ms. Aya Burshan and Ms. Colleen Wellborn appeared representing the respondent.

Preliminary matters

The application to a rental officer identified the landlord as Northern Properties. The respondent's representatives confirmed that the landlord should appropriately be identified as NPR Limited Partnership. The applicant agreed to amending the application to identify the landlord as NPR Limited Partnership. The application and style of cause going forward will identify the respondent/landlord as NPR Limited Partnership.

Tenancy agreement

The parties agreed at hearing that a tenancy agreement is in place between them for the rental premises known as #11, 5023 - 48 Street, in Yellowknife, Northwest Territories. The residential complex is also known as Hudson House. The tenancy commenced in October 2014. The monthly rent was established at \$1,200. I am satisfied a valid tenancy agreement is in place between the parties in accordance with the *Residential Tenancies Act* (the Act).

Maintenance and Disturbances

Shortly after the tenant moved into the rental premises she discovered her apartment and the residential complex was infested with cockroaches. An exterminator treated her apartment on November 18, 2014, noting there was no visible sign of cockroaches there but recommending one more treatment after 14 days. The tenant observed living and cleaned up dead cockroaches after this treatment and notified the landlord of the continued infestation. Additional treatments were done on December 15th, March 10th, April 24th, May 22nd, and June 5th. The presence of cockroaches was observed by the exterminator in December, March, and April, and he recommended additional treatments. The exterminator did not observe any cockroaches during the May treatment, but recommended one more treatment to be certain. The exterminator again did not observe any cockroaches during the June treatment and did not recommend further treatments.

The tenant did not file complaints regarding the presence of cockroaches with the landlord after the last treatment. She was travelling for the months of July and August. Upon her return in early September she immediately discovered both living and dead cockroaches in her apartment. She again did not notify the landlord, opting instead to file an application to a rental officer regarding the matter. She expressed frustration with the apparent lack of progress in exterminating the cockroaches and felt that there was no point in filing another complaint with the landlord.

The tenant described the experience of living with cockroaches as a nightmare, causing undue stress upon herself and her pet. The presence of the cockroaches and the preparation requirements for treatments compelled her to live out of boxes rather than continuously emptying her cupboards. Out of concern for her property and the fear of carrying the infestation with her should she move, the tenant transferred property stored in the on-site room provided to an off-site storage facility, paying \$90 per month. No invoices or receipts were provided for this claim.

The landlord testified that they have been treating Hudson House for quite some time, and although successful eradication has eluded them there have been various improvements noted. Initially only parts of the building and units that complaints were received from were treated; In May and June of this year all units and the whole building were treated by the exterminator. After the June 5th treatment, only the common areas, laundry, storage, and units from which complaints were received were treated. The landlord's position is that if they are not made aware of the infestation in a particular unit then there presumably is not infestation in that particular unit to treat. The exterminator has noted significant improvements in the areas which have continued to be treated to date.

The landlord has clearly been making repeated efforts to resolve the cockroach infestation at Hudson House. These efforts do require the cooperation of all tenants, and the recent departure of some tenants has assisted with the recent significant improvements. There is no dispute that Ms. Westerman has been cooperative with preparing for treatments and keeping her premises ordinarily clean.

I am satisfied that the landlord believed the infestation in Unit 11 had been eradicated as of June 5th and ceased treating that unit as recommended by the exterminator. Not having received any further complaints from the tenant since then, no further treatments were initiated. Treatments in other units and the rest of the building continued on a regular basis as recommended by the exterminator.

The tenant's absence from the rental premises for two months does explain why no further complaints were made during that period. The tenant's refusal to notify the landlord upon discovering cockroaches remained in her apartment was not helpful in the circumstances. Had the landlord been informed at that time, treatments could have re-commenced as early as September 16th.

The presence of cockroaches in the building at all does create an environment difficult to enjoy, much less inhabit. Although the NWT Public Health Act does not recognize cockroaches as a health hazard, the World Health Organization describes them as follows:

“Cockroaches are among the most common pests in many homes and other buildings. At night they search for food in kitchens, food storage places, rubbish bins, drains and sewers. They are pests because of their filthy habits and bad smell. Some people may become allergic to cockroaches after frequent exposure. Cockroaches can sometimes play a role as carriers of intestinal diseases, such as diarrhoea, dysentery, typhoid fever and cholera.”¹

I am satisfied that the cockroach infestation has existed at Hudson House since at least November 2014 and continues to date. I am satisfied that Unit 11 was infested from November 2014 to June 2015, and that it became re-infested sometime after July 1, 2015. I am satisfied that the re-infestation was not reported to the landlord until they were served with the filed application to a rental officer on September 24, 2015. The landlord provided into evidence numerous email confirmations from the exterminator reporting what areas and units in the residential complex were treated and when. Based on this information, it is clear that Unit 11 has not been treated since June 5, 2015.

