

IN THE MATTER between **CAMERON MURRAY**, Landlord, and **BOB DUNSMORE AND LINDA DUNSMORE**, Tenants;

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, regarding the rental premises at **YELLOWKNIFE, NT**.

BETWEEN:

**CAMERON MURRAY**

Landlord

- and -

**BOB DUNSMORE AND LINDA DUNSMORE**

Tenants

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the tenants shall pay the landlord rent arrears in the amount of two thousand seven hundred seventy dollars (\$2770.00).
2. Pursuant to sections 41(4)(c) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the rental premises known as 183 Curry Drive, Yellowknife, NT shall be terminated on August 31, 2002 and the tenants shall vacate the rental premises on that date, unless the rent arrears are paid in full.
3. Pursuant to section 30(4)(a) of the *Residential Tenancies Act*, the landlord shall make

repairs to the dishwasher in the rental premises or replace same in order to restore it to normal working order.

4. Pursuant to section 33(3)(b) of the *Residential Tenancies Act*, the landlord shall not interfere with the provision of water to the rental premises again.

DATED at the City of Yellowknife, in the Northwest Territories this 16th day of August, 2002.

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Hal Logsdon  
Rental Officer

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BETWEEN:

**CAMERON MURRAY**

Landlord

-and-

**BOB DUNSMORE AND LINDA DUNSMORE**

Tenants

**REASONS FOR DECISION**

<b><u>Date of the Hearing:</u></b>	<b>August 13, 2002</b>
<b><u>Place of the Hearing:</u></b>	<b>Yellowknife, NT</b>
<b><u>Appearances at Hearing:</u></b>	<b>Cameron Murray, Landlord Bob Dunsmore, representing the Tenants</b>
<b><u>Date of Decision:</u></b>	<b>August 16, 2002</b>

**REASONS FOR DECISION**

The Landlord's application was filed on July 10, 2002 and the Tenants' application was filed on August 2, 2002. Both applications were served on the other party and with the agreement of both parties the two matters, which relate to the same tenancy agreement, were heard at a common hearing.

The Landlord alleged that the respondents had breached the tenancy agreement by failing to pay rent and sought an order for the alleged rent arrears and termination of the tenancy agreement between the parties. The Landlord testified that no payments of rent had been received since June 8, 2002 when the tenants made a partial payment of the June rent in the amount of \$500. The Landlord testified that the rent for the premises was \$1100/month. The landlord indicated that he had provided a credit of \$30 to compensate for the loss of satellite TV. He calculated the rent owing to be \$2870. The landlord also testified that he estimated that the rent had been paid late "about 60% of the time" since the tenancy commenced about two years ago.

The Tenants alleged that the Landlord had interfered with the provision of water on several occasions and that the water quality was unacceptable. The tenants also alleged that the landlord had failed to repair certain items in the rental premises. Specifically, the tenants alleged that the carpets were in poor condition, the bathroom had frozen up in the past, the dishwasher did not work and that the glass surround on the fireplace had broken. The tenants testified that the landlord had been notified of these problems but had failed to make the necessary repairs.

The tenants disputed the allegations of the landlord, testifying that only the August, 2002 rent was unpaid due to the fact the landlord had refused to accept their money order for the August rent in the amount of \$1100. The tenants provided a copy of the money order in evidence. The landlord indicated that he had refused to sign a receipt acknowledging the payment as August rent when there were previous amounts owing. The tenants were unable to provide any evidence of rent payments made after June 8, 2002.

The landlord acknowledged that “some games went on” concerning the water during the past month as the parties argued with each other. He also acknowledged that he was aware of the problem with the dishwasher. The landlord indicated that the water had been tested and although it contained some sediment, was safe. He testified that he did not want the tenants to use the fireplace in the premises as he believed it presented a fire risk.

In the matter of rent I find the rent arrears to be \$2770, calculated as follows:

Rent - June	\$1100
Payment - June 08/02	(500)
Rent - July	1100
Rent - August	1100
Credit - T.V.	<u>(30)</u>
<b>Balance Owing</b>	<b>\$2770</b>

Although I would have preferred to see a copy of a landlord’s ledger as evidence, in my opinion the landlord’s testimony of rent and payments is of sufficient detail to establish the balance owing, notwithstanding that the landlord did not calculate the balance correctly. In my opinion, the onus then fell to the tenants to show that additional payments were made since June 8, 2002.

The tenants failed to provide any physical evidence or testimony that established when and if additional payments were made. It is unclear whether the tenants failed to tender the \$1100 money order in August because the landlord refused to acknowledge it as August rent or whether the landlord refused to accept the cheque if he was required to acknowledge it as August rent. In my opinion, it makes little difference as the parties agree that the Landlord is not in receipt of the monies. The landlord has failed to demonstrate through evidence that the rent has been late during most of the tenancy. Without a detailed statement of payments throughout the tenancy, one can only conclude that the rent for June and July was not paid on time. I find that the tenants breached the tenancy agreement by failing to pay the lawful rent to the landlord. I find the rent arrears to be \$2770. In my opinion, there are sufficient grounds to terminate the tenancy agreement unless the arrears are promptly paid. The order shall require the tenants to pay rent arrears of \$2770 and shall terminate the tenancy agreement between the parties unless those arrears are paid by August 31, 2002.

In the matter of the tenant's allegations concerning the provision of water I find no evidence to support the allegation that it is unsafe but note that the landlord has acknowledged tampering with the supply during the course of this dispute. A landlord is prohibited from interfering with the provision of water pursuant to section 33 of the Act. The order will require the landlord to not interfere with the provision of water in the future.

In the matter of the alleged required repairs, I find no evidence of the condition of the carpet or that the landlord was ever advised of necessary repairs or replacement of the carpet. There is no

evidence to suggest that the bathroom facilities are not currently in working order or that the previous problem was the result of lack of repair. The landlord acknowledged that he had been notified of the dishwasher malfunction and as there is no evidence to suggest it was caused by anything other than normal wear and tear, it is the landlord's obligation to repair. The order shall require the landlord to make necessary repairs to the dishwasher. It is unclear whether the landlord instructed the tenants to refrain from using the fireplace at the commencement of the tenancy agreement. In any case, as the fireplace is not the primary source of heat, I believe it is reasonable for the landlord to instruct the tenants to cease using it in the interest of fire safety. Fireplaces, particularly in mobile homes may present an increased fire risk even if properly installed.

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Hal Logsdon  
Rental Officer