

IN THE MATTER between **CITY MOTORS YELLOWKNIFE LTD.**, Applicant, and **SHANE M. WEST**, 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:

CITY MOTORS YELLOWKNIFE LTD.

Applicant/Landlord

- and -

SHANE M. WEST

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 43(3)(d) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Upstairs Apartment, 5105-51 Street, Yellowknife, NT shall be terminated on January 30, 2004 and the respondent shall vacate the premises on that date.

DATED at the City of Yellowknife, in the Northwest Territories this 14th day of January, 2004.

Hal Logsdon
Rental Officer

IN THE MATTER between **CITY MOTORS YELLOWKNIFE LTD.**, Applicant, and **SHANE M. WEST**, 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:

CITY MOTORS YELLOWKNIFE LTD.

Applicant/Landlord

-and-

SHANE M. WEST

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: January 13, 2004

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Hans Bauhaus, representing the applicant

Date of Decision: January 14, 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.

The applicant alleged that the respondent had repeatedly disturbed other tenants' quiet enjoyment of the premises and sought an order terminating the tenancy agreement between the parties. The applicant also stated that one of the other tenants had terminated her tenancy in December, 2003 due to the noise. The applicant stated that he has been unable to re-rent the premises until the respondent vacates and sought compensation for one month's lost rent in the amount of \$750.

The applicant provided a letter from another tenant outlining the disturbances and her reasons for terminating the tenancy agreement. The applicant testified that a third tenant had also complained on numerous occasions. The applicant served a notice of early termination on the respondent on October 5, 2003 but did not file an application to a rental officer until December 1, 2003.

The evidence supports the applicant's allegations and in my opinion, there are sufficient grounds to terminate the tenancy agreement between the parties. An order shall issue terminating the tenancy agreement on January 30, 2004 and requiring the respondent to vacate the premises on that date.

With regard to the compensation sought, section 54 of the *Residential Tenancies Act* permits a

landlord to serve a notice of early termination on a tenant when a tenant has repeatedly and unreasonably disturbed other tenants but requires the landlord to also file an application to a rental officer for an order terminating the tenancy agreement. Section 5(1) requires both landlords and tenants to mitigate damages.

Where a landlord or tenant is liable to the other for damages as a result of a breach of a tenancy agreement or this Act, the landlord or tenant entitled to claim damages shall mitigate his or her damages.

In this matter, the landlord failed to file an application to a rental officer in a timely manner. Had he filed an application in early October, when he served the notice of early termination on the tenant, this matter would have most likely been heard in November. This would have most likely prevented the vacancy and the resultant financial loss. In my opinion, the applicant failed to mitigate damages caused by the respondent's breach and his claim for damages is therefore denied.

Hal Logsdon
Rental Officer