

IN THE MATTER between **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, Applicant, and **JOE BAILEY**, 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 -

JOE BAILEY

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(c) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Apartment 207, 5001 - 52 Avenue, Yellowknife, NT shall be terminated on August 17, 2008 and the respondent shall vacate the premises on that date.

DATED at the City of Yellowknife, in the Northwest Territories this 4th day of July, 2008.

Hal Logsdon
Rental Officer

IN THE MATTER between **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, Applicant, and **JOE BAILEY**, 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-

JOE BAILEY

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: July 2, 2008

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Julia O'Brien, representing the applicant
Michelle Loyer, representing the applicant
Joe Bailey, respondent

Date of Decision: July 4, 2008

REASONS FOR DECISION

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay rent on the days it is due and had breached an order which required him to pay future rent on time.

The applicant sought an order terminating the tenancy agreement.

At the time of the hearing the rent for the premises was paid in full.

There have been five orders issued against the respondent, all involving non-payment or late payment of rent, between June 30, 2004 and February 12, 2008. Four of the previous orders terminated the tenancy agreement unless the rent arrears were paid in full. The respondent satisfied those orders and the tenancy agreement continued. The order filed on May 12, 2006 required the respondent to pay future rent on time. The respondent appeared at only two of the previous hearings and did not dispute the accuracy of the landlord's rent statements at either of those hearings.

The respondent stated that problems with employment continuity prevented him from paying the rent on time. He stated that he has been steadily employed with the Government of the Northwest Territories since November 3, 2007 and should now be able to pay the monthly rent on the days it is due.

The respondent also stated that he damaged a door to the premises in 2004 and was charged

\$753.22 although he claimed the landlord's actual repair costs were only \$90. There has been considerable correspondence between the parties on this issue and it appears the landlord is now willing to meet with the respondent to attempt to come to some resolution of the matter.

Section 41 of the *Residential Tenancies Act*, obligates a tenant to pay rent on the days specified in the tenancy agreement.

41.(1) A tenant shall pay to the landlord the rent lawfully required by the tenancy agreement on the dates specified by the tenancy agreement.

The written tenancy agreement between the parties obligates the tenant to pay the monthly rent in advance.

Since November, 2007 when he became employed on a regular basis, the respondent has failed to pay the full monthly rent on time on a single occasion. During that period, the landlord had to wait up to 52 days after the due date of the monthly rent to receive the full payment. From November 1, 2007 to June 3, 2008 the full rent was late a total of 243 days. The respondent's steady employment since November, 2007 does not appear to have resolved the late payment problem.

Even if the respondent was overcharged some \$663 in 2004 for the broken door, a matter on which I make no finding, it does not change the fact the rent was paid late every month since November, 2007. A credit of \$663 does not change the respondent's persistent late payment of rent.

A rental officer may apply any of three remedies for a breach of section 41.

- 41(4) Where, on the application of a landlord, a rental officer determines that a tenant has failed to pay rent in accordance with subsection (1), the rental officer may make an order
- (a) requiring the tenant to pay the rent owing and any penalty for late payment;
 - (b) requiring the tenant to pay his or her rent on time in the future;
 - or
 - (c) terminating the tenancy on the date specified in the order and ordering the tenant to vacate the rental premises on that date.

The landlord has been very tolerant with the respondent's negligent rent payments. On previous occasions, the landlord has asked for termination of the tenancy agreement only if the rent arrears are not promptly paid. However, on this occasion, the sixth application since 2004, the landlord is seeking an unconditional termination order.

In my opinion, a landlord should not be expected to repeatedly launch legal action in order to collect the rent. I find no valid reason why the respondent has been unable to pay the rent in accordance with the tenancy agreement. Despite the numerous orders, the respondent continues to pay the rent when faced with termination of the tenancy agreement. In my opinion,

the applicant is entitled to the relief requested.

An order shall issue terminating the tenancy agreement between the parties on August 17,

2008. The respondent shall vacate the premises on that date.

Hal Logsdon
Rental Officer
