

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

BETWEEN:

**RITA A. CATHOLIQUE**

Applicant/Tenant

- and -

**NORTHERN PROPERTY LIMITED PARTNERSHIP**

Respondent/Landlord

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 18.1(b) of the *Residential Tenancies Act*, the landlord must return all of the security deposit to the tenant in the total amount of \$1,459.77 (one thousand four hundred fifty-nine dollars seventy-seven cents).

DATED at the City of Yellowknife in the Northwest Territories this 11th day of January 2016.

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Adelle Guigon  
Deputy Rental Officer

IN THE MATTER between **Rita A. Catholique**, Applicant, and **Northern Property 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:

**RITA A. CATHOLIQUE**

Applicant/Tenant

-and-

**NORTHERN PROPERTY LIMITED PARTNERSHIP**

Respondent/Landlord

**REASONS FOR DECISION**

<b><u>Date of the Hearing:</u></b>	<b>December 8, 2015</b>
<b><u>Place of the Hearing:</u></b>	<b>Yellowknife, Northwest Territories</b>
<b><u>Appearances at Hearing:</u></b>	<b>Rita Catholique, applicant Aya Burshan, respondent</b>
<b><u>Date of Decision:</u></b>	<b>December 8, 2015</b>

### **REASONS FOR DECISION**

An application to a rental officer made by Rita A. Catholique as the applicant/tenant against Northern Property REIT as the respondent/landlord was filed by the Rental Office November 3, 2015. The application was made regarding a residential tenancy agreement for the rental premises known as 5445 - 52 Street in Yellowknife, Northwest Territories. The applicant personally served a copy of the filed application on the respondent November 3, 2015.

The tenant made the following allegations against the landlord in her application: that the security deposit had not been returned in accordance with the *Residential Tenancies Act* (the Act); that the landlord failed to adequately provide for the tenant's disabilities; that the landlord had failed to authorize a transfer to suitable alternative accommodations; that the landlord did not have their financial headquarters in the Northwest Territories; that the landlord's demand for professional carpet cleaning is unreasonable; that the landlord's administrative and management services and record keeping are inadequate. Evidence presented is listed in Appendix A attached to this order.

A hearing was scheduled for December 8, 2015, in Yellowknife, Northwest Territories. Ms. Rita Catholique appeared as applicant/tenant. Ms. Aya Burshan appeared representing the respondent/landlord.

#### *Preliminary matters*

The application to a rental officer identified the landlord as Northern Property REIT. The written tenancy agreement identifies the landlord as Northern Property Limited Partnership. Although it was recognized and acknowledged at hearing that both entities are part of the same organization, it was agreed by all parties that the style of cause to this application should appropriately reflect the landlord as stated on the written tenancy agreement. The style of cause going forward will identify the respondent/landlord as Northern Property Limited Partnership.

*Tenancy agreement*

The parties agreed and evidence was presented establishing a tenancy agreement between them for the rental premises known as 5445 - 52 Street in Yellowknife, Northwest Territories, which commenced February 22, 2008. A security deposit of \$1,370 was paid at commencement of the tenancy. The tenancy ended on September 30, 2015, after the tenant gave written notice on August 28, 2015, of her intention to vacate the premises in accordance with the Act.

*Security deposit*

Although a joint exit inspection of the premises was conducted on October 1, 2015, the landlord has yet to either return the security deposit or provide a written statement of account to the tenant respecting the security deposit.

Section 18(3) of the Act states:

“Subject to this section, a landlord who holds a security deposit, a pet security deposit or both shall, within 10 days after the day a tenant vacates or abandons the rental premises, ensure that

- (a) the deposit is returned to the tenant; and
- (b) the tenant is given an itemized statement of account for the deposit or deposits.”

Section 18(7) of the Act states:

“A landlord who intends to withhold all or a portion of a security deposit, a pet security deposit or both shall, within 10 days after the day a tenant vacates or abandons the rental premises,

- (a) give written notice to the tenant of that intention, and
- (b) subject to subsection (9), return the balance of the deposit or deposits to the tenant.”

The landlord's representative confirmed that neither the security deposit nor a statement of account have been provided to the tenant to date. She explained there had been some confusion about a possible transfer of the tenant to another premises and the security deposit was transferred to another rent account in anticipation of that transfer. This led to delays in the accounting department related to transferring funds between accounts to facilitate the return of the monies.

The affidavit of Debbie Angasuk, who is an employee of the landlord, indicates that as of November 5, 2015, the landlord did not have a "forwarding address for Rita for us to send any documentation to, but I have everything here and if need be I can email or she can come pick them up." References were made in paragraph 5 of the affidavit of telephone conversations and voicemail messages regarding the status of the security deposit, statement of account, and anticipated charges against the security deposit, but no specific dates were referenced from which to establish a timeline. What I can extrapolate from this affidavit is that the security deposit and the statement of account were not provided to the tenant as of November 5, 2015 – 36 days after the tenant vacated the rental premises.

The tenant's application to a rental officer was filed in the Rental Office and personally served on the landlord November 3<sup>rd</sup>. The application includes the tenant's new mailing address, contact phone numbers, and email address; any of which the landlord could have used to at least provide a statement of account to the tenant if not electronically transfer the security deposit funds. The landlord still has not provided either to the tenant as of December 8<sup>th</sup> – 69 days after the tenant vacated the rental premises. The landlord's representative could offer no reasonable explanation for the lengthy delay in complying with their obligations regarding the disposition of the security deposit.

