

IN THE MATTER between **JONATHAN STEVENS**, Applicant, and **NPR LIMITED PARTNERSHIP**, Respondent;

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

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

BETWEEN:

JONATHAN STEVENS

Applicant/Tenant

- and -

NPR LIMITED PARTNERSHIP

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 30(4)(e) and 34(2)(d) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Apartment 312, 490 Range Lake Road, Yellowknife, NT shall be terminated on March 11, 2015.
2. Pursuant to section 18.1(b) of the *Residential Tenancies Act*, the respondent shall return a portion of the retained security deposit to the applicant forthwith in the amount of seven hundred fifty dollars and twenty two cents (\$750.22).

DATED at the City of Yellowknife, in the Northwest Territories this 2nd day of April, 2015.

Hal Logsdon
Rental Officer

IN THE MATTER between **JONATHAN STEVENS**, Applicant, and **NPR LIMITED PARTNERSHIP**, 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:

JONATHAN STEVENS

Applicant/Tenant

-and-

NPR LIMITED PARTNERSHIP

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: March 11, 2015

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Jonathan Stevens, applicant
Ruth Shorten, witness for the applicant
Metslal Mesgun, representing the respondent

Date of Decision: March 26, 2015

REASONS FOR DECISION

The Application was made with the incorrect name of the respondent. The order reflects the legal name of the respondent.

The applicant alleged that the respondent had breached sections 30, 34 and 40 of the *Residential Tenancies Act* by failing to maintain the residential complex in a good state of repair, failing to maintain safety devices to ensure unauthorized entry to the building and disturbance of his quiet enjoyment of the residential complex.

The tenancy agreement between the parties was made for a term ending on June 30, 2015. The applicant stated that he provided written notice to the respondent on January 29, 2015 that he intended to vacate his apartment on February 28, 2015 due to unsafe living conditions in the building. A copy of the notice was provided in evidence. The applicant vacated the premises on February 28, 2015.

The applicant provided a list of complaints he had made to the landlord concerning the condition of the building, unauthorized persons gaining entry to the building and required repairs. He also provided numerous photographs illustrating his written complaints.

The applicant testified that he had repeatedly contacted the landlord about the condition and lack of security in the residential complex with little or no response from the landlord. The applicant

stated that vomit, garbage and urine in the hallways were often ignored by the landlord for days and damages left unrepaired. The photographs provided in evidence document these conditions.

The respondent did not dispute the allegations but stated that they had offered the applicant another apartment in a different building. The applicant refused the offer stating that he no longer wished to rent from the respondent.

Section 51(1) of the *Residential Tenancies Act* sets out how a term tenancy agreement may be terminated by the tenant's notice and section 50 sets out termination of a tenancy agreement by mutual consent.

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.

50. A landlord and tenant may agree in writing after a tenancy agreement has been made to terminate the tenancy on a specified date and the tenancy is terminated on the date specified.

Since the applicant's notice was not in accordance with section 51(1) and there was no mutual agreement to terminate the tenancy agreement, this tenancy agreement was terminated on February 28, 2015 by abandonment. Section 62 sets out the liability of a tenant who abandons rental premises.

62. (1) Where a tenant abandons a rental premises, the tenancy agreement is terminated on the date the rental premises were abandoned but the tenant remains liable, subject to section 5, to compensate the landlord for loss of future rent that would have been payable under the tenancy agreement.

The applicant sought an order terminating the tenancy agreement retroactively to February 28, 2015 the date of abandonment in order to avoid the potential liability set out in section 62(1). The application was filed on February 19, 2015. But not heard until March 11, 2015.

In my opinion, the respondent is in breach of both section 30 and section 34 of the *Residential Tenancies Act*. Clearly, unauthorized persons are entering the building and creating unsanitary conditions and disturbances in the hallways. The necessary cleaning and repair is not done in a timely manner by the landlord. In my opinion, there are sufficient grounds to terminate the tenancy but it is not reasonable to abandon the premises and seek a retroactive termination of the tenancy agreement by order. An order shall issue however, terminating the tenancy agreement forthwith on March 11, 2015.

The respondent holds a security deposit of \$835 which has accumulated interest of \$0.22. The respondent has provided a final statement indicating a balance owing to the landlord of \$1670 as follows:

Security deposit	(\$835.00)
Interest	(0.22)
Rent arrears	<u>85.00</u>
Subtotal	(750.22)
Amount to be refunded	<u>750.22</u>
Subtotal	0.00
Loss of future rent	\$1670.00

The applicant has not received the security deposit although the final statement appears to imply that amount is due to him. The statement implies that the tenant is owed \$750.22 yet it appears that the refund is offset or being withheld by the landlord's claim that they are owed for loss of

future rent, presumably the full rent for March, 2015. This is tantamount to deducting a penalty for abandonment from a security deposit which is a breach of both section 18 and section 13 of the Act.

An order shall issue terminating the tenancy agreement between the parties on March 11, 2015 and ordering the respondent to refund the balance of the security deposit to the applicant in the amount of \$750.22 forthwith.

Hal Logsdon
Rental Officer