

IN THE MATTER between **John Westergreen**, Applicant, and **Frank Landry**, 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**, Rental Officer, regarding a rental premises located within the **city of Yellowknife in the Northwest Territories**.

BETWEEN:

JOHN WESTERGREEN

Applicant/Landlord

- and -

FRANK LANDRY

Respondent/Tenant

ORDER and EVICTION ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 42(3)(e) and 45(4)(d) of the *Residential Tenancies Act*, the respondent must pay to the applicant costs of repairs and cleaning to the rental premises in the amount of \$546.03 (five hundred forty-six dollars three cents).
2. Pursuant to section 43(3)(d) of the *Residential Tenancies Act*, the tenancy agreement between the parties will terminate April 30, 2016, and the respondent must vacate the rental premises on or before that date.
3. Pursuant to section 63(4)(a) of the *Residential Tenancies Act*, the respondent will be evicted from the rental premises known as B01, 56 Rycon Drive, in Yellowknife, Northwest Territories, on May 6, 2016.

4. Pursuant to section 63(4)(b) of the *Residential Tenancies Act*, the respondent must compensate the applicant for use and occupation of the rental premises at a rate of \$29.59 for each day the respondent remains in the rental premises after April 30, 2016.

DATED at the City of Yellowknife in the Northwest Territories this 20th day of April 2016.

Adelle Guigon
Rental Officer

IN THE MATTER between **John Westergreen**, Applicant, and **Frank Landry**, 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:

JOHN WESTERGREEN

Applicant/Landlord

-and-

FRANK LANDRY

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	April 19, 2016
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	John Westergreen, applicant
<u>Date of Decision:</u>	April 19, 2016

REASONS FOR DECISION

An application to a rental officer made by John Westergreen as the applicant/landlord against Frank Landry as the respondent/tenant was filed by the Rental Office March 14, 2016. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The applicant personally served a copy of the filed application on the respondent March 15, 2016.

The applicant alleged the respondent had repeatedly and unreasonably disturbed the landlord's and other tenants' enjoyment and possession of the rental premises, had caused damages to the rental premises, and had failed to keep the rental premises in a state of ordinary cleanliness. An order was sought for costs to clean and repair the rental premises, and for termination of the tenancy agreement and eviction.

A hearing was scheduled for April 19, 2016, in Yellowknife, Northwest Territories. Mr. John Westergreen appeared as applicant. Mr. Frank Landry was sent a notice of the hearing by registered mail signed for April 11, 2016. Mr. Landry did not appear at hearing, nor did anyone appear on his behalf. The hearing proceeded in his absence pursuant to section 80(2) of the *Residential Tenancies Act* (the Act).

Tenancy agreement

The applicant provided into evidence a written tenancy agreement signed by both parties December 10, 2015. The tenancy commenced December 10, 2015, with the monthly rent set at \$900. The rental premises consists of a semi-furnished room (B01) within the residence located at 56 Rycon Drive in Yellowknife, and includes shared bathroom, kitchen, and living room spaces with the landlord and other tenants. I am satisfied a valid tenancy agreement is in place between the parties in accordance with the Act.

Cleaning and repairs

The applicant provided into evidence photographs of Room B01 taken before the respondent moved in and within the last month. At commencement of the tenancy the room had no apparent significant defects other than two marks on the wall and a stained window covering. Over the course of the tenancy, the carpet was burned by cigarettes in at least three places and had never been vacuumed, the mattress was stained, the desk chair was stained and had a burn mark, sticky residue was left on the walls, an ashtray with cigarette butts was in the room, bedsheets were stained and torn, food residue was left throughout the room, and furnishings were dirty. No apparent effort has been made by the respondent to keep the room in a state of ordinary cleanliness.

Due to a discovery of the presence of Silver Fish (worm-like insects) in the residence, the landlord initiated a thorough cleaning of the entire residence, requesting all tenants' cooperation and assistance. The respondent was not present when the clean up was scheduled, so the landlord cleaned the respondent's room in his absence. Proper advance written notice had been given to all tenants of the cleaning requirements. The room was found in the condition described above.

