

IN THE MATTER between **RICKY BAIN**, Applicant, and **NORTHERN PROPERTY LIMITED PARTNERSHIP**, 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:

RICKY BAIN

Applicant/Tenant

- and -

NORTHERN PROPERTY LIMITED PARTNERSHIP

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 34(2)(c) and 25(3)(c) of the *Residential Tenancies Act*, the respondent shall pay compensation to the applicant in the amount of two hundred seventy eight dollars (\$278.00).

DATED at the City of Yellowknife, in the Northwest Territories this 24th day of July, 2007.

Hal Logsdon
Rental Officer

IN THE MATTER between **RICKY BAIN**, Applicant, and **NORTHERN PROPERTY LIMITED PARTNERSHIP**, 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:

RICKY BAIN

Applicant/Tenant

-and-

NORTHERN PROPERTY LIMITED PARTNERSHIP

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: July 11, 2007

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Ricky Bain, applicant
John Lemouel, representing the applicant
Rosetta Morales, representing the respondent
Sharon Hysert, witness for the respondent
Krista Cooper, witness for the respondent
Heather Oliver, witness for the respondent

Date of Decision: July 24, 2007

REASONS FOR DECISION

The parties entered into a tenancy agreement which commenced on February 1, 2007. The applicant alleged that the respondent changed the locks to the premises, disturbing his lawful possession. The applicant also alleged that the respondent disposed of some of his furniture. The applicant sought relief for improper disposal of his furniture and the disturbance of his possession.

The applicant testified that he was arrested on March 9, 2007. Because he had given the keys to his apartment to a friend, he was unable to lock the apartment door. Approximately six hours after he was arrested, he contacted his friend and asked him to go to the apartment and lock the door. The applicant stated that his friend found the apartment locked and locks changed. The applicant stated that he was released on March 12, 2007 and had to stay in a hotel for two nights at a cost of \$139/night. He later retrieved his clothing, a television and a television stand, which had been stored by the respondent. The applicant stated that two couches, two end tables, lamps, a bed and a coffee table were not returned and he understood they had been disposed of.

The respondent stated that the applicant had repeatedly disturbed other tenants in the residential complex and failed to pay the March, 2007 rent. The respondent provided numerous notices to the applicant including a Notice of Early Termination on February 1, 2007 due to disturbance and a "48 hour notice" on February 27, 2007 apparently because the landlord had received advice that the applicant's rent would no longer be paid by the Income Security Program and because the

applicant failed "to abide by all the rules and regulations within our building".

On March 5, 2007 the respondent prepared a notice demanding the March rent and asking the applicant to remit immediately or eviction proceedings would commence. On March 8, 2007 a notice was prepared by the respondent stating that they had not received the rent and intended to inspect the premises on March 9, 2007 between 4PM and 5PM as they suspected the premises had been abandoned. These last two notices were apparently slipped under the apartment door.

The respondent claims the premises were abandoned, entitling them to take possession. The respondent testified that upon taking possession, they discovered drug paraphernalia on certain items of furniture and they deemed the items to be unsafe to store and of no value. These items were disposed of. The respondent stated that the notices had obviously been seen by the respondent and they assumed he had complied with the notices and left the premises. The respondent stated that she had not seen or heard from the applicant since February 27, 2007.

The respondent also testified that the applicant had repeatedly disturbed other tenants and called several witnesses who had direct knowledge of the alleged incidents. However, with respect, the conduct of the applicant is not the issue. Regardless of whether a tenant is in breach of his obligations, a landlord may only take possession if a tenant has vacated or abandoned the premises. Section 48 of the Act outlines these provisions.

- 48.(1) No person shall terminate a tenancy agreement except in accordance with this Act.**
- (2) No landlord shall regain possession of a rental premises unless**
- (a) the tenant has vacated or abandoned the rental premises;**
 - or**
 - (b) an eviction order has authorized the regaining of possession.**

Vacating rental premises means that the tenancy agreement has been terminated in accordance with the *Residential Tenancies Act*. There is no evidence that this tenancy agreement was terminated in accordance with the Act. There is no evidence that an eviction order was granted by the Court. The respondent claims the premises were abandoned. The *Residential Tenancies Act* sets out criteria for abandonment.

- 1.(3) For the purpose of this Act, a tenant has abandoned the rental premises and the residential complex where the tenancy has not been terminated in accordance with this Act and**
- (a) the landlord has reasonable grounds to believe that the tenant has left the rental premises; or**
 - (b) the tenant does not ordinarily live in the rental premises, has not expressed an intention to resume living in the rental premises, and the rent the tenant has paid is no longer sufficient to meet the tenant's obligation to pay rent.**

In my opinion, it is not reasonable to assume that a tenant does not *ordinarily* live in an apartment because the landlord has not seen him in ten days. Therefore, the respondent must rely on the criteria set out in section 1(3)(a) to consider the premises abandoned.

Did the landlord have reasonable grounds to believe the applicant had left the rental premises? As well as not having seen the tenant for ten days, the respondent also stated that the March rent was not paid, the door to the apartment was left open and

they had received advice that the Income Security Program would no longer be paying the applicant's rent. The respondent stated that the March 5 and March 8 notices had obviously been seen by the applicant and she assumed, based on the above evidence, that the applicant had abandoned the premises.

If a landlord slides a notice under a tenant's door stating that they believe the tenant has abandoned the premises and intend to enter the next day, does the landlord have reasonable grounds to assume the premises are abandoned and take possession solely because the tenant is not in the premises when the landlord enters? In my opinion the answer is no. Even considering the sum of all the factors considered by the landlord, it appears to me that the landlord sought to take advantage of an opportunity to take possession of the premises without recourse to a hearing.

I find the respondent in breach of the obligation to not disturb the tenant's possession and in breach of the obligation to not change the locks to the premises without the other party's permission. As the premises have been re-rented, I am not able to order the landlord to return the possession to the applicant but, in my opinion, the two nights of hotel costs incurred by the applicant are directly related the landlord's breach. An order shall issue requiring the respondent to compensate the applicant in the amount of \$278.

In the matter of the personal property disposed of by the landlord, I accept the testimony of the landlord that it may have been unsafe to store and was of no value. It appears that any items of value have been returned to the applicant. The applicant made no

representation as to the value of the goods which were disposed of. For these reasons, the applicant's request for compensation for the goods is denied.

I should also note that there is no provision in the Act for a landlord to serve a "48 hour notice" on a tenant. Such a notice, particularly one which threatens to take possession of the premises is of no legal effect and may very well be considered harassment for the purpose of forcing a tenant to vacate or abandon a rental premises, an offence pursuant to section 91 of the Act.

An order shall issue requiring the respondent to pay compensation to the applicant in the amount of \$278.

Hal Logsdon
Rental Officer
