

IN THE MATTER between **KEN BELFRY AND ELENA BELFRY**, Applicants, and
MIDWEST PROPERTY MANAGEMENT, Respondent;

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:

KEN BELFRY AND ELENA BELFRY

Applicants/Tenants

- and -

MIDWEST PROPERTY MANAGEMENT

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. No order is issued.

DATED at the City of Yellowknife, in the Northwest Territories this 2nd day of April,
2013.

Hal Logsdon
Rental Officer

IN THE MATTER between **KEN BELFRY AND ELENA BELFRY**, Applicants, and
MIDWEST PROPERTY MANAGEMENT, 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:

KEN BELFRY AND ELENA BELFRY

Applicants\Tenants

-and-

MIDWEST PROPERTY MANAGEMENT

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: March 13, 2013

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Ken Belfry, applicant
Elena Belfry, applicant
Diane Rivard, representing the respondent
Joyce Dust, representing the respondent

Date of Decision: March 13, 2013

REASONS FOR DECISION

The applicants alleged that the respondent had breached the provisions in section 47 of the *Residential Tenancies Act* by increasing the rent without adequate notice and prior to the expiry of twelve months since the last rent increase.

The applicants stated that the landlord served notice on December 5, 2012 that they would be charged an additional \$50 effective January 1, 2013 if they wished to continue to use the two parking spaces that they were currently allotted. The applicants stated that they had not paid the additional charges, believing that they were not in accordance with the Act.

The respondent did not dispute the allegations and stated that they now charged an additional \$50 for each additional parking space required by a tenant.

The tenancy agreement between the parties was made for a one year term which commenced on September 1, 2012. The monthly rent for the premises is \$1675. The agreement does not contain any specific provisions for parking but the parties agreed that two parking spaces, #73 and #59, had been reserved for the use of the tenants. The tenancy agreement contains no provisions for a rent increase during the term of the agreement. The applicants stated that the last rent increase for the premises became effective on September 1, 2012.

"Rent" is defined in section 1(1) of the *Residential Tenancies Act*.

"rent" includes the amount of any consideration paid or required to be paid by a tenant to a landlord or his or her agent for the right to occupy rental premises and for any services and facilities, privilege, accommodation or thing that the landlord provides for the tenant in respect of his or her occupancy of the rental premises, whether or not a separate charge is made for the services and facilities, privilege, accommodation or thing.

"Services and Facilities" is also defined in section 1(1).

"services and facilities" includes furniture, appliances and furnishings, parking and related facilities, laundry facilities, elevator facilities, common recreational facilities, garbage facilities and related services, cleaning or maintenance services, storage facilities, intercom systems, cable television facilities, heating facilities or services, air- conditioning facilities, utilities and related services, and security services or facilities.

Therefore, any increase in parking fees is considered a rent increase and subject to the restrictions contained in section 47.

- 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.**

In addition to the restrictions contained in section 47, unless a term agreement has a provision for a rent increase during the term, no increase is permitted even if the increase complies with the provisions of section 47.

I find the \$50 parking fee imposed by the respondent to be a breach of section 47 and of no legal effect. As the applicants have not paid this increase to the respondent, there shall be no order to

return any monies paid. There are no other remedies available to the applicants.

Hal Logsdon
Rental Officer