

IN THE MATTER between **Northern Property Limited Partnership**, Applicant, and
Tracey Woods, 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, **Adelle Guigon**, Deputy Rental Officer,
regarding a rental premises within **the city of Yellowknife in the Northwest Territories**.

BETWEEN:

NORTHERN PROPERTY LIMITED PARTNERSHIP

Applicant/Landlord

- and -

TRACEY WOODS

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent must pay to the applicant rental arrears in the amount of \$941.69 (nine hundred forty-one dollars sixty-nine cents).
2. Pursuant to sections 43(3)(d) and 46(2)(c) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the rental premises known as #306, 5001 - 52 Avenue, in Yellowknife, Northwest Territories, will terminate May 31, 2015, and the respondent must vacate the rental premises on or before that date.

DATED at the City of Yellowknife in the Northwest Territories this 28th day of May
2015.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Northern Property Limited Partnership**, Applicant, and
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REASONS FOR DECISION

<u>Date of the Hearing:</u>	May 27, 2015
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	Colleen Wellborn, representing the applicant Jason George, witness for the applicant Scott Lefrancois, witness for the applicant
<u>Date of Decision:</u>	May 27, 2015

REASONS FOR DECISION

An application to a rental officer made by Northern Property Limited Partnership as the applicant/landlord against Tracey Woods as the respondent/tenant was filed by the Rental Office April 14, 2015. The application was made regarding a residential tenancy agreement for the rental premises known as #306, 5001 - 52 Avenue, in Yellowknife, Northwest Territories. The applicant personally served a copy of the filed application on the respondent when Ms. Woods picked it up from the landlord's offices approximately May 7, 2015.

The applicant alleged the respondent had accumulated rental arrears, had disturbed the landlord's possession of the premises, and had permitted a person on the premises to disturb the landlord's possession of the premises. An order was sought for payment of the rental arrears, termination of the tenancy agreement, and eviction.

A hearing was originally scheduled for May 6, 2015, in Yellowknife, Northwest territories. Ms. Metslal Mesgun appeared representing the applicant. Ms. Tracey Woods appeared as respondent and Mr. Dayle Hein appeared with Ms. Woods. It was learned at that time that Ms. Woods had not in fact received either the filed application or the notice of attendance for this hearing, having learned of the hearing from her case worker. The hearing was adjourned to May 14, 2015. Ms. Mesgun, Ms. Woods, and Mr. Hein again appeared. Ms. Woods confirmed receipt of the filed application.

The parties agreed that Ms. Woods was a tenant occupying the rental premises known as #306, 5001 - 52 Avenue, also known as Crestview Apartments, in Yellowknife, Northwest Territories. The tenancy commenced in March 2013. Ms. Woods confirmed that Mr. Hein has been residing with her for at least the last couple of months.

The parties further agreed that Ms. Woods had accumulated rental arrears. Ms. Woods explained that her income support payments were inexplicably stopped and that was why she fell behind, but she also complained of maintenance issues to the premises for which she withheld additional rent payments. It was clarified with Ms. Woods at hearing that withholding rent payments is specifically prohibited by the *Residential Tenancies Act* (the Act). If Ms. Woods has complaints regarding the maintenance of the rental premises she should make them in writing to the landlord and if unsatisfied with the landlord's response then she can file an application to a rental officer. I agreed to consider the maintenance complaints at this hearing as the application included the request for termination of the tenancy and eviction, pursuant to section 68(2) of the Act. Both Ms. Woods and Ms. Mesgun indicated they wished to call witnesses. The hearing was again adjourned to accommodate the calling of witnesses and a new date was set for June 16, 2015.

On May 22, 2015, Ms. Colleen Wellborn, regional manager for the landlord, requested the hearing be brought forward to May 27, 2015. A new telephone contact number was provided by the landlord for Ms. Woods (as the number on file was no longer in service) and I contacted Ms. Woods that same afternoon. Ms. Woods agreed to the hearing date being brought forward to May 27th and confirmed her witnesses' availability.

On May 25, 2015, Ms. Woods left a note for me indicating she would not be able to attend the May 27th court date as she had a medical appointment, and to please call her at a new phone number. I called her at the new number and left a voicemail asking her to call me back right away regarding her note. She did not. Subsequent attempts to contact Ms. Woods went straight to voicemail, and the voicemail box was full. As such, the previously confirmed hearing date of May 27th continued as scheduled.

