

IN THE MATTER between **NPR LIMITED PARTNERSHIP**, Applicant, and **MARC AUGER AND TREVOR BOURGEOIS**, Respondents;

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act") and amendments thereto;

AND IN THE MATTER of a Hearing before, **HAL LOGSDON**, Rental Officer, regarding the rental premises at **YELLOWKNIFE, NT.**

BETWEEN:

NPR LIMITED PARTNERSHIP

Applicant/Landlord

- and -

MARC AUGER AND TREVOR BOURGEOIS

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 30th day of March, 2011.

Hal Logsdon
Rental Officer

IN THE MATTER between **NPR LIMITED PARTNERSHIP**, Applicant, and **MARC AUGER AND TREVOR BOURGEOIS**, Respondents.

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:

NPR LIMITED PARTNERSHIP

Applicant/Landlord

-and-

MARC AUGER AND TREVOR BOURGEOIS

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: March 22, 2011

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Maigan Lefrancois, representing the applicant
Marc Auger, respondent

Date of Decision: March 30, 2011

REASONS FOR DECISION

Notices of Attendance were sent to the respondents by registered mail at the address provided by the applicant. The notice addressed to Mr. Bourgeois was returned undelivered. Mr. Auger testified that Mr. Bourgeois no longer lived in the same dwelling. The respondents were formerly joint tenants of the applicant. The applicant elected to proceed against Mr. Auger only.

The applicant alleged that the respondents failed to give adequate notice to terminate the tenancy agreement, thereby abandoning the premises. The applicant testified that as a result, rent that would have come due if proper notice was given was lost. The applicant sought compensation for lost rent in the amount of \$1575 which is one month's rent.

A copy of the tenancy agreement and the written notice were provided by the applicant in evidence. The tenancy agreement was made for a term ending on December 31, 2010. The notice was dated December 2, 2010 and named a termination date of December 31, 2010.

Section 51(2) of the *Residential Tenancies Act* sets out the notice required to terminate a term tenancy agreement.

51. (1) Where a tenancy agreement specifies a date for the termination of the tenancy agreement, the tenant may terminate the tenancy on the date specified in the agreement by giving the landlord a notice of termination not later than 30 days before the termination date.

The tenant's notice to terminate fails to meet the criteria set out in section 51(1) and the applicant

is entitled to claim damages for lost rent. Section 5(2) of the Act sets out a landlords obligation to mitigate loss under these circumstances.

- 5. (1) Where a landlord or tenant is liable to the other for damages as a result of a breach of a tenancy agreement or this Act, the landlord or tenant entitled to claim damages shall mitigate his or her damages.**
- (2) Without limiting subsection (1), where a tenant terminates a tenancy agreement, contravenes a tenancy agreement, or vacates or abandons rental premises, other than in accordance with this Act or the tenancy agreement, the landlord shall rent the rental premises again as soon as is practicable and at a reasonable rent in order to mitigate the damages of the landlord.**

The applicant testified that when the respondent's notice was received, the apartment was put on their availability list. Leasing agents showed the apartment to any prospective tenant who wanted an apartment of that size (2-bedroom) and location. The applicant could not say how many prospective tenants viewed the apartment or sought a 2-bedroom unit but stated that it was not re-rented until February 24, 2011.

The Canada Mortgage and Housing Corporation October, 2010 apartment survey found the vacancy and availability rate for 2-bedroom apartments to be 0.6%. The survey indicates that in October, 2010 there were only five 2-bedroom apartments available for rent in the city.

The respondent rented the premises on a 6 month term agreement for \$1570. The next tenant was offered a 6 month term agreement for \$1595. The average monthly rent for 2-bedroom apartments in October, 2010 was reported in the CMHC survey as \$1486.

Considering that the respondent's notice was one day late, the vacancy and availability rates were very low, and the applicant raised the rent which was already higher than the average rent charged for that size apartment, I find it difficult to accept that the applicant took reasonable steps to re-rent these premises. In my opinion, the applicant has not demonstrated that reasonable steps were taken to avoid the loss of the January, 2011 rent. The application shall be dismissed.

Hal Logsdon
Rental Officer