

IN THE MATTER between **ELWOOD CHAN**, Applicant, and **JESSE CANNELL**,
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:

ELWOOD CHAN

Applicant/Landlord

- and -

JESSE CANNELL

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 42(3)(f) and 43(3)(d) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Apartment 25, 705 Williams Avenue, Yellowknife, NT shall be terminated on September 15, 2015 and the respondent shall vacate the premises on that date.

DATED at the City of Yellowknife, in the Northwest Territories this 21st day of August,
2015.

Hal Logsdon
Rental Officer

IN THE MATTER between **ELWOOD CHAN**, Applicant, and **JESSE CANNELL**,
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:

ELWOOD CHAN

Applicant/Landlord

-and-

JESSE CANNELL

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: August 19, 2015

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Elwood Chan, landlord

Date of Decision: August 21, 2015

REASONS FOR DECISION

The respondent was sent a Notice of Attendance by registered mail which was confirmed delivered. The respondent failed to appear at the hearing and the hearing was held in his absence.

The rental premises consist of a room in a condominium apartment owned by the applicant. The respondent and two other tenants share common facilities with the landlord who also occupies the premises. The tenancy agreement between the parties sets out a monthly rent of \$750 plus a share of the monthly utilities which is billed to each tenant by the applicant.

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay the full amount of the monthly rent and utility bills, disturbing other tenants and the landlord and damaging the rental premises and the residential complex. The applicant sought an order terminating the tenancy agreement and an eviction order.

The applicant provided a spreadsheet outlining the monthly rents, utility billings and payments which indicated the following totals:

Total rent	\$15,000.00
Total utilities billed	5,135.17
Total amount paid	(18,522.99)

The applicant testified that the respondent had repeatedly disturbed his quiet enjoyment of the premises by being loud at all hours of the day and night, having late night guests who often

stayed all night and failing to keep common areas of the apartment in a state of reasonable cleanliness. The applicant also provided an affidavit from a former tenant who stated that the respondent had frequent noisy guests who commonly stayed overnight. She also stated that he failed to clean up after himself, leaving the kitchen and common areas in a mess.

The applicant provided photographs of the respondent's room which indicated stains on the carpet, a hole in the wall, damage to the door frame and a hole in the wall in the common area. The applicant testified that these damages were the result of the respondent's negligence.

The applicant stated that the respondent had indicated to him verbally that he intended to terminate the tenancy on August 31 but had not given written notice to terminate the agreement.

Rent is defined in section 1 of the *Residential Tenancies Act* and section 47 places restrictions on rent increases

"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.

- 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.

Therefore any utilities which are charged by and payable to the landlord are considered rent and are subject to the restrictions in section 47. The utility charges levied by the applicant are not enforceable as they are tantamount to a rent increase. I do not find any arrears of rent as the amount paid by the tenant is sufficient to cover the rent charges. The respondent is not in breach of his obligation to pay rent.

I find the respondent in breach of his obligation to not disturb the landlord or other tenants. The landlord has direct knowledge of the disturbances and his testimony is consistent with the affidavit sworn by the former tenant.

I find the respondent in breach his obligation to repair damages to the rental premises and the residential complex. The photographic evidence and the testimony of the applicant are sufficient to support the allegation that the respondent has damaged the apartment.

In my opinion there are sufficient grounds to terminate the tenancy agreement. An order shall issue terminating the tenancy agreement on September 15, 2015. An eviction order to be effective on September 16, 2015 shall be issued separately.

Hal Logsdon
Rental Officer