

IN THE MATTER between **POLAR DEVELOPMENTS LTD.**, Applicant, and **MARK AITKENHEAD**, 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, **HAL LOGSDON**, Rental Officer, regarding the rental premises at **YELLOWKNIFE, NT.**

BETWEEN:

POLAR DEVELOPMENTS LTD.

Applicant/Landlord

- and -

MARK AITKENHEAD

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 12th day of December, 2003.

Hal Logsdon
Rental Officer

IN THE MATTER between **POLAR DEVELOPMENTS LTD.**, Applicant, and **MARK AITKENHEAD**, 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 **Hal Logsdon**, Rental Officer.

BETWEEN:

POLAR DEVELOPMENTS LTD.

Applicant/Landlord

-and-

MARK AITKENHEAD

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: December 9, 2003

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Gabrielle Decorby, representing the applicant
Mark Aitkenhead, respondent

Date of Decision: December 9, 2003

REASONS FOR DECISION

The applicant alleged that the respondent breached the *Residential Tenancies Act* by causing an overcrowded condition in the rental premises contrary to section 45(3) of the Act. The applicant also alleged that the respondent had breached the tenancy agreement by disturbing other tenants' quiet enjoyment of the premises. The applicant served a notice of early termination on the respondent on October 10, 2003 seeking vacant possession of the premises on November 10, 2003. The respondent did not give up possession. The applicant sought an order terminating the tenancy agreement.

The applicant stated that the respondent's application to rent the premises stated that he and his 11 year old daughter would be occupants. The application was approved and the parties entered into a tenancy agreement commencing September 24, 2003. The applicant stated that later that month the respondent sought the landlord's approval to have Tina Sangris and her 14 year old daughter and Steven Norn, a 27 year old, share the accommodation. The applicant refused permission in a letter dated October 1, 2003.

The applicant also stated that they had received a complaint about four teenagers on the apartment balcony during a period when the respondent was away. The applicant stated that the teenagers were seen throwing a beer can and popcorn from the balcony. The applicant sent a notice on November 5, 2003 outlining the complaint to the respondent.

Section 45(3) of the *Residential Tenancies Act* deals with overcrowding of rental premises.

A tenant shall not permit such number of persons to occupy the rental premises on a continuing basis that results in the contravention of health, safety or housing standards required by law or in a breach of the tenancy agreement.

The applicant stated that section 11(1) of the *Public Health Act General Sanitation Regulations* applied.

A building used for human habitation shall be deemed to be insanitary if there is not in all sleeping rooms an air space of 11 cubic metres for each occupant 10 years of age or over and 5.5 cubic metres for each occupant under 10 years of age and over one year of age.

The applicant provided a floor plan of the premises and calculated the volume of the two bedrooms as 50.07 cubic metres. Five occupants over the age of 10 years of age using the two bedrooms only would require 55 cubic metres of air space.

The applicant testified that his daughter did not live in the premises and that only four persons occupied the premises. The required air space for four persons would be within the available space. I find no breach of the *Public Health Act*.

There is no reference to the number of persons permitted to occupy the premises in the written tenancy agreement. The applicant stated that section E of the tenancy agreement had been breached as the respondent was renting portions of the premises.

- E. Use of the Premises: to use the premises as a private residence, and for no other purpose; and to observe any reasonable rules and regulations which may be made by the Landlord or his agent from time to time.

I find no breach of this section of the agreement. There is no evidence of non-residential use or of any rules or regulations regarding number of occupants.

The applicant stated that the respondent had sublet a portion of the premises without the permission of the landlord. Notwithstanding that termination is not an available remedy for failing to obtain permission to sublet, I find no evidence that the respondent has provided exclusive possession to any of the occupants in exchange for rent or sublet the premises or part thereof to any of the occupants.

The respondent denied the allegations concerning disturbance, stating that he had spoken to the maintenance man after receiving the notice and was told there was no beer can found on the grounds. The allegations are vague as to the date of occurrence. In my opinion, the applicant has not provided reasonable evidence of a breach of the tenancy agreement.

I find no breach of the respondent's obligation concerning overcrowding or disturbance. The application is therefore dismissed.

Hal Logsdon
Rental Officer