

IN THE MATTER between **DANIEL AUGER**, Landlord, and **SHAWN TAYLOR**,
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:

DANIEL AUGER

Landlord

- and -

SHAWN TAYLOR

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 eighty seven dollars and fifty cents (\$787.50).
2. Pursuant to sections 41(4)(c) and 43(3)(d) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Apartment D, 5106 - 53 Street, Yellowknife, NT shall be terminated on June 15, 2009 and the tenant shall vacate the premises on that date.
3. Pursuant to section 67(4) of the *Residential Tenancies Act*, the tenant shall pay the

landlord compensation for use and occupation of the rental premises in the amount of forty three dollars and fifty six cents (\$43.56) for each day the tenant remains in possession of the rental premises after June 15, 2009.

4. Pursuant to section 28(a) of the *Residential Tenancies Act*, the landlord shall not breach his obligations pertaining to entering rental premises in the future.

DATED at the City of Yellowknife, in the Northwest Territories this 4th day of June, 2009.

Hal Logsdon
Rental Officer

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BETWEEN:

DANIEL AUGER

Landlord

-and-

SHAWN TAYLOR

Tenant

REASONS FOR DECISION

Date of the Hearing: June 3, 2009

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Daniel Auger, landlord
Shawn Taylor, tenant

Date of Decision: June 4, 2009

REASONS FOR DECISION

The landlord filed an application on May 19, 2009 alleging non-payment of rent, non-payment of the required security deposit, failure of the tenant to pay for electricity and disturbance. The landlord sought an order requiring the respondent to pay the alleged rent arrears and terminating the tenancy agreement. The tenant filed an application on May 21, 2009 alleging that the landlord entered the rental premises without notice to change the locks and failed to provide a fire extinguisher in the premises. Since both applications related to the same premises and the same tenancy agreement, both matters were heard at a common hearing.

The tenancy agreement between the parties commenced on April 1, 2009. The monthly rent for the premises is \$1325 and a security deposit of \$1325 is required. The tenancy agreement obligates the tenant to pay for electricity during the term.

The landlord testified that \$125 of the April, 2009 rent remained unpaid and that no rent for June, 2009 had been received. The landlord stated that none of the required security deposit had been paid. The landlord also stated that the tenant had failed to establish an account for electrical service to the premises and that the landlord had paid several invoices for electricity on behalf of the tenant. The landlord did not produce any of the paid electrical invoices in evidence but stated that one of them was about \$170. The landlord stated that other tenants had complained of excessive noise on one occasion in April, 2009 and he had responded to two reported incidents of disturbance in May, 2009 involving noisy guests at a party.

The landlord served a notice of early termination on April 14, 2009 seeking vacant possession on April 30, 2009 due to the tenant's failure to provide the required security deposit or pay rent on time. The tenant failed to vacate the premises and another notice of early termination was served on May 14, 2009. The tenant has remained in possession.

The tenant did not dispute the allegations but stated that the landlord provided him additional time to pay the rent. The tenant did not dispute the incidents of disturbance but stated that another tenant in the complex complained about every little noise, making it difficult to undertake normal activities without disturbing him. The tenant stated that he had the money to pay the rent and security deposit immediately and wished to maintain his tenancy. In the matter of the electrical costs, the tenant stated that he simply "forgot" that he had to establish an account and pay the bills and would have done so if the landlord had reminded him of his obligation.

The tenant alleged that the landlord had breached his obligation to provide a fire extinguisher in the rental premises. The tenant also alleged that the landlord had entered the premises on May 25, 2009 without giving notice and proceeded to change the locks.

The landlord stated that he was aware of the tenant's request for a fire extinguisher and intended to address the issue.

The landlord stated that he had received a call from another tenant on May 25, 2009 stating that water was constantly running in the adjoining premises. The landlord stated that he attended Mr.

Taylor's premises with a locksmith because he did not have a key to the premises. The landlord stated that he rang the doorbell twice and when the tenant failed to respond, he entered the premises. The landlord stated that he felt there may be an emergency due to the running water. The landlord stated that he proceeded to have the locks changed but gave a copy of the key to the tenant and did not intend to prevent or interfere with his occupancy.

