

IN THE MATTER between **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, Applicant, and **LAVERNE LAFFERTY**, 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 REAL ESTATE INVESTMENT TRUST

Applicant/Landlord

- and -

LAVERNE LAFFERTY

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 1st day of March, 2006.

Hal Logsdon
Rental Officer

IN THE MATTER between **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, Applicant, and **LAVERNE LAFFERTY**, 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 REAL ESTATE INVESTMENT TRUST

Applicant/Landlord

-and-

LAVERNE LAFFERTY

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: February 28, 2006

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Krista Cooper, representing the applicant

Date of Decision: February 28, 2006

REASONS FOR DECISION

This tenancy agreement was terminated on or about October 18, 2005 when the respondent vacated the rental premises. The applicant inspected the premises and prepared an inspection report and statement of the security deposit which were presented in evidence. A note on the security deposit statement indicates it was sent by mail to the respondent on October 21, 2005 and that the respondent provided no forwarding address. I presume it was sent to the address of the rental premises.

The application was not filed until January 25, 2006 and was sent to the respondent by registered mail. The application was undelivered and returned to the applicant. The Notice of Attendance was also sent to the respondent by registered mail to the address of the rental premises. It had not been delivered at the time of the hearing and the respondent did not appear at the hearing. The evidence suggests that neither the security deposit statement, the application nor the Notice of Attendance were actually received by the respondent.

Section 71 of the *Residential Tenancies Act* permits service by registered mail and deems service seven days after mailing if mailed to the rental premises.

71.(1) Subject to subsection (3), any notice, process or document to be served by or on a landlord, a tenant or the rental officer may be served by personal delivery or by registered mail to the landlord at the address given in the tenancy agreement or mailed to the tenant at the address of the rental premises and to the rental officer at the address of the office of the rental officer.

- (2) **A notice, process or document sent by registered mail shall be deemed to have been served on the 7th day after the date of mailing.**
- (3) **Where a notice cannot be served personally on a tenant or a landlord who is absent or evading service, the notice may be served on the tenant or the landlord by serving it on any adult who apparently resides with the tenant or landlord.**

While section 71(2) permits for deemed service when sent by registered mail to the rental premises, section 75 of the Act compels a rental officer to ensure the rules of natural justice are followed.

- 75. A rental officer shall adopt the most expeditious method of determining the questions arising in any proceedings and ensure that the rules of natural justice are followed.**

Natural justice requires that a respondent know the allegations made against him or her and have the opportunity to answer the case against them.

In my opinion, a rental officer must balance the requirements imposed by section 75 with the deeming provisions of service by registered mail contained in section 71(2). Applicants and the rental officer should choose a method of service which will likely result in the successful and expeditious delivery of the document to the respondent. When it is clear that a respondent/tenant is no longer in possession and has given no forwarding address, there is really only one method of service which may have the desired results, namely registered mail to the address of the rental premises.

It is not unreasonable, in my opinion, to expect a former tenant to make arrangements to have mail forwarded for a short period of time. Failure to do so, when rent or other liabilities are owed to the landlord is simple avoidance of the tenant's obligations and the deeming provision of section 71(2) is reasonable to invoke. However, in my opinion, the landlord should be expected to act in an expeditious manner when it is clear that the tenant has left without providing any means of future contact and failure to do so calls into question the appropriateness of deeming service by registered mail.

In this matter, the applicant failed to file an application until over three months had passed from the time the respondent vacated the premises. The passage of this length of time, in my opinion, mitigates against the successful service of the application and the requirement to exercise the rules of natural justice.

For these reasons, I believe the application must be dismissed. The applicant may file a future application should the whereabouts of the respondent become known and proper service become possible.

Hal Logsdon
Rental Officer