

IN THE MATTER between **NORTHERN PROPERTY LIMITED PARTNERSHIP**,
Applicant, and **NELSON MUCHEKENI**, 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:

NORTHERN PROPERTY LIMITED PARTNERSHIP

Applicant/Landlord

- and -

NELSON MUCHEKENI

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 19th day of
December, 2005.

Hal Logsdon
Rental Officer

IN THE MATTER between **NORTHERN PROPERTY LIMITED PARTNERSHIP**, Applicant, and **NELSON MUCHEKENI**, 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:

NORTHERN PROPERTY LIMITED PARTNERSHIP

Applicant/Landlord

-and-

NELSON MUCHEKENI

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: December 16, 2005

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Sharon Hysert, representing the applicant
Arlene Campbell, representing the applicant
Nelson Muchekeni, respondent

Date of Decision: December 19, 2005

REASONS FOR DECISION

The parties entered into a term tenancy agreement with an expiry date of October 31, 2005. The applicant alleged that the respondent gave written notice to terminate the agreement on October 4, 2005 and that they have been unable to re-rent the premises. The applicant sought an order requiring the respondent to pay compensation for rent that was lost in the month of November, 2005 in the amount of \$1010.

The applicant testified that the notice was delivered to their offices on October 4, 2005. The applicant provided a copy of the notice showing their date stamp. The applicant testified that following the respondent's notice, they showed the apartment to prospective tenants seeking one-bedroom accommodation. The applicant stated that two persons wished to rent the premises but both were deemed unsuitable tenants. One was considered to have inadequate income to meet the obligation to pay the rent and another had no history of renting. The applicant stated that the apartment remains vacant.

The respondent testified that he faxed the notice to the landlord on September 30, 2005 because he was travelling to Winnipeg at 7AM that day. On his return, he attended the landlord's offices to confirm that his notice was received. When he was told the notice had not been received, he provided a copy to the landlord. The landlord acknowledged the receipt of the notice in writing and scheduled an inspection of the premises.

In early November, the respondent inquired about the return of his security deposit and was told it was being retained due to his improper notice to terminate. A statement of the deposit was issued to the respondent showing an amount due to the landlord of \$498.50 with the following explanation of the deduction:

November 05 rent will be adjusted and credited if unit is rented before Nov 30/05.

The respondent filed an application to a rental officer seeking the return of the deposit.

At the hearing, the landlord presented a cheque to the respondent for the full amount of the security deposit and interest and the respondent withdrew his application.

When a tenant abandons rental premises or vacates without giving adequate notice, the tenant may be liable for rent that would have come due if the tenancy had continued. These are damages, not a penalty. They are limited to the landlord's actual losses and are subject to the landlord's efforts to mitigate the loss. They may *not* be taken from a security deposit.

Notwithstanding the landlord's improper handling of this security deposit, they are entitled to have their claim for lost rent determined on its merits.

The respondent failed to give the notice required. A tenant must give written notice to terminate a term agreement at least 30 days prior to the expiry of the term. Such a notice may be served personally on the landlord at their offices or sent by registered mail. Fax service can not be deemed served when the other party denies having received it.

Section 5 of the *Residential Tenancies Act* sets out a landlord's obligation to mitigate loss of rent.

- 5.(1) 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.**
- (2) Without limiting subsection (1), where a tenant terminates a tenancy agreement, contravenes a tenancy agreement, or vacates or abandons rental premises, other than in accordance with this Act or the tenancy agreement, the landlord shall rent the rental premises again as soon as is practicable and at a reasonable rent in order to mitigate the damages of the landlord.**

The applicant's testimony indicates that two persons were willing to enter into a tenancy agreement with the landlord. Assuming that both would be obligated to pay the November, 2005 rent in advance before taking occupancy, either prospective tenant would have eliminated the landlord's loss of the November rent. Is it reasonable when considering mitigation to expect a landlord to enter into a tenancy agreement with anyone who produces the first month's rent in advance? In my opinion, no. However, there should be substantive reasons why a prospective tenant would be an unacceptable tenant. The lack of a rent credit history does not necessarily indicate an unacceptable tenant. In my opinion, the landlord did not take the necessary steps to mitigate this loss and the application is therefore dismissed.

Hal Logsdon
Rental Officer