Section 27 permits a landlord to enter rental premises without notice where an emergency exists.

27.(1) A landlord has the right to enter the rental premises without giving the notice required by subsection 26(3) where

- (a) an emergency exists;**
 - (b) the tenant consents at the time of entry; or**
 - (c) the landlord has reasonable grounds to believe that the tenant has vacated or abandoned the rental premises.**
- (2) In the case referred to in paragraph (1)(a), a landlord has a right to enter even though the tenant is not at home at the time and has not given his or her permission to the landlord to enter**
- (3) In the case referred to in paragraph (1)(a), where a tenant is at home at the time, the tenant shall permit the landlord to enter.**

While no emergency actually existed, in my opinion, the landlord had reason to believe that one did exist. Had the tenant answered the door, he could have told the landlord that no emergency existed and the landlord would not have had grounds to enter. In my opinion, however, the landlord had reasonable grounds to suspect that there was possible flooding and it was reasonable for him to enter when the tenant failed to answer the door. He did not, however, have grounds to continue to stay in the premises to change the lock without the permission of the tenant. It appears that since the landlord attended the premises with a locksmith in order to gain entry to

investigate the running water, he decided to proceed with the lock replacement. In my opinion, he should not have done so without the permission of the tenant. If the tenant objected to the entry, the landlord should have left the premises and given written notice of his intention to enter pursuant to section 26 of the Act. In my opinion, the landlord breached his obligation to provide notice to do the lock replacement or alternatively, seek the tenant's permission to enter.

Section 25(1) of the Act prohibits lock changes except by mutual consent.

25.(1) No landlord or tenant shall, during occupancy of the rental premises by the tenant, alter or cause to be altered the locking system on any door giving entry to the rental premises except by mutual consent.

There does not appear to be any intent on the part of the landlord to interfere with the tenant's possession of the premises by changing the locking mechanism on the door. It is necessary for a landlord and tenant to both have keys to the rental premises. If landlord's key does not unlock the door it is not unreasonable for the landlord to repair or replace the lock provided he/she provides a new key to the tenant. I can not find the landlord in breach of section 25.

Section 30 of the Act requires a landlord to maintain rental premises and to ensure that they comply with all statutory standards.

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.**

There are no territorial or municipal statutory requirements to provide portable fire extinguishers in rental premises. *The National Fire Code of Canada (2005)* does not require portable fire extinguishers in dwelling units. Since there are no standards required by law pertaining to the provision of fire extinguishers in rental premises, I do not find the landlord in breach of section 30.

I find the tenant in breach of his obligation to pay rent, his obligation to provide the required security deposit, his obligation to pay for electricity during the term of the tenancy agreement and his obligation to not disturb other tenants in the residential complex.

In my opinion, there are sufficient grounds to terminate the tenancy agreement between the parties. The tenant has had more than adequate notice concerning the non-payment of rent and his failure to provide the security deposit. The written tenancy agreement clearly sets out the tenant's obligation to pay for electricity. The landlord's May 14th notice sets out non-payment of electricity as a reason yet the tenant still has not established an account with the supplier or made any effort to reimburse the landlord for amounts paid on his behalf. I do not accept that the incidents of disturbance are simply the result of the hypersensitivity of one other tenant. The landlord attended the premises as well and concurred with others that the activity was disturbing. If the tenant has the ability to pay the rent arrears and outstanding portion of the security deposit, I question why he has not done so.

An order shall issue terminating the tenancy agreement between the parties on June 15, 2009.

The tenant is ordered to pay the landlord rent arrears of \$787.50 which represents the outstanding rent for April, 2009 (\$125) and 50% of the June, 2009 rent (\$662.50). Should the tenant fail to vacate the premises on June 15, 2009 he shall pay the landlord \$43.56 for each day he occupies the premises after June 15, 2009 as compensation for use and occupation of the premises.

The landlord shall be ordered to not breach his obligations pertaining to entering rental premises in the future.

There shall be no order pertaining to the electrical costs at this time. The landlord has not provided proof of the amounts paid by him on behalf of the tenant. The landlord may address this issue in a future application if the amounts remain unpaid, provided the application is made within six months after the termination of the tenancy agreement.

Hal Logsdon
Rental Officer