

IN THE MATTER between **Connie Kraeker**, Applicant, and **Northern Property REIT**,
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,
regarding a rental premises located within the **city of Yellowknife in the Northwest
Territories**.

BETWEEN:

CONNIE KRAEKER

Applicant/Landlord

- and -

NORTHERN PROPERTY REIT

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18.1(b) of the *Residential Tenancies Act*, the respondent must return to the applicant the security deposit in the amount of \$712.11 (seven hundred twelve dollars eleven cents).

DATED at the City of Yellowknife in the Northwest Territories this 7th day of December
2015.

Adelle Guigon
Deputy Rental Officer

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NORTHERN PROPERTY REIT

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REASONS FOR DECISION

<u>Date of the Hearing:</u>	November 25, 2015
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories, by teleconference
<u>Appearances at Hearing:</u>	Connie Kraeker, applicant Aya Burshan, representing the respondent
<u>Date of Decision:</u>	November 25, 2015

REASONS FOR DECISION

An application to a rental officer made by Connie Kraeker as the applicant/tenant against Northern Property REIT as the respondent/landlord was filed by the Rental Office October 6, 2015. The application was made regarding a residential tenancy agreement for the rental premises known as 5404 - 52 Street in Yellowknife, Northwest Territories. The applicant served a copy of the filed application on the respondent by email deemed received October 22, 2015, pursuant to section 4(4) of the *Residential Tenancies Regulations* (the Regulations).

The applicant alleged that the respondent had failed to pay the security deposit and sought an order for payment. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for November 25, 2015, by teleconference. Ms. Connie Kraeker appeared as applicant. Ms. Aya Burshan appeared representing the respondent.

Tenancy agreement

The parties agreed that a residential tenancy agreement was in place between them for the rental premises identified as 5404 - 52 Street in Yellowknife, Northwest Territories, which ended on or about August 26, 2015. I am satisfied a valid tenancy agreement was in place between the parties in accordance with the Act.

It was agreed the applicant and Mr. Darin Dasilva had entered into the tenancy agreement as joint tenants. The applicant testified that the relationship between herself and Mr. Dasilva ended before they could jointly take occupancy of the premises, and Mr. Dasilva never did reside with her. The applicant notified the landlord repeatedly in writing throughout the tenancy of this reality. All payments under the tenancy were made from the applicant's bank account, including the security deposit. Ms. Burshan did not dispute the applicant's assertion.

Security deposit

Upon vacating the rental premises the security deposit of \$712.11 was returned by cheque to the applicant's address in Winnipeg. The cheque was made out to "Connie Kraeker & Darin Dasilva" and specifies it is "For deposit to the account of the named payee only". As Ms. Kraeker does not have a joint bank account with Mr. Dasilva and does not know Mr. Dasilva's current

location, she returned the cheque to the landlord and requested a new cheque addressed to her alone. She reiterated in her return letter the reality of Mr. Dasilva's non-occupancy of the rental premises and that she was the sole contributor to the payment of the security deposit and rents.

Ms. Burshan confirmed her head office's receipt of the returned cheque. The landlord refused to re-issue the cheque in Ms. Kraeker's name only, citing their policy to issue security deposit refunds by cheque only to all named tenants to a tenancy agreement. To date, they have not re-issued any cheque for the security deposit, pending a decision by the rental officer on the matter.

Section 18(3) of the Act requires a landlord to return the security deposit to the tenant within 10 days of the tenant vacating the rental premises. It does not differentiate between sole and joint tenancies, nor does it get into specifics about which tenant in a joint tenancy gets the security deposit back. All it requires is that the security deposit be returned to the tenant. Clearly the landlord did comply with their obligation in that regard with the issuance of the original cheque. That obligation would still be complied with by issuing the refund to either one of the named tenants in a joint tenancy.

The applicant's request to have the monies returned to her alone is not unreasonable under these particular circumstances. Although there was a tenancy agreement for which both Ms. Kraeker and Mr. Dasilva were jointly responsible, it has been clear since the onset that Mr. Dasilva has not been contributing to that tenancy. I am satisfied that Ms. Kraeker has taken sole responsibility for the tenancy and should be the party to reap the benefits of those actions. I am satisfied as well that the landlord has been repeatedly notified by Ms. Kraeker throughout the tenancy and since its commencement that Mr. Dasilva was not an active participant to the tenancy.

Order

An order will issue requiring Northern Properties REIT to refund the security deposit amount of \$712.11 to the applicant, Ms. Connie Kraeker.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

Exhibit 1: Correspondence from applicant to respondent dated September 23, 2015

Exhibit 2: Respondent's cheque number 99827 dated September 9, 2015, addressed to Connie Kraeker and Darin Dasilva