

IN THE MATTER between **JEREMY TYLER**, Applicant, and **NORMAN WALPER**, 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 **INUVIK, NT.**

BETWEEN:

JEREMY TYLER

Applicant/Tenant

- and -

NORMAN WALPER

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 66(b) of the *Residential Tenancies Act*, the respondent shall return all personal property belonging to the applicant without charge or any imposed condition. The property shall be returned to the applicant forthwith.

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

Hal Logsdon
Rental Officer

IN THE MATTER between **JEREMY TYLER**, Applicant, and **NORMAN WALPER**, 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:

JEREMY TYLER

Applicant/Tenant

-and-

NORMAN WALPER

Respondent/Landlord

REASONS FOR DECISION

<u>Date of the Hearing:</u>	November 12, 2009
<u>Place of the Hearing:</u>	Inuvik, NT via teleconference
<u>Appearances at Hearing:</u>	Jeremy Tyler, applicant Doris Tyler, representing the applicant
<u>Date of Decision:</u>	November 12, 2009

REASONS FOR DECISION

The respondent was served with a Notice of Attendance sent by registered mail. The notice was refused by the respondent and returned to the rental office. The rental officer attempted to contact the respondent by phone without success. A fax was also sent to the respondent containing the place, time and location of the hearing. The fax was confirmed sent but the respondent did not make any contact with the rental officer. In my opinion, the respondent is avoiding service and the deeming provisions of section 71(2) are not unreasonable to apply. The respondent can not avoid the matter by refusing service. The matter was heard in the absence of the respondent.

The applicant alleged that the respondent changed the locks to the premises interfering with his possession and notified him that his personal property was being held pending the payment of rent and utilities that the respondent alleged was owing. The applicant stated that he had tried to pick up his goods but the respondent permitted him to only remove his dog. The applicant stated that he did not seek the reinstatement of his possession or compensation. The applicant sought only an order requiring that his personal possessions be returned.

A notice from the landlord, dated August 7, 2009 was provided in evidence. The notice stated that the applicant was being evicted for non-payment of rent and utilities and stated that the applicant's possessions could be picked up upon payment of the amount alleged due.

The applicant provided a list of possessions seized by the respondent.

Section 3 of the *Residential Tenancies Act* expressly prohibits the remedy of distress.

- 3.(1) No landlord shall distrain for rent payable under a tenancy agreement on the goods and chattels of any person.**
- (2) No person authorized by any Act or other law or agreement to recover rent payable for rental premises shall distrain on the goods and chattels of a tenant of rental premises.**
- (3) Subsections (1) and (2) apply whether or not the default in respect of which the remedy of distress that might have been taken, but for this section, occurred before February 6, 1988.**

Notwithstanding whether the applicant owes rent and utilities or not, a fact I need not determine, the remedy of distress is not permitted in residential tenancies in the Northwest Territories.

An order shall issue requiring the respondent to return the applicant's personal possessions immediately without any charge whatsoever and without any imposed conditions. Should the respondent fail to return the possessions or if there are possessions that are missing or damaged, the applicant may file another application listing the value of the possessions which have not been returned or are missing or damaged and seek monetary compensation.

Hal Logsdon
Rental Officer