

IN THE MATTER between **NICOLAE MURESAN**, Applicant, and **PAUL D. MCWHIRTER**, 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:

NICOLAE MURESAN

Applicant/Landlord

- and -

PAUL D. MCWHIRTER

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 58.1.1(a)(i) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as 25 Forrest Park, Yellowknife, NT shall be terminated on December 31, 2013 and the respondent shall vacate the premises on that date.

DATED at the City of Yellowknife, in the Northwest Territories this 21st day of November, 2013.

Hal Logsdon
Rental Officer

IN THE MATTER between **NICOLAE MURESAN**, Applicant, and **PAUL D. MCWHIRTER**, 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:

NICOLAE MURESAN

Applicant/Landlord

-and-

PAUL D. MCWHIRTER

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: **October 17, 2013**

Place of the Hearing: **Yellowknife, NT**

Appearances at Hearing: **Nicolae Muresan, applicant**
 Paul D. McWhirter, respondent

Date of Decision: **October 17, 2013**

REASONS FOR DECISION

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay rent and by disturbing the landlord. The applicant sought an order terminating the tenancy agreement and evicting the respondent. The applicant also stated that he wished to use the premises as his own residence and wanted the tenancy terminated so he could live in the premises himself.

The applicant testified that the monthly rent for the premises is \$2000/month and that the respondent paid only \$390 in September, 2013 leaving arrears of \$1610. The applicant provided no evidence of rent accounting to support his allegation. The applicant also testified that the respondent assaulted him when he attended the premises to collect rent. The applicant testified that the tenancy agreement he currently has with his landlord is ending on October 31, 2013 and he plans to move into 25 Forrest Park and use it as his own residence.

The respondent denied owing any rent testifying that he had paid the entire rent due for September, 2013 and all other months. The respondent testified that the applicant attended the premises when he was extremely intoxicated and pushed and shoved him. He stated that his actions were entirely defensive. Both parties acknowledged that the police had investigated the altercation and no charges were laid.

I do not find sufficient evidence to conclude that the respondent has breached the tenancy

agreement by failing to pay rent or by disturbing the landlord. It would appear that the applicant keeps no records of rent whatsoever nor does he provide receipts for payments made. I must also assume that if the police found sufficient evidence of assault they would have laid a charge. From the evidence available it is unclear which party initiated the altercation. The applicant's request for an order terminating the tenancy agreement for cause is therefore denied.

Section 58 of the *Residential Tenancies Act* sets out a provision for termination of a tenancy agreement where a landlord intends to use the premises for their own residence.

58. (1) A landlord may apply to a rental officer to terminate a tenancy if the landlord

(a) requires possession of the rental premises for use as a residence by

(I) the landlord,

(ii) the spouse, child or parent of the landlord, or

(iii) a child or parent of the spouse of the landlord.

(1.1) A rental officer who determines that a landlord, in good faith, requires the rental premises for a reason referred to in subsection (1), may make an order

(a) terminating the tenancy,

(I) in the case of a periodic tenancy, on the last day of a period of the tenancy that is not earlier than 90 days after the application is made.

I accept the applicant's testimony that he intends to use the premises as his own residence. An order shall issue terminating the tenancy agreement on December 31, 2013.

The parties shall note the provisions for quick notice and rent payment contained in section 58 as well as the remedies for improper termination contained in section 60 of the Act.

- 58(2) Where a tenant receives a copy of an application under subsection (1), the tenant may, at any time before the date specified for termination in the application, terminate the tenancy by**
- (a) giving the landlord not less than five days notice of termination specifying an earlier date of termination of the tenancy; and**
 - (b) paying to the landlord on the date the tenant gives notice of termination under paragraph (a) the proportionate amount of rent due up to the date the earlier termination is specified to be effective.**
- (3) Where, on the application of a tenant, a rental officer determines that the tenant has terminated the tenancy under subsection (2), the rental officer may make an order requiring the landlord to pay to the tenant any overpayment of rent paid by the tenant.**
- 60. (1) Where, on the application of a former tenant, a rental officer determines that the tenant vacated the rental premises as a result of an application to terminate under section 58 or 59 and that the landlord or, in the case of an application under paragraph 58(1)(b), the purchaser, did not in good faith require the rental premises for the purpose specified in the application to terminate, the rental officer may make an order requiring the landlord or the purchaser**
- (a) to pay the reasonable moving expenses of the tenant to his or her new accommodation; or**
 - (b) to compensate the tenant for any additional reasonable expenses incurred by the tenant, including, for a period of up to 12 months, any increased rent that the tenant was obliged to pay as a result of the improper termination.**

Hal Logsdon
Rental Officer