**File #10-8810**

IN THE MATTER between **KIM MACNEARNEY AND CRAIG MACNEARNEY**, Applicants, and **THOMAS WONDERLIN AND MARY BROUSSARD**, 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:

**KIM MACNEARNEY AND CRAIG MACNEARNEY**

Applicants/Tenants

- and -

**THOMAS WONDERLIN AND MARY BROUSSARD**

Respondents/Landlords

**ORDER**

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 11th day of January, 2006.

Hal Logsdon
Rental Officer

File #**10-8810**

IN THE MATTER between **KIM MACNEARNEY AND CRAIG MACNEARNEY**, Applicants, and **THOMAS WONDERLIN AND MARY BROUSSARD**, 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:

**KIM MACNEARNEY AND CRAIG MACNEARNEY**

Applicants/Tenants

-and-

**THOMAS WONDERLIN AND MARY BROUSSARD**

Respondent/Landlords

## REASONS FOR DECISION

| | |
|---|---|
| **Date of the Hearing:** | **December 16, 2005** |
| **Place of the Hearing:** | **Yellowknife, NT** |
| **Appearances at Hearing:** | **Kim MacNearney, applicant**<br>**Craig MacNearney, applicant** |
| **Date of Decision:** | **January 11, 2006** |

**REASONS FOR DECISION**

The respondents were served with Notices of Attendance by Registered mail which were confirmed delivered. On December 15, 2005, the respondents filed a statement of defence and notified the rental officer that they would not be able to attend the hearing due to a planned holiday. The respondents did not wish to have the matter adjourned and requested that the hearing proceed in their absence. The statement of defence was provided to the applicants.

The applicants alleged that the respondents had failed to maintain the rental premises in a good state of repair and sought compensation for expenses directly related to the alleged breach. The rental premises consist of a houseboat which is moored in Yellowknife Bay.

The applicants allege that they were exposed to levels of carbon monoxide in the rental premises which were potentially dangerous to their health. The applicants vacated the premises and stayed in a hotel for eight days incurring costs of $995.10. The applicants sought an order requiring the respondents to compensate them for those costs.

The respondents raised the issue of the rental officer's jurisdiction in this matter. Prior to considering any of the evidence, I shall address the jurisdictional issue. The respondents argue that the rental unit is a vessel and regulated by various marine rules applicable to boats. While the houseboat in question may or may not be a vessel according to federal legislation, it nevertheless meets the definition of rental premises contained in the *Residential Tenancies Act*.

> **"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.**

As long as provisions of the *Residential Tenancies Act* do not conflict with any applicable federal statute relating to navigation or shipping, in my opinion, they are effective. In the case of any conflict, the federal statute would be paramount.

The jurisdictional issue has arisen in the past with regard to taxation and zoning by the municipality. It has been generally accepted that since the lake bed of Yellowknife Bay is federally held land, the municipality is unable to impose zoning, building by-laws or taxes related to that land. However, the *Residential Tenancies Act* does not deal with land but rather tenancy agreements which are contracts and do not create any interest in land. The *Residential Tenancies Act* deals solely with the contractual relationship between landlord and tenant and does not directly deal with the use of the land. In my opinion, a rental officer is within their jurisdiction to consider a tenancy agreement for a houseboat used for residential purposes.

The parties entered into a verbal tenancy agreement on September 1, 2005. In October, the landlord installed a propane range. The applicants state that they discovered mould and mildew in the premises and that they suffered some allergic reactions. Both tenants stated that they continued to suffer from headaches, shortness of breath and fatigue. On November 23, 2005, the applicants suspected that their symptoms may be the result of carbon monoxide (CO) and went to the hospital where Craig was tested. His carbon monoxide level (COHb) was measured at 2%. The applicants arranged to have the premises tested by the Yellowknife Fire Department and

spent the night in a hotel.

The results of the CO monitoring of the premises indicated that after turning on the oven, the CO levels in the premises gradually rose, reaching 49 parts per million (ppm) after 3.25 hours. At that time, the oven was turned off and the concentration of CO dropped gradually, stabilizing at 4 ppm about 12.25 hours later. The respondents continued to stay in the hotel on November 24th.

The parties agree that the respondents were first notified of the CO concerns on November 25, 2005. The respondents were concerned about the vacant premises and agreed to terminate the tenancy agreement by mutual agreement if the applicants wished to do so. The parties mutually agreed to terminate the agreement effective November 30, 2005. The respondents continued to stay in a hotel until that date returning to the premises only to clean and remove their possessions.

The NWT Gas Inspector was consulted regarding code provisions for the installation of propane ranges. He advised that the use of propane ranges as a source of heat was prohibited and that they were to be used for cooking only. He also advised that there were no code requirements to provide fresh air to these appliances and that if the range had been installed within his jurisdiction (which did not include houseboats) he would have found it in compliance with all requirements. He stated that due to the small size of the premises he would have recommended some form of ventilation but that this was not a statutory requirement.

The applicants contacted the Environmental Health Officer who inspected the premises and ordered that a 4 inch combustion air intake be installed to bring in fresh air for the range and a combustion air intake for the wood stove. The Environmental Health Officer indicated that the order was made pursuant to section 3, 4 and 9 of the *General Sanitation Regulations* (*Public Health Act*).

