

IN THE MATTER between **MUNYARADZI MADZINGA AND THERESA JIRI**,
Applicants, and **POLAR DEVELOPMENTS LTD.**, 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:

MUNYARADZI MADZINGA AND THERESA JIRI

Applicants/Tenants

- and -

POLAR DEVELOPMENTS LTD.

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 8th day of
December, 2006.

Hal Logsdon
Rental Officer

IN THE MATTER between **MUNYARADZI MADZINGA AND THERESA JIRI**, Applicants, and **POLAR DEVELOPMENTS LTD.**, Respondent.

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

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-and-

POLAR DEVELOPMENTS LTD.

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: November 28, 2006

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Munyaradzi Madzinga, applicant
Theresa Jiri, applicant
Karen McLeod, representing the respondent

Date of Decision: November 28, 2006

REASONS FOR DECISION

The applicants alleged that the respondent had breached the tenancy agreement by failing to maintain the rental premises and sought an order terminating the tenancy agreement between the parties.

The applicants stated that the kitchen sink drain was leaking, the toilet seat was loose and a closet door did not operate properly. The applicants stated that they had notified the landlord of the required repairs but the landlord had failed to attend to them. The applicants also complained that smoking was permitted in the building and that they often smelled smoke in their apartment and in the hallways. The applicants acknowledged that they had not seen anyone smoking in the hallways or common areas but assumed it must be happening due to the smell of smoke in those areas and in their apartment.

The tenancy agreement between the parties commenced on March 16, 2006 and was made for a term of 12 months and 16 days. The applicants gave written notice on October 24, 2006 that they intended to vacate the premises on December 31, 2006. The landlord acknowledged their notice informing the applicants that they would remain responsible for the rent until another tenant was found. The landlord also informed the applicants that they had the right to assign the tenancy agreement.

The respondent testified that the toilet seat and leaking drain had been repaired. She stated that

she had not been notified that the repairs were unsatisfactory or that the problems had reoccurred. The respondent stated that a work order was pending for the closet door repair but a part was needed that had not yet been received. The respondent noted that the leak below the kitchen sink was very minor. The respondent stated that none of the tenancy agreements in the building prohibited smoking but that smoking was prohibited in the hallways and common areas. The respondent stated that in response to the applicants' complaints, gaskets had been installed in the electrical boxes on common walls to prevent air infiltration from one apartment to another.

Section 30 of the *Residential Tenancies Act* sets out a landlord's obligation to repair and the remedies available to a tenant.

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.**
- (2) Any substantial reduction in the provision of services and facilities shall be deemed to be a breach of subsection (1).**
 - (3) Subsection (1) applies even where a tenant had knowledge of any state of non-repair before the tenant entered into the tenancy agreement.**
 - (4) Where, on the application of a tenant, a rental officer determines that the landlord has breached an obligation imposed by this section, the rental officer may make an order**

 - (a) requiring the landlord to comply with the landlord's obligation;**

- (b) requiring the landlord to not breach the landlord's obligation again;**
 - (c) authorizing any repair or other action to be taken by the tenant to remedy the effects of the landlord's breach and requiring the landlord to pay any reasonable expenses associated with the repair or action;**
 - (d) requiring the landlord to compensate the tenant for loss that has been or will be suffered as a direct result of the breach; or**
 - (e) terminating the tenancy on a date specified in the order and ordering the tenant to vacate the rental premises on that date.**
- (5) A tenant shall give reasonable notice to the landlord of any substantial breach of the obligation imposed by subsection (1) that comes to the attention of the tenant.**
- (6) A landlord shall, within 10 days, remedy any breach referred to in subsection (5).**

Although the landlord may not have attended to the repairs within the ten day period specified by the Act, the deficiencies of the premises are minor. In my opinion, the applicants' enjoyment of the premises has not been so adversely affected to justify the remedy of termination of the tenancy agreement. In the matter of the alleged smoking in the hallways, there is no clear evidence that other tenants have been smoking in the common areas of the building or that the landlord has been less than vigilant in enforcing the smoking prohibition in common areas. This is not a non-smoking building. There is no prohibition in the tenancy agreement to prevent tenants from smoking in their apartments. The landlord has taken what steps they can to prevent infiltration between apartments.

The respondents state in their application that they have made plans to relocate to Edmonton.

Clearly, the respondents want to limit their liability for lost rent. However, in my opinion, there are not sufficient grounds here to terminate the tenancy agreement. The application shall be dismissed.

Hal Logsdon
Rental Officer