The applicant personally hand washed the desk chair, successfully removing the majority of the stains; only the cigarette burn remains. The applicant thoroughly vacuumed the carpet and washed it by hand; the cigarette burns remain but have damaged the carpet to an extent necessitating carpet replacement. The applicant washed the walls, vacuumed and wiped the furniture, cleaned the mattress and bedsheets, and otherwise thoroughly cleaned and removed garbage from the room. Other than the carpet, the remainder of the room was brought to a good state of repair and ordinary cleanliness by the applicant.

I am satisfied the respondent has failed to comply with his obligation to maintain the rental premises in a state of ordinary cleanliness as required under section 45(2) of the Act. I am further satisfied that the respondent has caused damage to the desk chair and carpet by his own wilful or negligent conduct and is liable for the costs to repair said damage as required under section 42(1) of the Act.

The applicant obtained a quote from Fitzgerald Carpeting for the removal and replacement of the existing carpeting in the room for \$820.25. He requested compensation for the full amount, citing the reasons the carpet needed replacement were as a direct result of the respondent's actions. He confirmed that the existing carpeting is approximately eight years old. The useful life of the carpet must be taken into consideration when calculating compensation. The average useful life of residential carpeting is 10 years. As such, the applicant is entitled to compensation for two years' worth of useful life he is losing. However, the damages to the carpet having instigated the early replacement of the carpet justify further compensation to the applicant. In considering the area of the carpet that was damaged, I am satisfied an appropriate amount of compensation to be 10 percent of the total cost to replace the carpet. I find the respondent liable to the applicant for the cost of replacing the room carpet in the amounts of \$82.01 for the damages and \$164.02 for the loss of useful life of the carpet, totalling \$246.03.

The applicant did not make a claim to replace the desk chair, but I recognize the amount of effort that was put into not only cleaning the desk chair but also the entire room and its contents. I am satisfied the applicant is entitled to compensation for the cleaning of the room and find the respondent liable for that compensation to the applicant in the amount of \$300.

Disturbances

The tenancy agreement entered into by the parties includes two sections relevant to the applicant's claim of disturbances:

15. The tenant's family or guests will not cause a nuisance or disturbance to the other tenant(s) of the building.
23. There is no smoking, no drinking of alcohol or use of illegal drugs in the house at any time.

Additionally, there are house rules posted in the kitchen which include the following:

8. No cooking in the kitchen between the hours of 11pm to 7am, which includes the making of coffee (Support tool for quiet hours 11 to 7 for sleepers).

The applicant testified to, and provided some photographic evidence in support of, the respondent's repeated failure throughout the tenancy to respect his housemates' right to a premises free of disturbances and disruptive behaviours. The respondent has failed to comply with his obligation not to smoke or drink within the premises, as evidenced not only by the applicant's testimony but also by photographic evidence showing the presence of the those very items within the respondent's room and hands. The respondent has been intoxicated, causing his behaviour towards other tenants and the landlord to be invasive and disruptive. The respondent has been observed cooking in the kitchen when he's not supposed to be, leaving items on the stove to burn, and consequentially creating an extremely unsafe environment for himself and other persons residing in the premises. Tenants have complained and become frustrated with the respondent's continued presence, expressing concern for their safety.

Repeated warnings to the respondent have gone unheeded, with no apparent effort to improve his behaviour. The applicant has given the respondent two separate notices pursuant to section 54(1) of the Act to terminate the tenancy for May 31, 2016. However, the continued pattern of behaviour and the complaints of the other tenants reinforce the applicant's request to terminate the tenancy earlier.

I am satisfied the respondent has failed to comply with his obligation not to disturb the landlord's and other tenants' enjoyment and possession of the residence. I am further satisfied that the respondent's actions have compromised the safety of the landlord and other tenants of the premises. I am satisfied that immediate termination of the tenancy agreement is justified, as is an eviction order.

Order

An order will issue requiring the respondent to pay for repairs and cleaning in the total amount of \$546.03; terminating his tenancy agreement April 30, 2016; evicting the respondent May 6, 2016; and requiring the respondent to compensate the applicant for use and occupation of the rental premises at a rate of \$29.59 for each day he remains in the rental premises after April 30, 2016.

Adelle Guigon
Rental Officer