

IN THE MATTER between **ROBERT DOUGLAS COULTER**, Applicant, and
POLAR DEVELOPMENTS, 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:

ROBERT DOUGLAS COULTER

Applicant/Tenant

- and -

POLAR DEVELOPMENTS

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 28(a) of the *Residential Tenancies Act*, the respondent shall comply with their obligations concerning entering rental premises and shall not breach these obligations in the future.

DATED at the City of Yellowknife, in the Northwest Territories this 8th day of July,
2009.

Hal Logsdon
Rental Officer

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ROBERT DOUGLAS COULTER

Applicant/Tenant

-and-

POLAR DEVELOPMENTS

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REASONS FOR DECISION

Date of the Hearing: July 7, 2009

Place of the Hearing: Yellowknife, NT

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

Date of Decision: July 7, 2009

REASONS FOR DECISION

The applicant alleged that the respondent had breached the *Residential Tenancies Act* by entering the rental premises without giving sufficient notice or obtaining his permission at the time of entry. The applicant sought compensation for lost wages in the amount of \$60.

Sections 26 and 27 of the *Residential Tenancies Act* set out the provisions concerning the landlord's entry into rental premises.

- 26.(1) A landlord shall not enter rental premises except as provided by this section and section 27.**
- (2) A landlord has the right to enter rental premises, and a tenant shall permit the landlord to enter,**
- (a) to perform the landlord's obligations under this Act and the tenancy agreement;**
 - (b) to inspect the rental premises where the tenant has requested the consent of the landlord to an assignment or subletting;**
 - (c) to show the rental premises to prospective tenants where**
 - (i) the tenant has given notice to terminate the tenancy,**
 - (ii) the landlord and tenant have agreed to terminate, or**
 - (iii) a rental officer has made an order terminating the tenancy;**
 - (d) to show the rental premises to prospective purchasers of the residential complex;**
 - (e) to inspect the rental premises every six months;**
 - (f) to permit a mortgagee or prospective mortgagee or an insurer or prospective insurer to inspect the premises where a mortgage or insurance coverage is being arranged or renewed on the residential complex; or**
 - (g) to inspect the rental premises on the day the tenant is required to vacate the premises to determine if the tenant has fulfilled the tenant's obligations under this Act and the tenancy agreement.**
- (3) A landlord who intends to exercise the right to enter under subsection (2) shall give written notice to the tenant at least 24 hours before the first time of entry under the notice, specifying the purpose of the entry and the days and the hours during which the landlord intends to enter the rental**

- premises.
- (4) **The hours during which the landlord intends to enter the rental premises must be between 8:00 a.m. and 8:00 p.m.**
 - (5) **Unless the tenant objects to the days and hours set out in the notice of the landlord and specifies alternative days and hours that are reasonable in the circumstances, the landlord may enter in accordance with the notice given under subsection (3).**
- 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.**

The applicant stated that a written notice regarding the landlord's intended entry at 10:30AM on Wednesday, June 3, 2009 was slid under his door no earlier than 1:15 PM the previous day. He stated that he notified the respondent on June 3, 2009 at 9:20 AM objecting to the time and date of entry and specified an alternate date of the following Tuesday (June 9, 2009) when he had a day off work. The applicant stated that the respondent refused to reschedule the entry despite the facts that no outside contractors would be involved in the entry and no urgent maintenance issues existed. The applicant stated that the respondent let herself into the apartment at 10:45 AM on June 3, 2009 calling out if the applicant was at home. The applicant stated that he replied that he was at home and also expressed his displeasure to the landlord for ignoring his objection to the entry. He stated that the landlord's staff were in the premises from 10:45 AM to 12:30 PM.

The respondent disputed only the length of time the landlord's staff were in the premises, stating

that they remained only for about 20 minutes. The respondent also stated that she interpreted the applicant's response to her at the time of entry as permission to enter. The respondent noted that it was not necessary for the tenant to be at home during the landlord's entry and that the proposed date and time that the applicant suggested was unreasonable. She stated that one of the reported maintenance problems was a leak which could have escalated to something much more serious.

The respondent also noted numerous other annoyances and alleged breaches committed by the applicant, none of which, in my opinion, were related to the matter at hand or could constitute a defence to the allegations.

Section 26(3) requires a landlord who intends to enter to give written notice at least 24 hours before the intended time of entry. The notice was not sufficient. The respondent does not dispute this fact. The respondent noted that the notice period given was close to the notice period required by the Act. Section 27(1) outlines three situations where the notice is not required. Two of these conditions clearly did not exist. There was no emergency and the landlord had no reasonable grounds to suspect abandonment. In my opinion, the applicant did not consent at the time of entry. It appears the landlord entered, then asked if the applicant was at home.

Acknowledging his presence after the landlord has entered is, not in my opinion, consent to enter.

Therefore, I find the respondent breached the obligation to provide the required written notice at least 24 hours before the intended time of entry. I can not conclude that the applicant consented to the entry. Although I do not necessarily agree that the suggested alternative hours of entry

suggested by the applicant were unreasonable, I need not make that determination to find the landlord in breach of the Act.

In my opinion, the compensation sought by the applicant is not reasonable. The nature of the entry was such that the applicant's presence was not required and I can find no compelling reason why the applicant had to take time off work. The applicant's request for monetary compensation is denied.

An order shall issue requiring the respondent to comply with their obligations concerning entering rental premises and to not breach these obligations in the future.

Hal Logsdon
Rental Officer