

IN THE MATTER between **Richard Shushack**, Applicant, and **Northview Apartment 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:

RICHARD SHUSHACK

Applicant/Tenant

- and -

NORTHVIEW APARTMENT REIT

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 30(4)(a) of the *Residential Tenancies Act*, the respondent must comply with their obligation to maintain the rental premises and residential complex in a state fit for habitation.
2. Pursuant to section 34(2)(c) of the *Residential Tenancies Act*, the respondent must compensate the applicant for loss suffered in the amount of \$3,114.50 (three thousand one hundred fourteen dollars fifty cents).

DATED at the City of Yellowknife in the Northwest Territories this 12th day of April
2016.

Adelle Guigon
Rental Officer

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NORTHVIEW APARTMENT REIT

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REASONS FOR DECISION

<u>Date of the Hearing:</u>	April 16, 2015, and March 24, 2016
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	Richard Shushack, applicant Metslal Mesgun, representing the respondent
<u>Date of Decision:</u>	April 7, 2016

REASONS FOR DECISION

An application to a rental officer made by Richard Shushack as the applicant/tenant against NPR Northern Properties Ltd. as the respondent/landlord was filed by the Rental Office March 19, 2015. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The applicant personally served a copy of the filed application on the respondent March 24, 2015.

The applicant alleged the respondent had failed to comply with their obligations to maintain the rental premises in a state fit for habitation and to not disturb the tenant's enjoyment and possession of the rental premises. Initially, the applicant was uncertain what remedies might be available, but over the course of time requested that the respondent exercise alternative methods of pest extermination and requested compensation in the form of rent reduction for the continued disturbances.

Preliminary matters

The application to a rental officer identified the landlord as NPR Northern Properties Ltd. Since filing of the application, the landlord underwent a name change to Northview Apartment REIT. The style of cause going forward will reflect the respondent/landlord as Northview Apartment REIT.

Tenancy agreement

The parties agreed that a residential tenancy agreement was entered into between them for the rental premises identified as #14 Hudson House, 5023 - 48 Street, in Yellowknife, Northwest Territories. The tenancy commenced in June 2013. The monthly rent was established at \$1,495. I am satisfied a valid tenancy agreement is in place between the parties in accordance with the *Residential Tenancies Act* (the Act).

Cockroach infestation

The tenant noticed and reported cockroaches in his rental premises in March 2014. The landlord responded – and had been responding previously to other tenants’ complaints – by commencing extermination treatments in the applicant’s rental premises. These treatments occurred monthly at first, using a product called Maxforce gel and a powder.

The landlord acknowledged that there has been a cockroach infestation in Hudson House for some time. The exterminator they have hired from the South has been treating the building as instructed by the landlord. The landlord for the most part has requested that individual apartments be treated when they receive complaints from the individual tenants. The common areas and other areas of the building are usually, but not always, treated. The exterminator has always applied the gel and/or powder, and has always recommended another treatment in 14 days. Initially, the treatments were scheduled more than 14 days apart. There were a few months in 2015 when the treatments actually were scheduled at 14 days apart as recommended. Between October 2015 and March 2016 the treatments were scheduled three, four, and five weeks apart. There was a brief period when all apartments and the entire building were treated whether complaints were received or not, but this was discontinued some time in the Fall of 2015.

In March 2015, an environmental health officer (EHO) inspected the building. The inspection was done during daytime hours. Cockroaches were not observed at the time, but the landlord did confirm to the EHO that some units did have cockroaches. The EHO identified cockroaches as undesirable stressors capable of lowering the sanitary condition of a home, but were not recognized as a health risk under current Northwest Territories legislation. The EHO expressed satisfaction with the landlord’s efforts at the time to resolve the infestation.

At the April 2015 hearing, the parties were cooperative and when the landlord’s representative expressed recent increased efforts and intentions to increase the frequency of treatments to eradicate the cockroaches, the tenant agreed to adjourn the hearing *sine die* in order to observe whether or not the landlord would be successful. Several attempts to continue the hearing at the applicant’s request were started in September 2015, but due to the applicant’s

work schedule were repeatedly postponed. A hearing scheduled for March 8, 2016, was postponed at the request of the respondent due to a previously scheduled medical appointment. The hearing successfully continued on March 24, 2016.

