

IN THE MATTER between **THEODORE ZAVLANOS AND CAMILLE ZAVLANOS**, Applicants, and **MIDWEST PROPERTY MANAGEMENT**, 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:

THEODORE ZAVLANOS AND CAMILLE ZAVLANOS

Applicants/Tenants

- and -

MIDWEST PROPERTY MANAGEMENT

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 30(4)(e) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Apartment 003, 5304 49th Street, Yellowknife, NT shall be terminated on May 31, 2005 and the respondents shall vacate the premises on that date.

DATED at the City of Yellowknife, in the Northwest Territories this 31st day of May, 2005.

Hal Logsdon
Rental Officer

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BETWEEN:

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-and-

MIDWEST PROPERTY MANAGEMENT

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: May 30, 2005

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Theodore Zavlanos, applicant
Camille Zavlanos, applicant
Wanda O'Keefe, representing respondent

Date of Decision: May 30, 2005

REASONS FOR DECISION

The parties entered into a one year term tenancy agreement which commenced on February 1, 2005. The applicants allege that the landlord has failed to maintain the common areas of the residential complex in a smoke-free condition, in contravention of the municipal smoking by-law and seek the termination of the tenancy agreement.

The applicants stated that they were assured by the landlord that there was no smoking permitted in the common areas of the residential complex. The applicants testified that on numerous occasions they have seen persons smoking in the common areas and noticed cigarette butts in those areas. Ms. Zavlanos stated that she had allergic reactions to cigarette smoke and was pregnant and could not risk her health or pregnancy. The applicants stated that there were no signs in the premises prohibiting smoking. The applicants stated that they had notified the landlord of the problem in April, 2005 but were unable to mutually agree to terminate the tenancy agreement, The applicants gave written notice to the landlord on April 30, 2005 to terminate on May 31, 2005. The applicants have taken up residence in another location but have not given up possession of the premises.

The respondent stated that she was unaware of the problem until the application was served. She stated that after receiving the notice and the application, she had tried to re-rent the premises and had entered into a tenancy agreement to commence on June 19, 2005. She stated that had she known of the problem earlier she would have most likely been able to find a new tenant by June

1, 2005 and would have mutually agreed to terminate the tenancy agreement. She acknowledged that there was no signage in the building prohibiting smoking.

Section 30 of the *Residential Tenancies Act* sets out the landlord's obligation to maintain and repair.

30.(1) A landlord shall

- (a) provide and maintain the rental premises, the residential complex and all services and facilities provided by the landlord, whether or not included in a written tenancy agreement, in a good state of repair and fit for habitation during the tenancy; and**
- (b) ensure that the rental premises, the residential complex and all services and facilities provided by the landlord comply with all health, safety and maintenance and occupancy standards required by law.**

The City of Yellowknife Smoking By-law prohibits smoking in "common areas of buildings...generally available for common use by the occupants including, but not limited to, hallways, foyers, stairways, elevators, escalators, laundry rooms, washrooms and amenity areas." This by-law also obligates the building proprietor to post signs at the entrance to the buildings in a specified form.

In my opinion, the municipal by-law constitutes a standard required by law pursuant to section 30(1)(b) of the Act. By failing to post the appropriate signs required by the by-law, the landlord is in breach of section 30 of the Act and the applicants are entitled to seek the remedy of termination of the agreement.

There is conflicting evidence regarding the notification to the landlord of this breach. I am satisfied that the applicants made someone at the landlord's offices aware of the problem but also feel it is hardly necessary for a tenant to make a landlord aware of their obligations concerning a by-law.

I find the respondent in breach of their obligation to curtail smoking in prohibited areas of the residential complex by posting signs in the building in accordance with the smoking by-law. The respondent is therefore also in breach of section 30 of the Act. In my opinion, termination of the tenancy is a reasonable remedy. An order shall issue terminating the tenancy agreement between the parties on May 31, 2005.

Hal Logsdon
Rental Officer