

IN THE MATTER between **MIDWEST PROPERTY MANAGEMENT**, Applicant, and **WALTER SIMON**, 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:

MIDWEST PROPERTY MANAGEMENT

Applicant/Landlord

- and -

WALTER SIMON

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 34(2)(d) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Apartment #5, 5304-49th Street, Yellowknife, NT shall be terminated on February 6, 2004, and the respondent shall vacate the premises on that day.

DATED at the City of Yellowknife, in the Northwest Territories this 21st day of January, 2004.

Hal Logsdon
Rental Officer

IN THE MATTER between **MIDWEST PROPERTY MANAGEMENT**, Applicant, and **WALTER SIMON**, 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:

MIDWEST PROPERTY MANAGEMENT

Applicant/Landlord

-and-

WALTER SIMON

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: January 13, 2004 continued January 20, 2004

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Wanda O=Keefe, representing the applicant
Sharon Hysert, representing the applicant
Diane Jamieson, representing the respondent (January 20, 2004 only)
Walter Simon, respondent (January 20, 2004 only)

Date of Decision: January 21, 2004

REASONS FOR DECISION

The respondent was served with a Notice of Attendance on December 22, 2003 but failed to appear at the hearing. The hearing was held in his absence but reconvened on January 20, 2003 to permit the respondent and his representative to offer a defence.

The applicant alleged that the respondent had breached the tenancy agreement by disturbing other tenants= quiet enjoyment of the rental premises. The applicant served a notice of early termination on the respondent on November 25, 2003 seeking vacant possession on December 4, 2003. The respondent failed to vacate the premises. The applicant filed the application on November 27, 2003 seeking an order terminating the tenancy agreement.

The applicant testified that she was called by the caretaker of the building November 21, 2003 on a report of young persons creating a disturbance. When she arrived, there were police in attendance and she joined them to investigate the source of the disturbance. The applicant stated that she entered the building using her key, as the entrance door was locked, and noted some damage by the entrance. As she proceeded through the building she was met by a worker from the YWCA by apartment 110 who told her that the respondent=s apartment had been broken into. She proceeded with the police to the respondent=s apartment and found significant damage to the premises. She testified that when she spoke to the respondent, he indicated to her that there were five young girls in the apartment who were drinking with him. She stated that the respondent appeared intoxicated and was swaying on his feet.

She stated that neither herself nor the police noted any signs of forced entry to the respondent=s premises and the police concluded that the damages were a result of a party. The applicant testified that the police returned to speak to her the following day as they had received a report of a break and enter to the respondent=s premises. She stated that they found no evidence of forced entry and referring to the report filed the previous night determined no further action was required.

The applicant stated that by the time she and the police arrived at the complex, there was no sign of disturbance or the persons who were said to be in the respondent=s apartment but she believed that the respondent was on the premises and had permitted the others entry to his premises. She stated that there had been other complaints concerning disturbances created by the respondent and provided two anonymous letters written to the landlord. Both complained generally about noise and other activities in the building but offered no details on specific incidents other than naming tenants in apartments 001, 003, and 005 as the source of the problems.

The respondent testified that he had been out of the building the night of November 21 and on returning to the apartment heard persons inside. He stated that he went to the YWCA office and told the worker that there were persons in his apartment. He stated that he never saw the persons or entered the apartment until they had left. He testified that he did not know who was in the apartment or how they gained entry but stated that he had lost the keys to the apartment and might have dropped them in the snow. He testified that on leaving the apartment that evening he had locked the door. He stated that he had been able to enter the building without his keys because the door was unlocked.

He later testified that he had been assaulted before returning home. He stated that the assailants took his jacket and may have taken his keys. He testified that he did not know the assailants. The applicant testified that when speaking with the respondent on the evening of November 21, she noticed no sign of injury to the respondent or any other indication he had been assaulted.

Section 43 of the *Residential Tenancies Act* obligates a tenant to not disturb other tenants or the landlord.

A tenant shall not disturb the landlord=s or other tenants= possession or enjoyment of the rental premises or residential complex.

A disturbance caused by a person permitted by a tenant to enter the residential complex or the rental premises of the tenant shall be deemed to be a disturbance caused by the tenant.

There were no signs of forced entry, which suggests that a key was used to enter the premises or the tenant permitted others to enter.

In my opinion, the balance of evidence supports the landlord=s allegation that the respondent permitted the persons in the apartment. If the tenant=s keys were lost or stolen, the person coming into possession of the keys would only have been able to gain entry to the building and the premises if they knew the tenant or were permitted by the tenant to use the keys to enter the premises. A found key does not permit entry to an apartment or an apartment building unless the finder knows what lock it fits. The respondent stated that he did not know the alleged assailants who may have taken his keys. If the keys

were stolen, the assailants would have to know where the respondent lived and would, in all likelihood, be known to the respondent. As well, the respondent stated that when he entered the building, the entry door was not locked. The landlord entered the same door, perhaps no more than 30 minutes later, and had to use her key to enter.

In my opinion, the testimony of the respondent does not serve to refute the allegation of the landlord, that the persons creating the disturbance were permitted in the premises by the respondent. In my opinion, particularly considering the damages done to the premises, there are sufficient grounds to terminate the tenancy agreement between the parties.

An order shall issue terminating the tenancy agreement on February 6, 2004 and requiring the respondent to vacate the premises on that date.

Hal Logsdon
Rental Officer