File #10-7657

IN THE MATTER between **TED STUDER**, Applicant, and **MISHELENE TEE AND CORY LUNDRIGEN**, 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 at **YELLOWKNIFE, NT.**

BETWEEN:

TED STUDER

Applicant/Landlord

- and -

MISHELENE TEE AND CORY LUNDRIGEN

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 16th day of December, 2003.

Hal Logsdon
Rental Officer

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AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

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BETWEEN:

TED STUDER

Applicant/Landlord

-and-

MISHELENE TEE AND CORY LUNDRIGEN

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing:	**December 9, 2003**
Place of the Hearing:	**Yellowknife, NT**
Appearances at Hearing:	**Ted Studer, applicant** **Mishelene Tee, respondent** **Cory Lundrigan, respondent**
Date of Decision:	**December 16, 2003**

REASONS FOR DECISION

The applicant alleged that the respondents failed to take possession of rental premises in accordance with a tenancy agreement, causing the applicant to lose rent revenue which would have been payable if the tenancy agreement proceeded. The applicant sought compensation for one months rent in the amount of $1495.

The applicant stated that there was an oral tenancy agreement formed with the respondents which entitled them to take possession of the rental premises on October 1, 2003. He stated that the premises were ready for occupancy on that date. The applicant stated that several previous occupancy dates had been set but postponed at the request of the respondents. The applicant testified that the respondents notified him on October 1, 2003 that they did not intend to move into the premises. The applicant stated that he immediately advertised the premises and showed it to prospective tenants but was unable to rent it until November 1, 2003. He sought compensation for November rent in the amount of $1495.

The respondents stated that they had wanted to rent the premises in September but claimed the renovations to the premises were not complete and the occupancy date was amended by the applicant. They stated that they had looked in the window of the premises on or about October 1, 2003 and found the renovations still unfinished. The applicants also stated that the applicant wanted to enter into a written term agreement and they were apprehensive about committing to a term, preferring a month-to-month arrangement.

No rent was paid by the respondents, no written agreement was executed by the parties and the respondents did not take possession of the premises.

The respondents completed a rental application supplied by the respondent on August 29, 2003 and provided the applicant with a deposit of $1500. The application requested a move in date of September 20, 2003 and provided employment, vehicle and personal information. The application did not contain any particulars of the tenancy agreement such as rent or term. When the respondents decided not to take possession, the applicant retained the deposit. The applicant was ordered to return the deposit (Mishelene Tee and Ted Studer, File #10-7613, November 18, 2003).

The relationship between a landlord and tenant created under a residential tenancy agreement is one of contract only (section 2(1), *Residential Tenancies Act*). Tenancy agreements may be written, oral or implied (s. 9(1)).

There was no written tenancy agreement between the parties, although the applicant indicated he had prepared one to present to the respondents. In my opinion, the rental application can not be considered an offer by the respondents as it lacks several essential terms such as term and rent. There does not appear to be any written acceptance of the application by the landlord.

There is certainly no implied agreement as no possession, payment of rent or other actions, typical of a landlord or tenant have taken place.

The applicant claims there was an oral agreement. Most oral agreements are obviously valid contracts as the landlord has accepted rent and the tenant has taken possession. In the absence of these obvious indicators of an agreement, one must look for an offer to rent and a positive acceptance.

As previously stated, I do not believe the application can be considered an offer to rent made by the respondents as it contains few elements of the agreement, such as term or rent. It is, in my opinion, information provided to enable the landlord to conduct credit checks and the general suitability of the prospective tenants.

There are several indicators that the parties had not determined a form of contract. Although it is not clear which party initiated the request, the commencement date was changed on several occasions. The respondents expressed apprehension about signing the written agreement as they felt it was for a term.

The landlord indicated that he had prepared a written tenancy agreement. If there was a preceding oral agreement or an offer to enter into a written agreement, there should be evidence of a positive acceptance of the basic terms of the agreement by the respondents. In my opinion, the evidence does not support such an acceptance.

I find there was no tenancy agreement formed between the parties and the application for damages for lost rent is accordingly dismissed.

Hal Logsdon
Rental Officer