I find the landlord has failed to comply with their obligation to return the security deposit in accordance with the Act. The security deposit amounts to \$1,370 and the interest on that security deposit amounts to \$89.77, for a total security deposit refundable to the tenant of \$1,459.77.

*Other matters raised in the application*

The tenant raised other issues in her application. I will briefly address them here.

Repairs and cleaning

The tenant disputed any claims the landlord might make regarding repairs of two small burn marks on the floor and carpet cleaning requirements. As there was no evidence presented regarding any claims the landlord might make for cleaning or repairs I will make no comments in this regard at this time. Should the landlord choose to make application for compensation for repairs or cleaning at a future date, then I will consider the validity of such claims at that time.

Landlord's response to tenant disabilities

The tenant testified that she had developed a medical condition during her tenure at the rental premises which made using stairs extremely difficult, and provided a note from a nurse practitioner confirming the condition. She had requested a transfer to a ground-level unit to accommodate her medical needs. These requests for transfer were not approved by the landlord until after the tenant gave her written notice to terminate the tenancy, at which point the premises offered were in poor states of repair and the tenant refused them.

The landlord is not obligated under the Act to honour a tenant's request for transfer, regardless of the circumstances. It might make a good business decision to do so, but it is not legally required. As long as the landlord maintains the premises in accordance with the Act, and the premises provides for services and facilities both as stated in the tenancy agreement and in accordance with the Act, then the landlord has met their obligations under the Act.

The tenant further suggested in her application that the landlord's failure to provide suitable accommodation in regard to her disability was tantamount to discrimination. This type of argument is not one for this tribunal under the *Residential Tenancies Act*. Perhaps the tenant could consult with the NWT Human Rights Commission should she wish to pursue this argument under the *Human Rights Act*.

### Landlord's financial headquarters

The tenant suggested in her application that the landlord was breaking the law by failing to have their financial headquarters in the Northwest Territories. There is no requirement under the Act for a landlord to either have their financial offices or their finances held in the Northwest Territories, except with regard to security deposits. Section 17 of the Act states:

- “(1) A landlord shall keep all security deposits, pet security deposits and interest separate and apart from money belonging to the landlord.
- (2) A landlord shall hold all security deposits, pet security deposits and interest in trust.
- (3) A landlord shall
  - (a) only invest security deposits, pet security deposits and interest as directed by the *Trustee Act*; or
  - (b) deposit all security deposits and pet security deposits in a trust account in a bank within the Northwest Territories.”

The issue in this application is not where the security deposit money is being held, as there was no actual evidence one way or another in that regard; rather the issue was about which office was tasked with doing the accounting and cutting the cheques. I am not satisfied that the landlord has failed to comply with their obligation to hold security deposits in trust in accordance with the Act, because I have heard no evidence to support the suggestion. I am also not satisfied that the landlord has failed to comply with any requirement to maintain their financial headquarters in the Northwest Territories, because there is no requirement under the Act for them to do so, nor have I heard any evidence suggesting they are required to do so under any other legislation.

### Administrative, management, and record-keeping issues

The tenant expressed dissatisfaction with the way she was treated by the landlord's front-end personnel, both during her repeated requests for transfers, requests for repairs to the rental premises throughout the tenancy, and subsequent to the end of her tenancy. The Act addresses the rights and obligations of landlords and tenants in residential tenancies; other than in that context, it does not direct how a landlord does business.

With respect to the issue of keeping records of requests, the tenant questioned why there was no record of her repeated requests over the years to effect certain repairs. While it would certainly benefit the landlord to keep a record of such requests and how they were addressed, it is not specifically required. It is as much the tenant's responsibility to keep a record of their requests to the landlord if for no other reason than to have evidence in support of any allegations that the landlord has not complied with their obligations to effect necessary repairs or address other concerns in accordance with the Act. The landlord's failure to keep a record of these type of requests may very well work against the tenant if the tenant has not kept their own records, but it could also work against the landlord were they to dispute any breach allegations made by the tenant. The landlord is not obligated under the Act to keep communications records on behalf of the tenant.

*Order*

An order will issue requiring the landlord to return the total security deposit of \$1,459.77 to the tenant.

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Adelle Guigon  
Deputy Rental Officer



APPENDIX A

Exhibits

Exhibit 1: Applicant's written statement of reasons for application

Exhibit 2: Applicant's written notice to terminate tenancy dated August 28, 2015

Exhibit 3: Correspondence from Kathleen Matthews, NP, dated June 10, 2015

Exhibit 4: Respondent's notice of entry dated September 23, 2015, with additional hand-written notes

Exhibit 5: Move out inspection and acceptance report dated October 1, 2015

Exhibit 6: Lease agreement made February 20, 2008

Exhibit 7: Email conversation between Kelly Benedict, Leny Cuaresma, and Debbie Angasuk dated October 6, 2015

Exhibit 8: Affidavit of Connie Diener affirmed December 2, 2015

Exhibit 9: Affidavit of Debbie Angasuk affirmed November 5, 2015