

IN THE MATTER between **STEVEN MESZES**, Applicant, and **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, 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:

STEVEN MESZES

Applicant/Tenant

- and -

NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 12th day of February, 2009.

Hal Logsdon
Rental Officer

IN THE MATTER between **STEVEN MESZES**, Applicant, and **NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST**, 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:

STEVEN MESZES

Applicant/Tenant

-and-

NORTHERN PROPERTY REAL ESTATE INVESTMENT TRUST

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: February 10, 2009

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Steven Meszes, applicant
Connie Diener, representing the respondent

Date of Decision: February 10, 2009

REASONS FOR DECISION

This dispute involves several notices of rent increase issued by the respondent/landlord. The applicant received a notice from the respondent on September 11, 2008 stating that his rent account was in arrears. The applicant attended the respondent's office the next day and discovered that the landlord had issued a notice of rent increase on May 14, 2008 for a rent increase to be effective September 1, 2008. The applicant claims that he never received the notice. The respondent showed the notice to the applicant which set out three rent levels depending on whether the tenant elected a one-year or monthly tenancy agreement. There is no evidence that the notice was given to the applicant at the office. He did not indicate any tenancy agreement preference.

Perhaps realizing that the May 14, 2008 notice had not been successfully served on the applicant, the respondent issued a second notice of rent increase on September 25, 2008 for an increase to be effective January 1, 2008. This notice set out only one rent amount for a one year tenancy agreement which was higher than the one year rate set out in the May 14, 2008 notice.

Realizing that the effective date of the September 25, 2008 notice was incorrect, the respondent issued yet another notice of rent increase on November 27, 2008 for the same rent increase as set out in the September 25, 2008 notice to be effective March 1, 2009.

The applicant contends that the respondent had an obligation to maintain the same quantum of

rent increase on the September and November notices as were set out in the May notice. He objects to the higher rent increase set out in the September and November notices. The respondent's position is that the May and September notices were flawed and therefore ineffective. The respondent maintains that they were entitled to rescind the first two flawed notices and issue another notice at any rental rate.

Section 47 of the *Residential Tenancies Act* sets out provisions pertaining to rent increases.

- 47.(1) Notwithstanding a change in landlord, no landlord shall increase the rent in respect of a rental premises until 12 months have expired from**
- (a) the date the last increase in rent for the rental premises became effective; or**
 - (b) the date on which rent was first charged, where the rental premises have not been previously rented.**
- (2) The landlord shall give the tenant notice of the rent increase in writing at least three months before the date the rent increase is to be effective.**
- (3) An increase in rent by a landlord is not effective until three months have expired from the date of the notice of the rent increase.**

Section 71(1) of the Act sets out service of notices

- 71.(1) Subject to subsection (3), any notice, process or document to be served by or on a landlord, a tenant or the rental officer may be served by personal delivery or by registered mail to the landlord at the address given in the tenancy agreement or mailed to the tenant at the address of the rental premises and to the rental officer at the address of the office of the rental officer.**

In my opinion, section 71(1) serves to void the May, 2008 notice of rent increase as the applicant claims not to have received it and there is no evidence that the respondent served it personally or sent it to the applicant by registered mail.

The second notice, given to the applicant on September 25, 2008 contained an effective date which did not conform to section 47(2). In my opinion, notwithstanding the incorrect effective date, this notice could be deemed effective for January 1, 2009 pursuant to section 47(3) but clearly the respondent has elected to rescind it and issue a new notice with a correct effective date.

In my opinion, the November 27, 2008 notice conforms to the provisions of the Act and the rent can be increased to \$1395 effective March 1, 2009. There is no requirement in the Act that requires the respondent to maintain the quantum of rent increase contained in the earlier notices. I note that the respondent has continued to charge the same amount of rent, indicating that they consider the two earlier notices invalid or rescinded.

For these reasons, the application is dismissed.

Hal Logsdon
Rental Officer