

IN THE MATTER between **GWICH'IN PROPERTIES LIMITED**, Applicant, and **FRANK USSELMAN**, 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, regarding the rental premises at **INUVIK, NT**.

BETWEEN:

GWICH'IN PROPERTIES LIMITED

Applicant/Landlord

- and -

FRANK USSELMAN

Respondent/Tenant

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 three thousand one hundred fifty dollars (\$3150.00).
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 Apartment #24, Nihjaa Apartments, 20 Tununuk Place, Inuvik, NT shall be terminated on December 31, 2002 and the respondent shall vacate the rental premises on that date, unless the respondent

pays the applicant four thousand fifty dollars (\$4050.00) on or before that date.

DATED at the City of Yellowknife, in the Northwest Territories this 4th day of
December, 2002.

Hal Logsdon
Rental Officer

IN THE MATTER between **GWICH'IN PROPERTIES LIMITED**, Applicant, and **FRANK USSELMAN**, 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:

GWICH'IN PROPERTIES LIMITED

Applicant/Landlord

-and-

FRANK USSELMAN

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: December 3, 2002

Place of the Hearing: Inuvik, NT, via video conference

Appearances at Hearing: Colum McCready, representing the applicant
Frank Usselman, respondent

Date of Decision: December 4, 2002

REASONS FOR DECISION

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay rent. The applicant also alleged that the respondent had been smoking in the premises which was prohibited and had, through his careless smoking while intoxicated, endangered other tenants in the residential complex. The applicant served the respondent with a notice of termination on November 4, 2002 pursuant to section 54 of the *Residential Tenancies Act* for failure to pay rent. The notice did not name any other reasons for termination. The applicant sought an order requiring the respondent to pay the alleged rent arrears and termination of the tenancy agreement between the parties.

The applicant testified that the caretaker of the apartment had entered the rental premises on November 21 and found the tenant drunk and unconscious and had noticed many burns on the carpet and furniture. The applicant testified that he had personally been in the apartment and viewed it's condition.

The respondent did not dispute the allegations pertaining to rent but indicated that he would be able to pay the rent when he got a job in the new year. He indicated that he had seen a "notice" about smoking in the building.

In my opinion there is insufficient evidence to support the allegations that the tenancy agreement was breached due to the tenant allegedly smoking in the apartment. I have no copy of the

tenancy agreement and it is unclear whether the prohibition on smoking is an obligation in a written agreement or a rule established by the landlord. In either case, it would have to be deemed reasonable in order to be enforceable and given my uncertainty concerning the origin of the prohibition, I can not determine its reasonableness.

In my opinion, there is insufficient evidence to support the allegations that the respondent endangered other tenants. I note that the testimony of the applicant concerning the caretaker's observations is hearsay and I do not give it any weight in my decision. The applicant's testimony concerning his direct knowledge does not, in my opinion, provide convincing evidence that the respondent has endangered other tenants. Burns to the carpet and furniture may indicate negligence but not necessarily endangerment.

In the matter of rent there appears to be no dispute. I note that the applicant's statement of rent does not include the rent for December. As I have not seen a copy of the tenancy agreement, I am not able to determine when during the month the rent becomes due. However, it is safe to assume that the December rent will be due on or before December 31, 2002.

I find the respondent has breached the tenancy agreement by failing to pay the lawful rent to the landlord. I find the rent arrears to be \$3150. In my opinion, there are sufficient grounds to terminate the tenancy agreement unless the rent arrears are promptly paid. An order shall be issued requiring the respondent to pay the applicant rent arrears in the amount of \$3150. and terminating the tenancy agreement on December 31, 2002 unless applicant pays the respondent

\$4050, which represents the full amount of the rent arrears plus rent for December, 2002.

Hal Logsdon
Rental Officer