

IN THE MATTER between **VINCE HALUSHKA**, Applicant, and **MICHAEL LAPIERRE**, 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:

**VINCE HALUSHKA**

Applicant/Landlord

- and -

**MICHAEL LAPIERRE**

Respondent/Tenant

**ORDER AND EVICTION ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant rent arrears in the amount of four thousand eight hundred dollars (\$4800.00).
2. Pursuant to section 45(4)(d) of the *Residential Tenancies Act*, the applicant is authorized to pay for the outstanding water costs owed by the respondent and the respondent is ordered to pay the applicant for the costs paid on his behalf in the amount of seven hundred twenty one dollars and eighty three cents (\$721.83).

3. Pursuant to sections 41(4)(c), 45(4)(e) and 46(2)(c) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as 557 Catalina Drive, Yellowknife, NT shall be terminated on March 9, 2016 and the respondent shall vacate the premises on that date.
4. Pursuant to section 63(4)(a) of the *Residential Tenancies Act*, the respondent shall be evicted from the premises known as 557 Catalina Drive, Yellowknife, NT on March 10, 2016.

DATED at the City of Yellowknife, in the Northwest Territories this 1st day of March, 2016.

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Hal Logsdon  
Rental Officer

IN THE MATTER between **VINCE HALUSHKA**, Applicant, and **MICHAEL LAPIERRE**, 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:

**VINCE HALUSHKA**

Applicant/Landlord

-and-

**MICHAEL LAPIERRE**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:** March 1, 2016

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

**Appearances at Hearing:** Vince Halushka, applicant  
Michael LaPierre, respondent  
Sherri Brown, attending with the respondent

**Date of Decision:** March 1, 2016

**REASONS FOR DECISION**

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay rent, failing to provide insurance coverage, smoking in the rental premises, failing to repair damage to the premises, failing to pay for water during the term, and committing an illegal act on the premises. The applicant sought an order requiring the respondent to pay the alleged rent arrears, compensation for the unpaid water costs which will be paid on his behalf and termination of the tenancy agreement and eviction.

*Rent*

The tenancy agreement between the parties was made in writing and set out a monthly rent of \$1800 plus a monthly charge for propane of \$300. The applicant provided a statement indicating that \$600 remained unpaid from the January, 2016 rent and that the February rent and March rent had not been paid resulting in a balance of rent owing of \$4800

January, 2016 balance	\$600
February rent	2100
March rent	<u>2100</u>
Total	\$4800

The respondent did not dispute the allegation but stated that he had been in the hospital and been fired from his job and could not pay the rent. I find the respondent in breach of his obligation to pay rent and find the rent arrears to be \$4800.

### *Insurance*

The tenancy agreement obligates the tenant to provide proof of tenant contents insurance within one month of occupying the unit. In my opinion the obligation to insure one's own belongings is not a reasonable obligation. The decision as to whether to insure personal effects should be the tenant's decision. This obligation is not enforceable and the tenant's failure to provide proof is not a breach of the tenancy agreement.

### *Smoking*

The written tenancy agreement prohibits smoking in the premises. The applicant testified that he had attended the premises and had personally observed persons smoking. The respondent did not dispute that smoking had occurred on the premises but stated that he had recently been in the hospital. Notwithstanding that the landlord may have observed others smoking in the premises, a tenant is responsible for the actions of others who are permitted entry to the premises by the tenant. I find the respondent in breach of the obligation to not smoke in the rental premises.

### *Damages to the Premises*

The applicant alleged that there were damages to the walls which had been partially repaired, damages to the patio doors and damage to the master bedroom interior door. A photograph of the missing bedroom door was provided in evidence. The respondent did not dispute the allegations and stated that he intended to repair the damaged items.

### *Water*

The tenancy agreement obligates the tenant to pay for water during the term. The applicant provided a statement of the tenant's water account with the City of Yellowknife which indicated a balance owing of \$721.83 including penalties for late payment. The statement indicates that no payments have ever been made. The respondent did not dispute the allegations but noted that the city was sending the statements to his former address and he had been unaware that the account was in arrears. In my opinion, having agreed to pay for water and setting up an account with the supplier, the respondent should have assumed that the account would be in arrears after some eight months had passed. I find the respondent in breach of his obligation to pay for water during the term and find the amount owing to be \$721.83. As the arrears will ultimately be applied to the landlord's property tax account, authorizing the landlord to pay the account and ordering the respondent to reimburse him the expenses paid on his behalf is an appropriate remedy.

### *Illegal Activities*

The applicant stated that the premises had been raided by police and the respondent charged. A copy of the search warrant and the court docket indicating the charges was provided in evidence. The respondent has been charged with numerous offences pursuant to the *Criminal Code* and *Controlled Drugs and Substances Act*. The applicant testified that he had attended the premises on February 8, 2016 and observed persons in the premises using marijuana and cocaine. The respondent did not speak to the allegations except to say that he had not yet been to court or convicted.

The standard of proof in a civil matter such as this is different than in a criminal matter. I must be satisfied on the balance of probabilities that an illegal act was committed in the premises. In my opinion, the landlord's testimony under oath that he witnessed these activities with no evidence to the contrary is sufficient to conclude that there was a breach of the tenant's obligation to not commit an illegal act on the premises.

The respondent alleged that the applicant had failed to give him proper notice to enter the premises in January. He acknowledged that he received a notice in writing but objected to it and the landlord entered anyway. Section 26 of the *Residential Tenancies Act* permits a tenant to object to the date and hours of the landlord's intended entry but requires the tenant to specify alternate hours that are reasonable. There is no evidence that the respondent offered alternate hours and therefore the landlord was entitled to enter during the hours specified on the notice.

In any case, the tenant's allegations should be the subject of an application filed by the tenant. It cannot be used as a defence for the landlord's allegations.

In my opinion, the multiple breaches of the tenancy agreement and the Act warrant termination of the tenancy agreement and the eviction of the tenant. The rent arrears are significant. The full amount of rent has not been paid for three months and no rent whatsoever has been paid for February or March, 2016. There has been no payment for water and there is sufficient evidence to conclude that illegal activities are occurring on the premises. There are damages to the premises.

An order shall issue requiring the respondent to pay the applicant rent arrears of \$4800. The applicant is authorized to pay the water bills on behalf of the respondent and the respondent is ordered to pay the applicant those costs of \$721.83. The tenancy agreement shall be terminated on March 9, 2016 and an eviction order issued to be effective on March 10, 2016.

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Hal Logsdon  
Rental Officer