

IN THE MATTER between **POLAR DEVELOPMENTS LTD.**, Applicant, and **DOUG COULTER**, 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:

POLAR DEVELOPMENTS LTD.

Applicant/Landlord

- and -

DOUG COULTER

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 12(5) of the *Residential Tenancies Act*, the obligation contained in article 1K of the tenancy agreement between the parties (to maintain insurance against fire and other perils in respect of all personal property of tenant, tenant's family and property of third party of tenant and to cause the insurer to waive the right of subrogation against the landlord) is not reasonable and not enforceable.

DATED at the City of Yellowknife, in the Northwest Territories this 29th day of December, 2007.

Hal Logsdon
Rental Officer

IN THE MATTER between **POLAR DEVELOPMENTS LTD.**, Applicant, and **DOUG COULTER**, 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:

POLAR DEVELOPMENTS LTD.

Applicant/Landlord

-and-

DOUG COULTER

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: December 18, 2007

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Karen McLeod, representing the applicant
Doug Coulter, respondent

Date of Decision: December 29, 2007

REASONS FOR DECISION

This application was made pursuant to section 12 of the *Residential Tenancies Act* which permits a landlord to apply to a rental officer to determine if an obligation contained in a written tenancy agreement is reasonable and if so, to order the tenant to comply with the obligation.

- 12.(1) In addition to the rights and obligations contained in the residential tenancy agreement set out in the Schedule, a landlord and tenant may provide in a written tenancy agreement for other rights and obligations that are not inconsistent with this Act.**
- (2) Where an additional obligation concerns the tenant's use, occupancy or maintenance of the rental premises or residential complex, the obligation cannot be enforced unless it is reasonable in all circumstances.**
- (3) A landlord shall not establish, modify or enforce rules concerning the tenant's use, occupancy or maintenance of the rental premises or residential complex, unless the rules are reasonable in all circumstances, in writing and made known to the tenant.**
- (4) A landlord or tenant may apply to a rental officer to determine whether an obligation or rule is reasonable.**
- (5) A rental officer who receives an application under subsection (4) may determine whether an obligation or rule is reasonable and order the landlord or tenant to comply.**

The obligation in question is contained in article 1K of the tenancy agreement between the parties.

- IK Insurance:** tenant acknowledges responsibility for maintaining Insurance (sic) against fire and other perils in respect of all personal property of tenant, tenant's family and property of third party of tenant. Tenant shall cause its insurers to waive any and all rights of subrogation against the landlord.

The applicant submits that the obligation contained in article IK is not inconsistent with the Act and is reasonable. The respondent stated that he objected to the landlord's requirement to submit a copy of the insurance policy as proof of coverage.

Tenant's insurance typically consists of two components. One insures the tenant against liability and the other insures the tenant against loss of personal property. Article IK appears to require coverage only for the latter. In my opinion, the requirement to insure one's personal property or the personal property the tenant's family or of a third party should be the sole decision of the owner of the property. The landlord cannot be found liable for such losses unless some negligence can be established. Therefore, I find the obligation unreasonable and not enforceable.

The applicant may have intended to require liability insurance. According to local insurance brokers and the Insurance Bureau of Canada, liability insurance is not obtainable without coverage for loss of personal property. The two components are normally packaged in a single policy and not offered individually. In my opinion, requiring personal property insurance based on the assumption that such insurance is not obtainable without liability insurance is not the same as requiring liability insurance. If the applicant intended to require liability insurance, the tenancy agreement should have specifically set out that obligation in the tenancy agreement.

I also find the waiver of subrogation requirement contained in article IK of the tenancy agreement to be unreasonable. Both local brokers and the Insurance Bureau of Canada indicate that such waivers are unobtainable for residential tenant's insurance. In my opinion, requiring an

unobtainable element of an insurance policy is unreasonable and therefore unenforceable.

For these reasons, I find the obligation contained in article IK of the tenancy agreement between the parties to be unreasonable and unenforceable. The applicant's request for an order requiring the respondent to comply with the obligation is therefore denied.

Hal Logsdon
Rental Officer