

IN THE MATTER between **J.V. ENTERPRISES NWT LTD.**, Applicant, and **JUDITH GALE**, 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 **FORT SMITH, NT.**

BETWEEN:

J.V. ENTERPRISES NWT LTD.

Applicant/Landlord

- and -

JUDITH GALE

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant rent arrears in the amount of two thousand six hundred twenty five dollars (\$2625.00).
2. Pursuant to sections 41(4)(c) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as 31 Cumming Avenue, Fort Smith, NT shall be terminated on April 30, 2009 and the respondent shall vacate the premises on that date, unless the rent arrears and 50% of the security deposit in the total amount of three thousand sixty two dollars and fifty cents (\$3062.50) are paid in full.

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3. Pursuant to section 40(2) of the *Residential Tenancies Act*, the applicant shall comply with their obligation to ensure the premises are secure from unauthorized entry by ensuring the locking mechanisms on all doors giving entry to the premises are in good working order and keys are provided to the respondent. The applicant shall attend to this forthwith.

DATED at the City of Yellowknife, in the Northwest Territories this 9th day of April, 2009.

Hal Logsdon
Rental Officer

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J.V. ENTERPRISES NWT LTD.

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REASONS FOR DECISION

<u>Date of the Hearing:</u>	April 9, 2009
<u>Place of the Hearing:</u>	Fort Smith, NT via teleconference
<u>Appearances at Hearing:</u>	Alden Vogt, representing the applicant Judith Gale, respondent
<u>Date of Decision:</u>	April 9, 2009

REASONS FOR DECISION

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay rent, failing to provide the required security deposit and creating disturbances. The applicant sought an order requiring the respondent to pay the alleged rent arrears and terminating the tenancy agreement.

The tenancy agreement between the parties, provided in evidence by the applicant, was made in writing for a one year term commencing on February 1, 2009. The applicant testified that the tenant had failed to pay any rent whatsoever and currently owed rent for February, March and April, 2009. The rent for the premises is \$875/month. The tenancy agreement also requires a security deposit of \$875 and the applicant testified that no security deposit payments had been received.

The applicant testified that the neighbours had complained about noise on two occasions.

The respondent acknowledged that she owed rent for three months. She stated that she had dropped off two cheques totalling \$1550 at the mailbox of J.V. Enterprises in Fort Smith but acknowledged that they had not been cashed and that presently there were not sufficient funds in her account to cover the cheques. She stated that she was not sure how the rent was to be paid. The applicant testified that J.V Enterprises did not have an office in Fort Smith and he had never received any cheques from the respondent. The respondent stated that she did not have the

financial means to pay the arrears immediately and suggested that they be paid in monthly installments of \$150.

The respondent denied that she had caused any significant disturbance and stated that the applicant had come to the premises with the police with the intention of evicting her. She stated that the disturbance was due to that incident. It appears that the landlord assumed that there was no tenancy agreement because no rent had been paid, despite the fact that a written tenancy agreement had been executed by the parties and the tenant permitted to take possession. The RCMP did not, however, consider the matter one of trespass and would not assist the landlord.

The respondent stated that the landlord had promised to provide her with keys but had not done so. The applicant stated that he did not know if there were keys to the premises.

In the matter of the alleged rent arrears I find the respondent in breach of her obligation to pay rent. The respondent claims that she was unsure of how to pay the rent. It is true that the tenancy agreement is not helpful in this matter as it refers only to J.V. Enterprises in Ft. Smith. However, the respondent was sent a notice demanding rent and the security deposit on February 26, 2009 and the landlord's address is clearly indicated on that correspondence. If the respondent intended to pay the rent, her cheque, money order or bank draft could have been sent to that address. I am not satisfied from the evidence that any cheques were tendered to the landlord. In any case, it does not appear that they would have been honoured by the bank. I find the rent arrears to be \$2625.

Similarly, I find the respondent in breach of her obligation to pay the security deposit. Section 14(2) permits a tenant to pay 50% of the required security deposit at the commencement of the tenancy agreement and the remainder within three months.

14.(2) Where a tenant is liable for a security deposit for a tenancy other than a weekly tenancy, the tenant may pay

- (a) 50% of the security deposit at the commencement of the tenancy; and**
- (b) the remaining 50% of the security deposit within three months of the commencement of the tenancy.**

Therefore, I find 50% of the security deposit due in the amount of \$437.50.

It appears that much of the disturbance was a result of the landlord's efforts to evict the tenant. In any case, section 43 of the Act prohibits a tenant from disturbing the landlord or other tenants. No other tenants were disturbed. The applicant's request for relief due to alleged disturbance is denied.

Section 40 obligates a landlord to ensure that the premises are secure from unauthorized entry.

40.(1) A landlord shall cause to be installed in the rental premises, including the door giving entry to a residential complex, devices necessary to make rental premises reasonably secure from unauthorized entry.

- (2) Where, on the application of a tenant, a rental officer determines that the landlord has breached an obligation imposed by this section, the rental officer shall make an order requiring the landlord to comply with this obligation.**

- (3) A landlord who does not comply with subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding \$500.**

I am unable to determine if the keys have been withheld from the respondent or if they were lost

before the landlord was able to deliver them to the tenant. In any case, the premises are not secure and the landlord is obligated to make them secure by either providing keys or changing the locks and providing a new key to the respondent.

In my opinion, there are sufficient grounds to terminate the tenancy agreement unless the rent arrears and the outstanding portion of the security deposit are promptly paid. The respondent's proposal to pay the arrears in installments is not reasonable.

An order shall issue requiring the respondent to pay the applicant rent arrears in the amount of \$2625 and terminating the tenancy agreement on April 30, 2009 unless the arrears and 50% of the security deposit in the total amount of \$3062.50 are paid in full. I calculate that amount as follows:

Rent arrears (Feb. March & April/2009 @ \$875/month	\$2625.00
50% of the security deposit	<u>437.50</u>
Total	\$3062.50

The applicant is ordered to comply with their obligation to provide secure locking mechanisms on all entry doors and provide keys to the respondent. This is to be done immediately.

This decision was made known to the parties at the conclusion of the hearing.

Hal Logsdon
Rental Officer