

IN THE MATTER between **SHELTER CANADIAN PROPERTIES**, Applicant, and **GORMAN PITTMAN**, 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:

SHELTER CANADIAN PROPERTIES

Applicant/Landlord

- and -

GORMAN PITTMAN

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 62(2) of the *Residential Tenancies Act*, the respondent shall pay the applicant compensation for lost rent in the amount of one thousand three hundred fifty dollars (\$1350.00).

DATED at the City of Yellowknife, in the Northwest Territories this 22nd day of January, 2008.

Hal Logsdon
Rental Officer

IN THE MATTER between **SHELTER CANADIAN PROPERTIES**, Applicant, and **GORMAN PITTMAN**, 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:

SHELTER CANADIAN PROPERTIES

Applicant/Landlord

-and-

GORMAN PITTMAN

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: January 15, 2008

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Gwen Monahan, representing the applicant
Trudy Spence, representing the applicant
Gorman Pittman, respondent

Date of Decision: January 22, 2008

REASONS FOR DECISION

The respondent gave up possession of the rental premises on August 31, 2007. The applicant retained the security deposit and interest and the respondent filed an application requesting the return of the deposit. The matter was heard on November 8, 2007 and an order issued (file #10-9773, filed on November 19, 2007) requiring the landlord to return the security deposit and accrued interest to the tenant. The applicant now seeks an order requiring the respondent to pay compensation for lost rent for the month of September, 2007.

The tenancy agreement was made for a term that expired on August 31, 2007. The applicant alleged that the respondent failed to give written notice until August 27, 2007 to terminate the tenancy agreement on August 31, 2007. The applicant testified that they notified all parties on their waiting list and made the premises available to any prospective tenants but were unable to re-rent the premises until October 1, 2007. The new tenancy agreement was provided in evidence. It indicates that it was executed on September 1, 2007 but the applicant testified that it was actually executed on September 12, 2007, the date on which the tenant acknowledged receipt of the agreement. The commencement date of the tenancy agreement is October 1, 2007.

The respondent stated that he had given the site manager verbal notice in July and was told it was sufficient. The respondent stated that he was later told the notice had to be in writing so he complied but the notice was not given in time. He also stated that his van was towed from the parking lot in September, presumably to make room for the new tenant's vehicle. The applicant stated that

the new tenancy agreement did not commence until October 1, 2007 and that the van was towed because it was not registered.

Sections 51(1) and 55(1) of the *Residential Tenancies Act* set out the requirements for notice to terminate a term tenancy agreement.

51.(1) Where a tenancy agreement specifies a date for the termination of the tenancy agreement, the tenant may terminate the tenancy on the date specified in the agreement by giving the landlord a notice of termination not later than 30 days before the termination date.

55.(1) A notice of termination by a tenant or a landlord shall be in writing and must

- (a) be signed by the tenant or the landlord or an agent of the tenant or the landlord;**
- (b) identify the rental premises to which the notice applies;**
- (c) state the date on which the tenancy is to terminate; and**
- (d) state the reason for the termination of the tenancy.**

It is clear that the notice must be in writing and must be given not less than 30 days prior to the expiry of the tenancy agreement.

The requirement for a tenant's notice to terminate to be made in writing is not a mere technicality. The notice to terminate serves to end the contract between the parties on a certain date. It obligates the tenant to give up possession on that date and enables the landlord to show and re-rent the premises. It must free of any ambiguity and available as evidence. Verbal notices simply do not meet these criteria.

The respondent's apparent reliance on the site manager's advice that verbal notice was adequate is regrettable. Although the respondent did not indicate that he also relied on the provisions of the

tenancy agreement, it too would have provided him with poor advice. Although the tenancy agreement between the parties was not provided to me in evidence, the tenancy agreement between the applicant and the new tenant, which I suspect is in the same form, is inconsistent with the Act regarding notice to terminate and renewal of a term agreement. However, notwithstanding the tenancy agreement or the site manager's advice, in my opinion, the requirements of the Act must be met. They were not. Therefore I find that the respondent failed to give adequate notice and is liable, subject to the landlord's reasonable efforts to mitigate loss, for the landlord's loss of the September, 2007 rent.

Section 5 of the *Residential Tenancies Act* sets out the requirements to mitigate damages.

- 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.**

I accept the landlord's testimony that the new tenancy agreement was executed on September 12, 2007. While it is true that the applicant could have declined that offer to rent the premises, possibly mitigating the loss of rent for the entire month, it was also prudent to enter into the tenancy agreement in advance in order to avoid the loss of any more than the September rent. In my opinion, the applicants efforts to mitigate loss were sufficient.

An order shall issue requiring the respondent to pay the applicant compensation for lost rent in the amount of \$1350.

Hal Logsdon
Rental Officer