> **3. No person shall create, establish or maintain any insanitary condition.**
>
> **4.(1) Without limiting the generality of section 3, no person shall create, establish or maintain a condition likely to become injurious to public health in or on any**
> **(a) premises or part of any premises;**
> **(b) highway, lane path, pool, ditch, gutter, water course, well, sink, water or earth closet, toilet, privy, urinal, septic tank, cesspool, drain, dung pit or soakage pit;**
> **(c) stable or other building where birds or animals are kept;**
> **(d) building or land used for any work manufactory, trade or business;**
> **(e) school house, theatre, factory, church, shop or other public building.**
>
> **9.(1) Where in the opinion of a Health Officer, a building or part of a building is in such an insanitary condition as to make it dangerous to the health of the occupants, he or she may give the owner reasonable notice to make such alterations or to take such action as may be necessary to remedy the condition, and where the owner refuses or neglects to do so, the Health Officer may declare the building to be unfit for human habitation and in that event he or she shall placard it accordingly, and it shall be vacated within 24 hours of the placarding.**

The Environmental Health officer reported that the ordered alterations have been completed by the landlord.

The Yellowknife Fire Department was consulted regarding the interpretation of the data from the CO monitor. The department provided graphical representations of the data on CO concentration,

long term exposure concentration and short term exposure concentration. They also advised the rental officer of the workplace standards established for CO exposure and advised that there were no similar standards for residences.

Section 30 of the *Residential Tenancies Act* obligates a landlord to maintain the rental premises.

**30.(1) A landlord shall**

**(a) provide and maintain the rental premises, the residential complex and all services and facilities provided by the landlord, whether or not included in a written tenancy agreement, in a good state of repair and fit for habitation during the tenancy; and**

**(b) ensure that the rental premises, the residential complex and all services and facilities provided by the landlord comply with all health, safety and maintenance and occupancy standards required by law.**

**(2) Any substantial reduction in the provision of services and facilities shall be deemed to be a breach of subsection (1).**

**(3) Subsection (1) applies even where a tenant had knowledge of any state of non-repair before the tenant entered into the tenancy agreement.**

**(4) Where, on the application of a tenant, a rental officer determines that the landlord has breached an obligation imposed by this section, the rental officer may make an order**

**(a) requiring the landlord to comply with the landlord's obligation;**

**(b) requiring the landlord to not breach the landlord's obligation again;**

**(c) authorizing any repair or other action to be taken by the tenant to remedy the effects of the landlord's breach and requiring the landlord to pay any reasonable expenses associated with the repair or action;**

**(d) requiring the landlord to compensate the tenant for loss that has been or will be suffered as a direct result of the breach; or**

**(e) terminating the tenancy on a date specified in the order and ordering the tenant to vacate the rental premises on that date.**

**(5) A tenant shall give reasonable notice to the landlord of any substantial breach of the obligation imposed by subsection (1) that comes to the attention of the tenant.**

**(6) A landlord shall, within 10 days, remedy any breach referred to in subsection (5).**

The applicants stated that they often used the range for long periods of time. They stated that they prepared all of their own food and baked a lot of bread, often keeping the oven on for four hours or more. They also stated that they had to use all four burners at times to make water.

In my opinion, it is not unreasonable to assume that a household will usually operate an oven for periods of 2 hours or less at a time. There are few foods, other than the Christmas turkey which require longer periods of cooking. I assume it is because of this norm that propane ranges do not require venting and why their use as heating appliances is prohibited. When used for normal periods of time, the concentrations of CO released are not considered harmful. The data from the CO monitoring done by the applicants supports this. After two hours of operation the concentration of CO in the premises measured only about 17 ppm.

While the CO concentrations measured during the monitoring were below both the long term and short term exposure limits for workplaces, it is certainly possible that longer periods of range operation could result in CO concentrations which would cause adverse reactions. However, I must consider if such levels were the result of the landlords' failure to maintain or abide by certain statutory requirements or because of the extraordinary use of the range by the tenants. I must also consider how the landlords could have become aware of this situation before they were advised of the problem. The landlords installed the range in accordance with applicable codes and good practice. When they were made aware of the problem, by the tenants and the Environmental Health Officer, they took action to remedy the problem The Act permits them 10 days to effect a remedy but by that time, the tenancy agreement had been terminated.

Another factor considered is the duty to mitigate loss. Section 5(5)(1) of the *Residential Tenancies Act* sets out this principle.

> **5. (1) Where a landlord or tenant is liable to the other for damages as a result of a breach of a tenancy agreement or this Act, the landlord or tenant entitled to claim damages shall mitigate his or her damages.**

It was clear from the CO monitoring that the source of the CO was the range and that when the range was not in use, or used for short periods of time, the CO levels were non-existent or very low. Knowing that fact, why did the tenants continue to stay in a hotel for eight days when they could have continued living in the premises and simply reduced their use of the range. In my opinion, the applicants failed to mitigate their damages and are not entitled to simply stay in a hotel at the respondents' expense until their new premises were ready for occupancy at the beginning of December.

For these reasons, I do not think compensation is reasonable and shall dismiss the application.

Hal Logsdon
Rental Officer