

IN THE MATTER between **EDWARD MARTIN LESSARD**, Applicant, and
PATRICIA SHERMET AND HARRY SHERMET, Respondents;

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 near **YELLOWKNIFE, NT.**

BETWEEN:

EDWARD MARTIN LESSARD

Applicant/Landlord

- and -

PATRICIA SHERMET AND HARRY SHERMET

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 18th day of
September, 2002.

Hal Logsdon
Rental Officer

IN THE MATTER between **EDWARD MARTIN LESSARD**, Applicant, and
PATRICIA SHERMET AND HARRY SHERMET, Respondents.

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:

EDWARD MARTIN LESSARD

Applicant/Landlord

-and-

PATRICIA SHERMET AND HARRY SHERMET

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: September 16, 2002

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Edward Lessard, applicant
Karyn Dick, witness for the applicant
William Rouse, representing the respondent
Patricia Shermet, respondent

Date of Decision: September 18, 2002

REASONS FOR DECISION

The applicant permitted the respondents to take occupancy of a house and property located on the Mackenzie highway, near the City of Yellowknife. The applicant claimed that the respondents were tenants and sought the termination of the tenancy agreement on the grounds the respondents had damaged the property and failed to maintain it in a reasonably clean state. The respondents claimed that they were a party to an offer to purchase and could not be considered tenants pursuant to the *Residential Tenancies Act*.

The question of jurisdiction must be addressed first. A rental officer may only act within the application of the *Residential Tenancies Act*. The Act applies only to rental premises and to tenancy agreements. Section 1 of the *Residential Tenancies Act* sets out the definitions for rental premises and tenancy agreement as follows:

A tenancy agreement means an agreement between a landlord and a tenant for the right to occupy rental premises, whether written, oral or implied, including renewals of such an agreement

Rental premises means a living accommodation or land for a mobile home used or intended for use as rental premises and includes a room in a boarding house or lodging house.

In my opinion the written agreement presented in evidence by the applicant can not be considered a valid written agreement. It was not signed by the respondents. The respondent testified that it was presented to her on or about June 5, 2001 but they refused to sign it, preferring to enter into an agreement to purchase. She testified that shortly thereafter, her husband met with the applicant who agreed to sell the property and accepted a cheque for \$5000 as a down payment. She

testified that they were permitted to take occupancy of the property on June 15, 2001 and an additional payment was made to the applicant on July 30, 2001 in the amount of \$10,000. The applicant acknowledged that the respondents always intended to purchase and that the payments of \$15,000 were “supposed to be for buying”. He indicated that after discovering the conditions attached by Indian and Northern Affairs Canada to assign the lease, he considered the payments to be prepaid rent and did not contact the respondents or take any further action until the prepaid amounts were no longer sufficient to meet what he considered the respondents’ obligation to pay rent (\$1000/month).

There does not appear to be an oral tenancy agreement between the parties. Neither do I see any evidence to suggest that an implied tenancy agreement was made between the parties.

In my opinion, the agreement between the parties was an oral agreement for sale which has not been completed. Arising from the permission to occupy the property until the completion of the sale is a tenancy at will. In my opinion, it is not a tenancy agreement in the meaning of the *Residential Tenancies Act* because it has no specific term nor does the tenant have any specific right to remain on the premises. Similarly the premises can not be considered rental premises as the parties did not intend them to be rental premises.

In my opinion, a rental officer has no authority to adjudicate this matter and the application is accordingly dismissed.

Hal Logsdon
Rental Officer