

IN THE MATTER between **Polar Developments Ltd.**, Applicant, and **Karen Petersen**,
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, **Adelle Guigon**, Deputy Rental Officer,
regarding a rental premises located within the **city of Yellowknife in the Northwest
Territories.**

BETWEEN:

POLAR DEVELOPMENTS LTD.

Applicant/Landlord

- and -

KAREN PETERSEN

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. The application is denied.

DATED at the City of Yellowknife in the Northwest Territories this 9th day of September
2015.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Polar Developments Ltd.**, Applicant, and **Karen Petersen**,
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 **Adelle Guigon**, Deputy Rental Officer,

BETWEEN:

POLAR DEVELOPMENTS LTD.

Applicant/Landlord

-and-

KAREN PETERSEN

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	July 22 and September 8, 2015
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	Karen McLeod, representing the applicant Karen Petersen, respondent
<u>Date of Decision:</u>	September 8, 2015

REASONS FOR DECISION

An application to a rental officer made by Polar Developments Ltd. as the applicant/landlord against Karen Petersen as the respondent/tenant was filed by the Rental Office June 17, 2015. The application was made regarding a residential tenancy agreement for the rental premises known as #403, 4503 - 52 Avenue, in Yellowknife, Northwest Territories. The applicant personally served a copy of the filed application on the respondent June 17, 2015, and by email deemed received June 20, 2015, pursuant to section 4(4) of the *Residential Tenancies Regulations* (the Regulations).

The applicant alleged the respondent had caused damages to the rental premises by smoking in the premises, and that the respondent had compromised the safety of others by smoking in bed and in the vicinity of an oxygen tank. An order was sought to terminate the tenancy and evict the tenant. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for July 22, 2015, in Yellowknife. The hearing commenced then and was adjourned to September 8, 2015, for continuance. Ms. Karen McLeod appeared at both hearings representing the applicant. Ms. Karen Petersen appeared at both hearings as respondent.

Tenancy agreement

The parties agreed and evidence was provided establishing a written tenancy agreement made between Polar Developments Ltd. and Karen Petersen for the rental premises known as #403, 4503 - 52 Avenue, in Yellowknife, Northwest Territories. The tenancy agreement commenced September 1, 2014.

Smoking in the rental premises

Ms. McLeod testified that the extent of Ms. Petersen's smoking was permeating into the corridors and other apartments, and that complaints were received from other tenants. Maintenance persons investigated the complaints and confirmed to Ms. McLeod that cigarette smoke was detected in the hallways of the apartment complex around Ms. Petersen's rental

premises. Efforts were made to adjust the air handling system to accommodate the amount of smoke, but due to other environmental factors the efforts were only marginally successful. The landlord verbally requested that the respondent stop smoking in her premises in consideration of her neighbours. Ms. McLeod expressed concern in her claim that Ms. Petersen's continued smoking in the premises was causing damage to the painted surfaces, carpets, and porous porcelain floor tile and grout. No physical evidence was presented to substantiate the claim for damages, nor could Ms. McLeod specifically identify such damages. A notice to terminate the tenancy effective June 30, 2015, was served on Ms. Petersen June 16, 2015, citing section 54(1)(b) of the *Residential Tenancies Act* (the Act).

Ms. Petersen disputed that she was the sole cause of the smoke in the hallways, arguing that there are others in the building who also smoke and that the amount she smokes should not account for the air quality problems. She suggested the smell in the hallways was more likely from the air freshener rather than her apartment. Ms. Petersen also disputed that there are any damages in the rental premises from smoking as she keeps her premises meticulously clean.

There being no prohibition in the written tenancy agreement to the respondent smoking in her rental premises, and there being no subsequent agreement in writing to not smoke in the rental premises, Ms. Petersen retains the right to smoke in her rental premises if she wishes. The landlord is obligated to maintain the services and facilities in the residential complex, and that includes the air handling system. If the landlord cannot get the system to adequately filter the air, that is not the tenant's responsibility. There was no substantive proof provided at hearing of any damages to the rental premises from smoking, and it was acknowledged by all parties that any such damages would be best addressed at the end of a tenancy or as they required repair.

Section 54(1)(b) of the Act permits a landlord to give written notice of at least 10 days to terminate a tenancy where "the tenant...has caused damage to the rental premises or the residential complex and the tenant has failed to comply with an order of the rental officer made under paragraphs 42(3)(a) to (e)". In this case, damage to the rental premises has not been proven, nor has an order of the rental officer been made under paragraphs 42(3)(a) to (e) of the Act. The applicant's request to terminate the tenancy pursuant to section 54(1)(b) of the Act is denied.