On May 27th, Ms. Colleen Wellborn, Mr. Jason George, and Mr. Scott Lefrancois appeared representing the applicant. Ms. Tracey Woods did not appear, nor did anyone appear on her behalf. Being satisfied that Ms. Woods was aware of the hearing and had not received consent to reschedule the hearing again, the hearing proceeded in her absence. Issues related to Ms. Woods complaints regarding maintenance of the residential complex were not addressed. Ms. Woods retains the right to file an application to a rental officer regarding her maintenance complaints. The hearing continued solely on the landlord's application for payment of rental arrears, termination of the tenancy agreement, and eviction.

Rental arrears

Ms. Wellborn provided into evidence an updated resident ledger reflecting the current status of Ms. Woods rent account. It included charges for monthly rent, key/FOB replacement, an undefined invoice, and payments received against Ms. Woods rent account. Ms. Wellborn had no evidence to support the undefined invoice charge of \$80 and could not speak directly to what it was for, therefore, that amount was deducted from the total rental arrears claimed. I am satisfied the resident ledger accurately reflects the respondent's rent account and I find the respondent has accumulated rental arrears in the amount of \$941.69.

Disturbances and illegal activity

The applicant's representatives presented their case respecting repeated disturbances and illegal activities conducted on the premises with direct observations, documented evidence, and video evidence.

In December 2014 the landlord installed a new entry security system, replacing the keyed locks on the residential complex entry/exit doors with FOBs. FOBs are encoded digital entry devices which can be programmed to permit entry to specific doors and buildings. Each FOB has its own identification code to permit the landlord to record which FOB is assigned to each tenant. Each use of the FOB to gain access to any building that uses the FOB security system within the landlord's inventory is digitally logged, whether or not access is granted. Which means that if a FOB is used to attempt to gain access to a building it is not programmed to permit entry to, that attempt is digitally logged in the associated FOB register, as is every successful entry.

Ms. Woods' FOB was logged attempting entry to Ptarmigan Apartments five times on January 31, 2015. On February 2, 2015, Ms. Woods reported her FOB lost and requested a new one. Her original FOB was deactivated and Ms. Woods was provided with a replacement FOB at no charge. Ms. Wellborn testified that there is a FOB replacement charge of \$100, but Ms. Woods had not been informed of it at the time and therefore was not charged for it. The replacement FOB was not used until February 9, 2015, and then it was used to make eight attempts to access Shaganappy Apartments. The replacement FOB was not used again until March 6, 2015, and thereafter to gain access to Ms. Woods' own apartment building, Crestview Apartments. On March 17, 2015, Ms. Woods again reported her FOB lost and requested a replacement. The FOB

was deactivated. Ms. Woods was informed of the replacement charge of \$100 which could either be paid up front or added to her rent account, and she was told the replacement FOB would be available for her to pick up at any time. Ms. Woods refused to accept the replacement charge on her ledger, refused to pay the charge, and did not pick up the replacement FOB, effectively denying herself secure access to Crestview Apartments. Ms. Woods repeatedly called the office requesting the replacement FOB over the next few weeks and was repeatedly told that the FOB was available for her to pick up and the charge could be placed on her account; she never picked up her replacement FOB.

During a routine building inspection of Crestview Apartments, Mr. Lefrancois discovered that the boiler room where the security DVR system was stored had been broken into and the DVR stolen. The theft was reported and arrangements made to obtain a replacement DVR. On March 20, 2015, the newly replaced DVR recorded Mr. Hein accessing and then removing the security camera from one of the entryways to the apartment building. Mr. Hein's face is clearly visible, permitting identification. This footage was provided to the RCMP, who obtained a warrant to search Ms. Woods' apartment #306. During the execution of the search warrant, officers found in and seized from Ms. Woods' apartment a DVR, monitor, damaged and disassembled security cameras, a modem, wires, and cables – all items belonging to and stolen from the landlord. An email from RCMP Constable Jonathan White to Ms. Wellborn dated May 14, 2015, confirms that the items belonging to the landlord were seized and that they cannot be returned until Mr. Hein's court matters are completed.

Between March 30 and May 25, 2015, 68 security reports were written of discovering the entry/exit doors to Crestview Apartments being wedged open with cigarette butts, cables, and rocks. Five security footage videos dated May 21 to 24, 2015, were provided into evidence depicting persons wedging open the doors; Mr. Hein is identifiable as the person wedging open the doors in all five videos. Ms. Wellborn identified this behaviour as creating a security risk for the occupants of the building and to the property. It exposes the property to vagrants and criminal activity, and it damages the security doors.

