

IN THE MATTER between **TIA HANNA AND WARREN BATON**, Applicants, and  
**5655 NWT LTD.**, 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:

**TIA HANNA AND WARREN BATON**

Applicants/Tenants

- and -

**5655 NWT LTD.**

Respondent/Landlord

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 34(2)(c) of the *Residential Tenancies Act*, the respondent shall pay the applicant compensation for loss of full enjoyment of the yard in the amount of fifty dollars (\$50.00).

DATED at the City of Yellowknife, in the Northwest Territories this 4th day of August,  
2010.

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Hal Logsdon  
Rental Officer

IN THE MATTER between **TIA HANNA AND WARREN BATON**, Applicants, and  
**5655 NWT LTD.**, 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:

**TIA HANNA AND WARREN BATON**

Applicants/Tenants

-and-

**5655 NWT LTD.**

Respondent/Landlord

**REASONS FOR DECISION**

**Date of the Hearing:** July 28, 2010

**Place of the Hearing:** Yellowknife, NT

**Appearances at Hearing:** Tia Hanna, applicant  
Lynn Elkin, representing the respondent  
Ted Studer, representing the respondent

**Date of Decision:** August 4, 2010

### **REASONS FOR DECISION**

With the consent of the parties the style of cause of this order shall reflect the correct name of the respondent rather than the incorrect name on the application.

The applicants alleged that the respondent had breached the tenancy agreement by interfering with their full enjoyment of the yard, by failing to provide window screens in the premises and by entering the premises without proper notice. The applicants also alleged that the respondent had failed to address the infiltration of water through the roof. The applicants sought an order requiring the respondent to pay compensation for the loss of full enjoyment of the yard, to reimburse them for the cost of providing window screens and prohibiting future entry without notice or permission at the time of entry. The applicants also sought an order terminating the tenancy agreement on August 3, 2010.

The applicants stated that the respondent moved a considerable amount of building material into the yard on March 12, 2010 in preparation for some major renovations to the premises. The applicants acknowledged that most of the material was moved next door after 45 days but claimed that the material interfered with their full enjoyment of the yard. Photographs of the building material were provided in evidence. The applicant sought a 25% abatement of rent for 45 days and a 5% abatement of rent for 90 days. The monthly rent for the premises is \$1650. The applicants also alleged that the respondent failed to give notice that he was entering the yard prior to storing the material.

The applicants stated that there were no screens provided in the premises at the beginning of the tenancy. An inspection report, provided in evidence by the applicants, does not indicate any missing screens but correspondence from the applicants to the landlord indicates that screens were requested in April, 2010. Ms Hanna stated that she finally had screens made and installed after the respondent failed to provide them and provided a receipt for \$404.88 in evidence.

The applicants also stated that the roof leaked when it rained. Ms Hanna acknowledged that the respondent had made some repairs to the premises to eliminate the water infiltration but that water still entered the premises somewhat. Ms Hanna also acknowledged that she had not notified the landlord that the previous repairs had not completely rectified the problem.

The respondent stated that he moved the material off the property as soon as he could and questioned to what degree the tenants' full enjoyment of the yard was compromised. The respondent stated that the material did not interfere with the tenants' access to the shed outside or their wood supply as alleged because both were accessible through the back door of the premises. A photograph of the material and a sketch of the site were provided in evidence.

The respondent stated that the premises were not initially supplied with screens and were not part of the premises. Previous correspondence from the respondent to the applicants indicated that he would, as a favour, look for screens but had not been successful in locating any to date.

The respondent stated that he had taken action that he believed had eliminated the water

infiltration but had not been notified by the tenant that some leakage still occurred.

Repairs or improvements to rental premises during a tenancy agreement can interfere to some degree with the tenant's full enjoyment of the premises. In this case however, it appears to me that the loss was minimal. The use of a yard in March and early April is limited in this climate and the evidence does not indicate any significant loss of access to the shed on the property or to the supply of firewood. Undoubtedly, there was some loss of the use of the yard but in my opinion, compensation of \$50 is adequate.

Section 30 of the *Residential Tenancies Act* sets out the landlord's obligation to repair and section 31 sets out a tenant's obligation to repair.

**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.**

**31.(1) Notwithstanding section 30, where a residential complex is composed of one rental premises, a landlord and tenant may agree that any or all of the obligations set out in subsection 30(1) may be performed by the tenant except for repairs required as a result of reasonable wear and tear or as a result of fire, water, tempest or other act of God.**

The rental premises consist of a single mobile home and the tenancy agreement between the parties obligates the tenant to perform the obligations set out in 30(1)(a) and 30(1)(b) except for repairs required as a result of reasonable wear and tear or as a result of fire, water, tempest or

other act of God. The provision of screens does not fall into any of the excepted categories and therefore the provision of screens is the responsibility of the tenant. For this reason, the request for compensation must be denied.

Notice to enter a yard is not required. A yard is considered a *common area* in the Act and as such part of the *residential complex*. Written notice is not required before entering a *residential complex*, only prior to entering *rental premises*.

In my opinion, there are not sufficient grounds to terminate this tenancy agreement by order. The agreement is now month-to-month and the tenant may terminate it at the end of August with 30 days written notice. I see no reason to terminate it any earlier

An order shall issue requiring the respondent to pay the applicants compensation of \$50.

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Hal Logsdon  
Rental Officer