Compromising the safety of others

Ms. McLeod testified to being informed that Ms. Petersen had developed a medical condition requiring her to use medical oxygen. A complaint from another tenant observing Ms. Petersen smoking outside her office building with an oxygen tank, and concerns expressed by a maintenance person who observed an ashtray with cigarette butts on Ms. Petersen's night stand, led Ms. McLeod to believe Ms. Petersen might be smoking in bed and/or smoking in the vicinity of the medical oxygen delivery device. Ms. McLeod made inquiries to fire enforcement officials regarding the hazards of smoking in an oxygen enriched environment and was told it was an extremely hazardous practice which could cause an accelerated, high-energy fire. Concern for the safety of other tenants in the building, an application was made to terminate the tenancy agreement. The previously referenced notice to terminate the tenancy effective June 30, 2015, also cited section 54(1)(f) of the *Residential Tenancies Act* (the Act). Ms. McLeod was unable to provide direct evidence to establish the likelihood that Ms. Petersen was in fact smoking while using the oxygen delivery device, and she was not familiar with what type of oxygen delivery device Ms. Petersen was using.

Ms. Petersen disputed that she was compromising anyone's safety by smoking in the same room as her oxygen delivery device. She identified the device she was using as an Everflo oxygen concentrator, and provided documentation on how the concentrator operates. Ms. Petersen also testified to information she received from Mr. Dan Stockton, owner-operator of North Cair Medical Supplies Inc., who provided the device to Ms. Petersen and instructed her on its use. Mr. Stockton's information as delivered by Ms. Petersen at hearing was identical to that information received directly from Mr. Stockton to this rental officer prior to the initial hearing. It was learned that the oxygen concentrator does not increase the amount of oxygen in the air. It takes the oxygen already in the air and concentrates it for delivery through a nasal tube directly to the patient. The concentrator does not store any oxygen. The only hazard would occur when the concentrator is on and delivering air, and then only at the tips of the nasal tubes where the oxygen is being released; if the oxygen coming from the nasal tubes is exposed to a heat source then the concentrated oxygen will fuel the flame, increasing the amount of heat released. If a person were to be using the oxygen concentrator and had smoked a cigarette at the same time the risk would

be high of burning their face. The risk of fire in a room where there is an oxygen concentrator is cited as being no higher than leaving a stove element on or lighting a candle with a lighter. Ms. Petersen also provided into evidence Mr. Stockton's qualifications, and several articles regarding the oxygen concentrator and oxygen therapy. Ms. Petersen also testified that she understood and acknowledged Mr. Stockton's instructions regarding the safe use of the oxygen concentrator, and that she does not smoke when she is using the oxygen concentrator. With respect to being observed smoking near her oxygen tank at work, Ms. Petersen explained that the oxygen tank in question was completely empty, she was not using it at the time, and she was waiting outside her workplace for the service provider to pick it up from her.

Based on the evidence and testimony provided, I am not satisfied the respondent was either smoking in bed or smoking while using an oxygen delivery device. The landlord's evidence is largely hearsay and does not include any direct observation of the respondent actually smoking in either scenario. I am not satisfied the respondent has compromised the safety of others in the residential complex. The applicant's request to terminate the tenancy pursuant to section 54(1)(f) of the Act is denied.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Applicant's correspondence to respondent dated June 16, 2015
- Exhibit 2: Lease agreement made August 25, 2014
- Exhibit 3: Respondent's written submission dated July 16, 2015
- Exhibit 4: *Yellowknifer* news article from August 26, 2015, entitled, "Seniors' home blaze sends one to hospital"
- Exhibit 5: CBC.ca website article from September 3, 2015, entitled, "Fire at Yellowknife's Mary Murphy seniors' home sends 1 to hospital"
- Exhibit 6: Partial email from Karen Petersen to Adelle Guigon sent on July 24, 2015
- Exhibit 7: Respondent's written transcript of her conversation with Gerda Groothuizen, Deputy Fire Chief, dated August 14, 2015
- Exhibit 8: The "About" webpage from danstockton.com
- Exhibit 9: Advisory Circular from Transport Canada on Carriage of Medical Oxygen Cylinders or Portable Oxygen Concentrators for Passenger Use on Board Aircraft
- Exhibit 10: Two website articles on oxygen concentrators
- Exhibit 11: An article by John R. Goodman BS RRT entitled, "Common Myths Regarding Oxygen Therapy"
- Exhibit 12: Two website articles regarding oxygen therapy myths
- Exhibit 13: New York State Office of Fire Prevention and Control Home Oxygen Fire Safety fact sheet
- Exhibit 14: An article from Essential Health Supplies on how oxygen concentrators work
- Exhibit 15: A website search-generated list of rental office orders naming Polar Developments Ltd. as a party
- Exhibit 16: EverFlo user manual
- Exhibit 17: Suite Type 'B' 1-bedroom floor plan