

IN THE MATTER between **N.W.T. COMMUNITY SERVICES CORPORATION**,  
Applicant, and **DANIEL WILSON**, 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:

**N.W.T. COMMUNITY SERVICES CORPORATION**

Applicant/Landlord

- and -

**DANIEL WILSON**

Respondent/Tenant

**ORDER**

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 19th day of April,  
2007.

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Hal Logsdon  
Rental Officer

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BETWEEN:

**N.W.T. COMMUNITY SERVICES CORPORATION**

Applicant/Landlord

-and-

**DANIEL WILSON**

Respondent/Tenant

**REASONS FOR DECISION**

<b><u>Date of the Hearing:</u></b>	<b>April 18, 2007</b>
<b><u>Place of the Hearing:</u></b>	<b>Yellowknife, NT</b>
<b><u>Appearances at Hearing:</u></b>	<b>Gail Leonardis, representing the applicant Daniel Wilson, respondent John LeMouel, representing the respondent</b>
<b><u>Date of Decision:</u></b>	<b>April 19, 2007</b>

### **REASONS FOR DECISION**

The applicant alleged that the respondent had breached the tenancy agreement and a previous order by a rental officer by disturbing other tenants in the residential complex. The applicant sought an order terminating the tenancy agreement between the parties.

The applicant provided a copy of a report created by a security officer outlining an alleged incident in the respondent's apartment. According to the report, another tenant came to the security office at about 5:20 AM on Sunday, February 11, 2007 and reported "noise coming from a bunch of drunks in 606". The report states that the security officer went to the apartment and before knocking on the door "heard low drunken talk". The report states that the security officer then knocked on the door but no one would answer.

The report states that the same tenant returned to the security office at 5:37 AM and complained that the people in the respondent's apartment "were at it again". The security officer writes that he returned to the apartment and knocked on the door. The report does not note any noise coming from the apartment at this time except a voice (reported as that of the respondent) saying "stay away" and a "drunken female voice".

The security officer writes that he called the RCMP after the same complaining tenant came to his office for a third time at 6:00 AM. He reports that the respondent refused to open the door

and was speaking loudly to the police. The report states that at about 6:25 AM, the RCMP left the building and a woman, Rosemary, left at the same time, having been asked to leave.

The applicant also provided a copy of a handwritten letter, dated February 17, 2007 from the complaining tenant named in the security report. In the letter she outlines that an "all night party" kept her awake "last weekend". She complains that this is the second time such an incident has occurred and that "people should not have to keep calling the police because he has no respect for the people around him".

The respondent denied that the incident occurred. The respondent stated that one other person was in the apartment with him on the evening of Saturday, February 10, 2007. He testified that the RCMP attended the premises about 7:00 or 7:30 PM responding to a complaint of a woman screaming. The respondent testified that no disturbance had occurred and the police left. The respondent stated that he left the apartment about 11:00 PM on February 10, 2007 and did not return until about 11:00 AM the next day. The respondent testified that there was no one in the apartment during that time.

The respondent testified that the security officer who wrote the report provided in evidence did not like him and that he tried to keep his distance from the officer.

There have been two previous orders regarding disturbance involving these parties. In both of those matters, the respondent was found to be in breach of his obligation to not disturb the

landlord or other tenants. Although the landlord sought termination in both of the previous matters, the rental officer declined to terminate the tenancy agreement, issuing instead orders to not create any disturbance in the future.

The applicant's evidence consists of two unsworn documents. Neither of the writers were called as witnesses to testify. The applicant's representative did not have direct knowledge of the alleged incident and relied on the report and the letter to establish the facts. The respondent disputes the applicant's evidence entirely.

If there is reason to doubt that the letter and security officer's report are credible, because the evidence is contradicted by the sworn testimony of the respondent, I should not rely on the written evidence. I did not have the opportunity to determine the credibility to be accorded to the letter and the report because their makers were not available to be questioned or be cross examined by the respondent.

In my opinion, although the letter and the report contain a number of consistent elements such as the approximate time of day the alleged incidents took place and the attendance of the police, there are some differences which give reason to question the credibility of the evidence. First, the description of the alleged disturbance is significantly different. The tenant describes the alleged disturbance as an "all-night party" while the security report indicates that "low drunken talk" could be heard and does not indicate any loud noise except the respondent's voice when the RCMP attended. The security officer's report does not describe a party at all and appears to

indicate that there was only one person in the apartment with the respondent. The security officer appears to rely on the credibility of the complaining tenant to conclude that there was a disturbance. He writes "I however do not dispute Nancy's claim about people being loud as drinking or drunk people tend to be loud".

In my opinion, without the opportunity to question or cross-examine the witnesses, I can not rely on the letter and report to conclude there was a disturbance. In the matter of an appeal to an Umpire from a decision of the Board of Referees pursuant to the Unemployment Insurance Act, Reed, J over struck down the decision of the Board, writing:

**In a case as this where there is reason to doubt the credibility of written evidence, a Board should not rely on that evidence in the face of oral testimony contradicting the written statements. The individuals....should have been called and questioned on their written statements, in order to assess the credibility of their evidence if that evidence was going to be relied on.** (Appeal of Laurie Pulzoni, CUB 12897, November 4, 1986).

For these reasons I can not conclude there was a breach of the respondent's obligation to not disturb other tenants or a breach of the previous orders of the rental officer and dismiss the application.

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Hal Logsdon  
Rental Officer