Section 30(1) of the Act requires landlords to provide and maintain the rental premises and residential complex in a good state of repair and fit for habitation, and to ensure they comply with all health, safety and maintenance, and occupancy standards required by law. I cannot make a finding that the landlord has failed to ensure that all health, safety and maintenance, and occupancy standards required by law are met, but I can and do make a finding that the landlord has failed to maintain the rental premises and residential complex in a good state of repair and fit for habitation.

Section 34(1) of the Act prohibits a landlord from disturbing a tenant’s possession or enjoyment of the rental premises or residential complex. In failing to eradicate the cockroach infestation over a lengthy period of time, and recognizing the stress the presence of cockroaches cause and the interruption in fully enjoying the possession of the premises accommodating their presence and treatment against them creates, I am satisfied the landlord has failed to comply with their obligation not to disturb the tenant’s enjoyment or possession of the rental premises and residential complex.

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¹http://www.who.int/water_sanitation_health/resources/vector288to301.pdf

Section 30(1) does not contain an element of fault; it does not require that an action by the landlord caused the damage or reduced the habitability of the premises for the landlord to be found in breach of the obligation. This section requires the landlord to make sure it doesn't stay damaged or uninhabitable. What or who caused the deficiency is not at question; the persistence of the deficiency is.

Having found the landlord in breach of both sections 30(1)(a) and 34(1) of the Act, I am satisfied the tenant should be compensated for the living conditions she has had to endure. The tenant requested reimbursement and reduction of rent. The landlord has been unable to provide a rental premises that is in a good state of repair and fit for habitation, and consequentially has disturbed the tenant's enjoyment and possession of the rental premises. Because the tenant did not notify the landlord of the continued infestation after June 5th, the landlord could not reasonably be expected to treat her rental premises after that date. They were under the impression, corroborated by the exterminator's observations, that the rental premises was no longer infested. As previously indicated, the landlord was not made aware of the infestation until they were served with a filed copy of the application to a rental officer on September 24th. The rental premises could have been treated in response to the application on September 30th and October 14th – when the exterminator was already scheduled to re-treat Hudson House – but the landlord did not facilitate this. An abatement of rent will apply against the rents for November 2014 to May 2015 and October 2015. To apply it against the rents for June to September 2015 would be unfair and inappropriate.

In previous similar applications from tenants of Hudson House, I have found a reasonable rent abatement amount to equal one month's rent for each 12 months of infestation. This method will be applied here as well. The tenant's monthly rent is \$1,200, which calculates to an abatement of \$100 per month. The tenant suffered for eight months of her tenancy to date. The landlord must compensate the tenant in the amount of \$800.

The tenant had requested the costs associated with storing her property off-site. She claims this is necessary to ensure her property does not become infested. No receipts or invoices were provided substantiating these costs. I am not satisfied off-site storage fees are necessary or reasonable.

The tenant requested compensation in the form of a transfer to an un-infested, pet-friendly building at the same monthly rent she currently pays. I am not satisfied I either have the authority to grant this request or that is necessary or appropriate. I have the authority to terminate the tenancy agreement, but that was not requested nor am I inclined to consider it at this time.

Order

An order will issue requiring the landlord to compensate the tenant in the amount of \$800.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

Exhibit 1: Set of 10 photographs

Exhibit 2: Landlord's notices of entry regarding cockroach treatments dated from November 18, 2014, to June 23, 2015

Exhibit 3: Landlord's notices of entry regarding maintenance dated from May 30 to September 10, 2015

Exhibit 4: Reports from Alta Pest Control for treatments from November 18, 2014, to October 14, 2015

Exhibit 5: Work orders number 142356, 134973, 130857, 130851, 122076, 118850, and 117741

Exhibit 6: Emails from DJ Westerman to Connie dated March 11 and 12, 2015