On May 1, 2015, Mr. Lefrancois attended Crestview Apartments and while removing cigarette butts from the door noted Ms. Woods and Mr. Hein return to the building. Mr. Hein detoured to the back entrance while Ms. Woods approached the entrance Mr. Lefrancois was repairing. Ms. Woods asked Mr. Lefrancois about getting a replacement FOB. Mr. Lefrancois told Ms. Woods the landlord was unable to issue new FOBs to any tenants at the moment until the security system was repaired. Mr. Lefrancois testified to Ms. Woods making an unsolicited comment to him that her boyfriend stole the DVR and not to blame her for it. Mr. Lefrancois told Ms. Woods they would call her when they are able to reprogram an FOB for her. Ms. Wellborn confirmed that attempts were made to contact Ms. Woods once they were able to reprogram the FOBs, but Ms. Woods did not respond or attend the office to pick hers up until May 11, 2015, at which time the replacement charge of \$100 was entered into Ms. Woods' rent account.

I am satisfied that there is sufficient evidence of illegal activity having occurred in and to the rental premises for which the respondent is responsible, and of breaches of the respondent's tenancy agreement and the Act. Ms. Woods permitted Mr. Hein entry into the residential complex and rental premises, and to reside with her, thereby accepting responsibility for his actions pursuant to sections 42 and 46 of the Act.

There is clear evidence of Mr. Hein wedging the security doors open with cigarette butts and cables, creating an unsafe environment for other tenants, exposing the residential complex to criminal activity and/or entry by unauthorized persons, and causing damage to the property. Section 8 of the landlord's rules and regulations attached to the residential lease specify that no entry of the building shall be obstructed. Section 45 of the Act requires tenants to comply with additional obligations undertaken in a written tenancy agreement. Section 43 of the Act specifies tenants shall not disturb the landlord's or other tenants' possession or enjoyment of the rental premises or residential complex. Section 42 of the Act specifies the tenants' liability for damages to the residential complex caused by the wilful or negligent conduct of the tenant or persons permitted on the premises by the tenant.

There is evidence clearly identifying Mr. Hein in the act of damaging and stealing the landlord's security cameras, and the search and seizure conducted in March discovered property belonging to the landlord in Ms. Woods' rental premises. Possession of stolen property is a criminal offence under the Criminal Code of Canada. Section 46 of the Act prohibits a tenant from committing an illegal act or permitting another person to do so in the rental premises or in the residential complex.

I am satisfied the totality of the identified breaches justifies termination of the tenancy and eviction from the rental premises. An order will issue requiring Ms. Tracey Woods to pay rental arrears in the amount of \$941.69, terminating her tenancy agreement on May 31, 2015, and requiring her to vacate the rental premises on or before that date, and ordering her evicted from the rental premises on June 1, 2015. The eviction order will follow under separate cover.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Resident ledger dated April 13, 2015
- Exhibit 2: Applicant's termination notices to respondent dated: March 23, 2015; April 10, 2015; March 9, 2015
- Exhibit 3: Residential lease dated March 26, 2013
- Exhibit 4: Email conversation between Cst. Jonathan White and Scott Lefrancois dated April 21-22, 2015
- Exhibit 5: Resident ledger dated May 14, 2015
- Exhibit 6: Email conversation between Cst. Jonathan White and Colleen Wellborn dated May 14, 2015
- Exhibit 7: Applicant's statement of evidence dated May 27, 2015
- Exhibit 8: Three Telelink maintenance call reports dated July 18 and August 17, 2014
- Exhibit 9: Three FOB access reports dated May 26, 2015
- Exhibit 10: Two Telelink lock out reports dated May 8 and May 10, 2015
- Exhibit 11: Email conversation between Colleen Wellborn and Cst. Jonathan White dated May 14, 2015
- Exhibit 12: 17 incident reports dated from May 9 to 25, 2015
- Exhibit 13: Set of four photographs
- Exhibit 14: Resident ledger dated May 26, 2015
- Exhibit 15: Three Telelink lock out reports dated April 4, 13, and 16, 2015
- Exhibit 16: 52 incident reports dated from March 30 to May 4, 2015
- Exhibit 17: 2 DVDs containing security footage