It was established and confirmed that:

- cockroaches are still infesting the rental premises and residential complex;
- for a brief time the landlord had all the apartments and common areas treated. Since at least October 2015 common areas were regularly treated, but only the apartments of tenants who notified the landlord of continued cockroach sightings were treated;
- the applicant's apartment has been treated each time the exterminator had been scheduled;
- between October 2015 and March 2016 the treatments were between three and five weeks apart;
- the exterminator recommended treatment every two weeks;
- the exterminator treated the building with only Maxforce gel and occasionally with powder.

The applicant provided emails from two separate regional representatives of a nationally recognized exterminator which indicate their pattern of treatment would be to first treat all units in a residential complex with Maxforce gel and then if that does not work after one or two months, they would re-evaluate the situation to determine the best plan to resolve the problem. Emphasis was placed on the co-operation of tenants and the follow-up of treatments being crucial to the success of the extermination.

When questioned, the landlord's representative could not speak to whether or not alternative treatment options had either been recommended by or discussed with the exterminator they have contracted for the last three years.

The NWT Environmental Health Act does not speak specifically to pest infestations. The EHO has not deemed the building uninhabitable under their legislation.

Section 30 of the Act obligates the landlord to maintain the rental premises and residential complex in a good state of repair, fit for habitation, and in compliance with all health, safety, maintenance, and occupancy standards required by law.

Section 34 of the Act obligates the landlord not to disturb the tenant's enjoyment or possession of the rental premises or residential complex.

The landlord clearly has made repeated and ongoing efforts to eradicate the cockroach infestation at Hudson House. Those efforts have not been successful to date, and have been limited to one eradication option. Although the landlord cannot be found to have introduced the infestation, they ultimately remain responsible for maintaining the rental premises in a state that the tenant can enjoy residing in.

Although Northwest Territories legislation does not recognize cockroaches as a health hazard, they have been identified as a nuisance that have the ability to carry bacteria, potentially compromising the sanitary condition of the premises, and their presence creates a stressful environment. The World Health Organization describes cockroaches 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

The continued presence of the cockroaches in the rental premises and residential complex, together with the impact of cockroaches on the occupants, creates a disturbance of the tenant's enjoyment of the rental premises and consequently results in an uninhabitable environment. In that context, I find the landlord in breach of their obligations under sections 30(1)(a) and 34(1) of the Act.

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

As previously mentioned, the applicant did not initially specify a remedy in his application, but over the course of these hearings and discussions he did mention two remedies he would be satisfied with. One would be an order requiring the landlord to use alternative extermination methods to those which have been unsuccessful to date. He argued that his own research suggested that after two unsuccessful attempts in using the gel, that a full building fumigation would be the next most cost effective and successful method to attempt. He wondered why, after more than two years, that option had not been tried. While I appreciate the tenant's frustration with this ongoing problem, I am not convinced I have the authority to dictate the specific manner in which a landlord must comply with the obligation to exterminate the infestation. I, too, am left wondering whether or not the landlord has considered other methods of extermination, including fumigation. I did suggest to the landlord's representative that it might be worth their time to at least do a cost comparison between implementing alternative extermination methods and the costs of the single method they have unsuccessfully used to date. While I am not prepared to direct the landlord in what methods to use to eradicate the infestation at Hudson House, I am prepared to order them to comply with their obligation to maintain the rental premises in a state fit for habitation.

The second remedy the applicant suggested was an abatement of rent for the period to date that he has suffered with the infestation. I am satisfied this is an appropriate remedy with respect to the disturbance of the tenant's enjoyment and possession of the rental premises. The tenant has not enjoyed the occupancy of the rental premises that he has paid for, through no fault of his own. As with previous applications of this nature, I will apply an abatement calculation of one month's rent for each 12 months of infestation that the tenant has suffered. The monthly rent is \$1,495. The applicant has suffered with the infestation from March 2014 to March 2016, or 25 months. The monthly rent divided by 12 months then multiplied by 25 months equals \$3,114.50.

Order

An order will issue requiring the landlord to comply with their obligation to maintain the rental premises in a state fit for habitation and to compensate the tenant in the amount of \$3,114.50.

Adelle Guigon
Rental Officer