

IN THE MATTER between **COLIN FORD**, Landlord, and **BRIAN PEARCE**, Tenant;

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:

COLIN FORD

Landlord

- and -

BRIAN PEARCE

Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the tenant shall pay the landlord rent arrears in the amount of seven hundred forty seven dollars and fifty eight cents (\$747.58).

DATED at the City of Yellowknife, in the Northwest Territories this 18th day of February, 2008.

Hal Logsdon
Rental Officer

IN THE MATTER between **COLIN FORD**, Landlord, and **BRIAN PEARCE**, Tenant.

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:

COLIN FORD

Landlord

-and-

BRIAN PEARCE

Tenant

REASONS FOR DECISION

Date of the Hearing: February 13, 2008

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Colin Ford, Landlord
Brian Pearce, Tenant

Date of Decision: February 18, 2008

REASONS FOR DECISION

The landlord's application was filed on January 17, 2008 and the tenant's application was filed on January 18, 2008. As both applications deal with the same tenancy agreement and rental premises, with the consent of the parties, both matters were heard at a common hearing.

The parties agreed that the tenancy agreement, which was made orally, commenced on November 1, 2007 and required a monthly rent of \$500. The parties also agreed that the tenant gave up possession of the premises on January 20, 2008 and that a total of \$575 had been paid during the tenancy for rent. There was no security deposit required. The premises consisted of a bedroom and bathroom in the landlord's apartment. The parties shared a kitchen and living area.

The landlord sought an order requiring the tenant to pay rent arrears. The landlord also sought compensation for long distance telephone calls which were allegedly made by the tenant on the landlord's phone. The tenant alleged that the landlord had unreasonably disturbed his possession and enjoyment of the premises and sought an unspecified amount of compensation, but an amount at least as much as the rent arrears.

The landlord presented six pages of itemized telephone calls at the hearing, alleging that the calls noted were made by the tenant. The tenant had not been provided with this evidence prior to the hearing. In my opinion, the tenant did not have adequate time to review or respond to these allegations at the hearing and I shall not deal with them in this order. The landlord may file

another application for relief if he so chooses.

The rent arrears are essentially uncontested although they were not calculated by the landlord in his application. The landlord served a notice of early termination on the tenant on January 9, 2008 seeking possession after 10 days. The tenant complied, ending the tenancy agreement on January 20, 2008. Therefore the rent owing the landlord is \$747.58 calculated as follows:

November/07 rent	\$500.00
December/07 rent	\$500.00
January 1-20/08 rent	\$322.58
Less payments	<u>(575.00)</u>
Rent owing landlord	\$747.58

Only three questions need to be determined. Did the landlord unreasonably disturb the tenant's possession and/or enjoyment of the rental premises? If so, is compensation a reasonable remedy? If compensation is reasonable, how much compensation is appropriate?

The tenant claims that his quiet enjoyment was repeatedly disturbed. On one occasion the tenant described a loud party that kept him awake. The tenant also claimed that when the landlord was away during Christmas, he permitted eleven persons to stay in the apartment for two weeks who interfered with his use of the common facilities and disturbed his quiet enjoyment. The tenant claimed he was not able to have guests visit the apartment. The tenant claimed that the sink in his bathroom was plugged for an unspecified period and the landlord did not make the necessary repairs. The tenant claimed that the landlord repeatedly unplugged his vehicle. The tenant alleged that the landlord had broken two of his framed prints and taken two automotive batteries.

The landlord denied damaging any property of the tenant and stated that he did not damage the tenant's framed prints.

The landlord stated that he removed the batteries from the apartment because his landlord had informed him that they presented a hazard and could not be stored in the premises. He stated that he was storing them in his car. As this tenancy agreement is now terminated, the batteries should be treated as abandoned personal property and dealt with in accordance with sections 64 and 65 of the *Residential Tenancies Act*. I find no malicious intent on the part of the landlord.

The landlord acknowledged that he had unplugged the tenant's car on several occasions after his landlord objected to the tenant's extension cord from the premises to the visitor's parking area. He denied damaging the cord. The landlord testified that he made it clear to the tenant at the commencement of the tenancy agreement that the rent did not include any parking privileges.

The landlord acknowledged that he permitted two adults and their four children to stay at the premises between Christmas and New Years. They occupied the two bedrooms normally occupied by the landlord and his daughter. The applicant stated that he was only absent for one week, not two weeks and he did not believe the guests caused a significant inconvenience to his tenant. A thank-you letter from the guest, entered in evidence, confirms the number of persons who stayed in the apartment during that period. The landlord stated that he had not received any complaints from his landlord or his neighbours during his absence. He noted that despite his objection to the tenant's girlfriend living at the premises, the tenant continued to permit her to

stay there on a continuing basis. The landlord also noted that his birthday party was not as boisterous as the tenant claimed because he had to work the next day. He also noted that the tenant spend most of that evening enjoying the party with his other guests.

The landlord stated that he was unaware of the plugged sink because he did not share a bathroom with the tenant and the tenant failed to notify him of the problem until he was served with the notice of early termination. The landlord stated that he attended to the repair as soon as became aware of the problem.

I find no evidence that the tenant's possession was disturbed by the landlord. In determining if the tenant's enjoyment of the premises was disturbed, I must consider the premises. They consist of a room and bathroom contained in the landlord's apartment. The landlord and tenant share certain facilities including a kitchen and living area. Their activities are necessarily in closer proximity to each other than other landlord-tenant relationships.

Examining the evidence from both parties it appears that the tenant has exaggerated the facts in order to avoid paying the rent that is due to the landlord. The six guests for one week became eleven people for two weeks. The birthday party the tenant enjoyed at the time became a significant disturbance. The unauthorized use of electricity for his car in the visitor's lot, became a breach of the landlord's obligation to provide energized parking. In my opinion, none of the actions of the landlord constitute a breach of his obligation to not disturb the quiet enjoyment of the tenant, given that the parties are obliged to share some of their living space. The living

arrangement they agreed to requires more tolerance and respect for each other than the normal landlord-tenant relationship. In my opinion, the tenant is not entitled to any compensation.

I find the tenant in breach of his obligation to pay rent and find the rent arrears to be \$747.58. An order shall issue requiring the respondent to pay the applicant rent arrears in the amount of \$747.58.

Hal Logsdon
Rental Officer