

IN THE MATTER between **902800 NWT LIMITED**, Applicant, and **ROBERT ESSARY**, 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:

902800 NWT LIMITED

Applicant/Landlord

- and -

ROBERT ESSARY

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant rent arrears in the amount of one thousand three hundred dollars (\$1300.00).
2. Pursuant to sections 41(4)(c) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Apartment #2, 5123 - 50th Street, Yellowknife, NT shall be terminated on May 10, 2005 and the respondent shall vacate the premises on that date unless the rent arrears, security deposit and the rent for May, 2005 in the total amount of two thousand six hundred dollars (\$2600.00) is paid to the applicant in full.

DATED at the City of Yellowknife, in the Northwest Territories this 28th day of April, 2005.

Hal Logsdon
Rental Officer

IN THE MATTER between **902800 NWT LIMITED**, Applicant, and **ROBERT ESSARY**, 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:

902800 NWT LIMITED

Applicant/Landlord

-and-

ROBERT ESSARY

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: April 26, 2005

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Seamus Henry, representing the applicant

Date of Decision: April 28, 2005

REASONS FOR DECISION

The respondent was served with a Notice of Attendance on April 15, 2005 but failed to appear at the hearing. The hearing was held in his absence.

The applicant alleged that the respondent had failed to pay any rent for the months of March and April, 2005 and had failed to provide any of the required security deposit. The applicant also alleged that the respondent had disturbed other tenants in the residential complex. The applicant sought an order requiring the respondent to pay the alleged rent arrears and terminating the tenancy agreement between the parties.

The applicant testified that the rent for the premises was \$650/month and that the required security deposit was \$650. There was no evidence of a written tenancy agreement but the applicant indicated that the tenant took possession sometime in January, 2005.

The applicant read a letter from a commercial tenant in the building into evidence outlining several incidents. The applicant indicated that none of the residential tenants had made any complaints to the landlord concerning the respondent. Section 43 of the *Residential Tenancies Act* sets out a tenant's obligation to not disturb.

- 43. (1) A tenant shall not disturb the landlord's or other tenants' possession or enjoyment of the rental premises or residential complex.**
- (2) 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.**

The commercial tenant's complaint primarily concerns the amount of traffic to and from the respondent's premises and, more specifically, the types of people who enter the respondent's premises. The implication is clearly that the visitors to the respondent's premises are undesirable elements in the community with connections to drug use. There is no complaint of noise. The complaining tenant states that a presumed occupant of Mr. Essary's apartment had asked about noise and was told, "I leave at 4:30 every day and I didn't know anything about noise". It appears from the evidence that the primary disturbing factor was the coming and going of undesirable persons and their presumed activities with the respondent.

The only activity of the persons visiting the respondent that might be considered to be disturbing was their occasional shouting or "throwing pebbles at the respondent's window" to gain access to the apartment. In my opinion, this activity, during the day, can not be considered a serious breach of the tenant's obligation to not disturb.

I also note that there is no evidence that the landlord has made the respondent aware of the complaints. One would expect the landlord to make the tenant aware of the offending behaviour in order to permit the tenant to remedy the situation. There is no evidence to suggest that any notices or other communication occurred to alert the tenant that his guests' activities were annoying to others.

In summary, I do not find sufficient evidence to conclude that other tenants in the building were disturbed by the respondent or his visitors. However, I find the respondent is in serious breach of

his obligation to pay rent and to provide the required security deposit. In my opinion, there are sufficient grounds to terminate the tenancy agreement unless the rent arrears and deposit are promptly paid. I find the rent arrears to be \$1300 and the outstanding security deposit to be \$650.

An order shall issue requiring the respondent to pay the applicant rent arrears in the amount of \$1300 and terminating the tenancy agreement on May 10, 2005 unless the rent arrears, security deposit and the May, 2005 rent is paid in full.

Hal Logsdon
Rental Officer