

IN THE MATTER between **TUKTOYAKTUK HOUSING ASSOCIATION**,
Applicant, and **TREVOR BROOKS AND MARLENE CHICKSI**, 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 **TUKTOYAKTUK, NT**.

BETWEEN:

TUKTOYAKTUK HOUSING ASSOCIATION

Applicant/Landlord

- and -

TREVOR BROOKS AND MARLENE CHICKSI

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 10th day of
November, 2005.

Hal Logsdon
Rental Officer

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-and-

TREVOR BROOKS AND MARLENE CHICKSI

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	November 10, 2005
<u>Place of the Hearing:</u>	Tuktoyaktuk, NT via teleconference
<u>Appearances at Hearing:</u>	Lucille Pokiak, representing the applicant Trevor Brooks, respondent Marlene Chicksi, respondent
<u>Date of Decision:</u>	November 10, 2005

REASONS FOR DECISION

The applicant alleged that the respondents were in breach of section 46 of the *Residential Tenancies Act* and in breach of their obligation to report any changes in the household income to the landlord. The premises are subsidized public housing and the tenancy agreement requires the reporting of household income so that rent can be based on the tenant's ability to pay. The applicant sought an order requiring the respondents to comply with his obligations under the Act and the tenancy agreement and to not breach those obligations in the future.

Section 46 of the *Residential Tenancies Act* prohibits criminal activity in the rental premises.

- 46.(1) A tenant shall not carry on or permit to be carried on any criminal act or do or permit the doing of any criminal act in the rental premises or in the residential complex.**
- (2) Where, on the application of a landlord, a rental officer determines that a tenant has breached the obligation imposed by subsection (1) and that the landlord or another tenant of the residential complex has been adversely affected, or is likely to be adversely affected by a continuation or repetition of the breach, the rental officer may make an order**
- (a) requiring the tenant to comply with the tenant's obligation;**
 - (b) requiring the tenant to not breach the tenant's obligation again; or**
 - (c) terminating the tenancy on the date specified in the order and ordering the tenant to vacate the rental premises on that date.**

The applicant alleged that Mr. Brooks had been charged pursuant to section 84 of the *Liquor Act* (bootlegging) and had pleaded guilty. The applicant alleged that the respondents had failed to

declare any of the income from his liquor sales as required pursuant to the tenancy agreement.

Mr. Brooks acknowledged that he had been charged and had pleaded guilty to an offence under section 84 of the *Liquor Act*. He stated that he had brought a quantity of liquor into Tuktoyaktuk by air and had been met at the airport by the police who confiscated the liquor at the airport and charged him with the offense. He testified that he had not sold any of the liquor.

The applicant stated that the rental premises consisted of a single family dwelling. She stated that no adjoining tenants of the Housing Association had complained about the illegal sale of alcohol by the respondents or any activity at the premises related to the sale of alcohol.

I do not find any breach of section 46 due to the following facts:

1. Section 46 relates to criminal acts. A criminal act is normally considered to be an offence under the Criminal Code, not an offence under a Territorial statute. Although the marginal note for section 46 is *illegal activities*, which could include other offences, the *Interpretation Act* excludes such notes from the enactment and limits them to reference aids only. In order to find a breach, one would have to consider an offence pursuant to a Territorial statute to be a *criminal act*. I am not inclined to give such a broad interpretation.
2. The evidence suggests that the liquor was confiscated before Mr. Brooks had an opportunity to sell it or bring it to the rental premises if, in fact, he intended to

sell it from that location. To find a breach of section 46, the offence must take place on the premises.

3. There is no evidence that the landlord or any other tenants in the residential complex were adversely affected. There are no other tenants in the residential complex and no tenants in the immediate vicinity have complained about activity related to illegal liquor sales. To apply a remedy under section 46, there must be a determination that the landlord or other tenants in the residential complex were adversely affected or are likely to be adversely affected by a continuation of the breach.

As well, I can find no breach of the tenant's obligation to report changes in income. The evidence suggests that the liquor was confiscated before the respondent was able to sell it. I see no other evidence of unreported income from any source.

The application is dismissed.

Hal Logsdon
Rental Officer