

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**, 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 7th day of June 2016.

Adelle Guigon
Rental Officer

IN THE MATTER between **Polar Developments Ltd.**, Applicant, and **Karen Petersen**,
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AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5
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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

Date of the Hearing: May 26, 2016

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: Karen McLeod, representing the applicant
Karen Petersen, respondent

Date of Decision: June 6, 2016

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 March 16, 2016. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The applicant served a copy of the filed application on the respondent by registered mail signed for March 22, 2016.

The applicant alleged the respondent has failed to comply with a no smoking rule and disturbed other tenants' enjoyment of the rental premises and residential complex by smoking in her rental premises. An order was sought to terminate the tenancy agreement.

A hearing was scheduled for May 26, 2016, in Yellowknife, Northwest Territories. Ms. Karen McLeod appeared representing the applicant. Ms. Karen Petersen appeared as respondent.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them for the rental premises identified as #403, 4503 - 52 Avenue, in Yellowknife, Northwest Territories. The tenancy commenced September 1, 2014. I am satisfied a valid tenancy agreement is in place between the parties in accordance with the *Residential Tenancies Act* (the Act).

Issues

The issues to be determined from this application include:

- whether or not a no smoking rule is reasonable and enforceable
- whether or not the tenant smoking in her rental premises has disturbed other tenants' enjoyment of the rental premises, and
- whether or not termination of the tenancy agreement is justified.

No smoking rule

Sub-sections 12(1), (2), and (3) of the Act state that a landlord and tenant may include in a written tenancy agreement additional rights and obligations that are not inconsistent with the Act and the regulations, and that where an additional obligation concerns the tenant's use, occupancy, or maintenance of the rental premises or residential complex the obligation cannot be enforced unless it is reasonable in all circumstances. It goes on to say that a landlord shall not establish, modify, or enforce rules concerning the tenant's use, occupancy, or maintenance of the rental premises or residential complex unless the rules are reasonable in all circumstances, in writing, and made known to the tenant.

Section 45(1) of the Act states that where in a written tenancy agreement a tenant has undertaken additional obligations, the tenant shall comply with the obligations under the tenancy agreement and with the rules of the landlord that are reasonable in all circumstances.

The written tenancy agreement between the parties contains no provisions prohibiting smoking within the rental premises or residential complex. On November 26, 2015, all tenants were notified that "effective February 1, 2016, smoking will no longer be permitted within" the residential complex.

The respondent is a long-time smoker, and entered into the residential tenancy agreement understanding smoking was permitted in the rental premises. She exercised her right to smoke within the rental premises. At no time was the tenancy agreement amended by mutual agreement to include a prohibition from smoking in the rental premises.

To smoke or not is a personal choice. Whether or not smoking is permitted within a rental premises can influence whether or not a person agrees to rent it. Prohibiting smoking after a smoking tenant has entered into an agreement and taken possession of the premises is unreasonable. A written tenancy agreement cannot be altered or amended without the mutual written agreement of both the landlord and tenant. To suggest to the tenants of a residential complex that a building-wide no smoking rule is binding on all tenants is misleading and unfair.

I am satisfied the tenancy agreement between the parties has not been amended by agreement to prohibit smoking in the rental premises, and I find the no smoking rule imposed effective February 1, 2016, unreasonable and unenforceable.

Smoking disturbing other tenants' enjoyment

Section 43(1) of the Act says a tenant shall not disturb the landlord's or other tenants' possession or enjoyment of the rental premises or residential complex.

Since shortly after the respondent moved into the rental premises, the landlord has received multiple complaints regarding smoke migrating into the common hallway and neighbours' apartments. The landlord has investigated these complaints and traced the source to the respondent's rental premises. Efforts were made by the landlord's maintenance personnel to improve the air handling system in the building in order to mitigate the smoke migration. What areas of air leakage were found were sealed where it was deemed safe to do so. Reports of smoke migrating in inconsistent but noticeable amounts continued. Neighbours and the landlord asked that the respondent cut down on how much she was smoking or try to keep it on her balcony. Complaints continued. After the imposition of the no smoking rule in February 2016, neighbours noticed an improvement in the amount of smoke, but not a cessation.

The respondent acknowledged that she had been a heavy smoker and that she had tried unsuccessfully to quit smoking. She has heard and understood her neighbour's complaints regarding the migrating smoke. After the imposition of the no smoking rule, and with her own deteriorating medical condition as a contributing factor, the respondent entered into a smoking cessation program which has successfully reduced the amount she smokes (as of this hearing date) to two cigarettes per day. She complied with the landlord's and other tenants' request to restrict her smoking to her balcony. In March 2016, after still hearing complaints regarding migrating smoke, she took the initiative to have her carpets professionally steam cleaned and rented a commercial air cleaner for three days to remove the residual smoke from her rental premises. This rental officer's inspection of the respondent's rental premises after the hearing observed no noticeable smoke either in the hallway or within the rental premises, although I acknowledge my observations are of a fixed point in time.

This issue raises the question: At what point does a tenant's right to enjoy their rental premises override another tenant's right to smoke? I don't believe this question regarding individual rights is one I have jurisdiction to answer.

In this case, there is no prohibition from smoking in the respondent's rental premises and the landlord has mitigated the problem of migrating smoke as best they can in compliance with their obligation to maintain the rental premises and residential complex. So who is really disturbing the other tenants' enjoyment of the rental premises: the smoking tenant or the landlord? The landlord is alleging the smoking tenant is the cause of the disturbance. While I am certainly satisfied that the other tenants' enjoyment of their rental premises is being disturbed by the smell of cigarette smoke in their apartments and in the common hallway, I cannot make a finding that the respondent did anything more than exercise her right to smoke in her rental premises. The tenant does not have control over the air circulation systems or ventilation throughout the residential complex, nor is she obligated to maintain those systems. Additionally, in this case, the respondent has in fact taken positive steps to mitigate the presence of smoke from within her rental premises. I am not satisfied the respondent has disturbed other tenants' enjoyment of the rental premises or residential complex.

Termination of the tenancy agreement

The applicant has requested termination of the respondent's tenancy agreement due to non-compliance with additional obligations or rules and disturbing other tenants' enjoyment of the rental premises. Having found the respondent is not in breach of either of those obligations, I find no justification to terminate the respondent's tenancy agreement. The application is denied.

Adelle Guigon
Rental Officer