File #10-9242

IN THE MATTER between **CHARLENE LLOYD AND ERIC BUNGAY**, Applicants, and **THE COMMISSIONER OF THE NORTHWEST TERRITORIES**, 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 **YELLOWKNIFE, NT.**

BETWEEN:

CHARLENE LLOYD AND ERIC BUNGAY

Applicants/Tenants

- and -

THE COMMISSIONER OF THE NORTHWEST TERRITORIES

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 4th day of December, 2006.

Hal Logsdon
Rental Officer

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Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing:	**November 21, 2006**
Place of the Hearing:	**Yellowknife, NT**
Appearances at Hearing:	**William Rouse, representing the applicants** **Darren Proctor, representing the respondent**
Date of Decision:	**December 2, 2006**

REASONS FOR DECISION

This application was made pursuant to section 30 of the *Residential Tenancies Act*. The applicants contend that the land they lease from the respondent, on which their mobile home is situated, is subject to the provisions of the *Residential Tenancies Act* and that the respondent, as landlord, is obligated to maintain the lot in accordance with section 30.

Section 30(1) of the Act obligates a landlord to maintain the rental premises in a good state of repair and in compliance with applicable statutory standards.

> **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.**

Counsel for the respondent contends that the *Residential Tenancies Act* does not apply as the land can not be considered to be “rental premises” and the dwelling can not be considered to be a “mobile home”. The applicability of the Act and the corresponding jurisdiction of the rental officer should therefore be determined prior to examining any other facts pertaining to the matter.

Section 6(1) sets out the application of the Act.

> **6.(1) Subject to this section, this Act applies only to rental premises and to tenancy agreements, notwithstanding any other Act or any agreement or waiver to the contrary.**

Rental premises is defined as follows:

> **"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.**

Tenancy agreement is defined as follows:

> **"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.**

Mobile home is defined as follows:

> **"mobile home" means a dwelling that is designed to be made mobile, and constructed or manufactured to provide a permanent residence for one or more persons, but does not include a travel trailer or tent trailer or trailer otherwise designed**.

There is no question in my mind that the dwelling placed on the lot in question was originally designed to be made mobile. It has, however, been modified somewhat. Photographs of the dwelling indicate that an attached addition and deck have been added to the original structure.

Counsel for the respondent cited *Cook Estate v. Doyle, Squires, Webber Sturge, Brown and Conners*, where the Newfoundland District Court found that dwellings which were originally mobile homes had been modified to such an extent that they no longer met the definition of a mobile home and as such did not fall under the jurisdiction of the residential tenancies statute. Although, the particular modifications were not specifically outlined in that judgement, I gather

they were quite extensive and perhaps structural in nature as the original mobile homes were described as being converted to bungalows. In my opinion, the addition of another room, porch or similar structure to an existing mobile home does not necessarily render it immobile. My interpretation of the photographic evidence leaves me with the impression that the applicants' dwelling could still be easily moved. In my opinion, the applicants' dwelling is a mobile home as defined in the Act.

The land in question, namely Lot 8, in Block 610 in the City of Yellowknife, is one of nine surveyed lots in the area commonly known as the Rycon Camp or Rycon Trailer Court. A number of the lots have mobile homes situated on them. An adjoining area, known as the Con Camp or Con Trailer Court is similar. Both of these areas were developed when these areas were part of the Con Mine property.

When the Con mine closed, the land reverted to the Commissioner who leased the parcel in question to the applicants for a term of 30 years. The lease has been amended twice; once to reflect a resurvey and again to convert the lease to an equity lease.

The lease obligates the applicants to use the land only for residential purposes but does not limit the type of dwelling to be placed on the land to a mobile home. The zoning for the lot is R5 which permits manufactured homes (mobile homes) as well as non-manufactured single detached dwellings.

The definition of “rental premises” contained in the *Residential Tenancies Act* is somewhat circular as it uses the term to define itself. If “land for a mobile home” means a parcel of land on which a mobile home is situated, then any leased lot on which the lessee puts a mobile home, becomes rental premises. Using this interpretation, the applicability of the Act is determined by what kind of dwelling is placed on the land. This could change over time. How would a parcel of leased land be considered if both a single detached dwelling and a mobile home were situated on the same lot? This interpretation also makes the definition of mobile home park confusing. If there were 20 leased lots in a community and two of them, on opposite ends town, had mobile homes situated on them by the lessees, what would constitute the mobile home park?

If “land for a mobile home” means land for the exclusive use of a mobile home, then only land which is zoned exclusively for mobile homes and/or where leases restrict dwellings situated on the land to mobile homes, are rental premises. Using this interpretation, the applicability of the Act is determined by the intended use of the land dictated by the zoning and the lease conditions. This could change if a mobile home park is converted to a condominium or to a leasehold tenure subdivision with mixed uses.

Section 10 of the *Interpretation Act* states that;

> **Every enactment shall be construed as being remedial and shall be given such large and liberal construction and interpretation as best ensures the attainment of its objects.**

The *Residential Tenancies Act* was intended to define by statute, specific landlord/tenant relationships setting them apart from the laws governing estates in land and applying the

common law principles of contract. Clearly, lands for a mobile homes were intended to be captured by the Act. However, in my opinion, the Act was not intended to capture all leased land on which the lessee placed a mobile home. Instead it was intended to capture what are normally considered as mobile home parks or land specifically intended only for the use of mobile homes.

The land in question may have been intended exclusively for a mobile homes when it was originally developed by the Con Mine. In fact, Miramar Con Mine made numerous applications pursuant to the *Residential Tenancies Act* regarding lands in this area. The jurisdiction of the rental officer was not an issue at any of those hearings. When the land came under the control of the Commissioner, however, it was leased to the applicants without restriction as to the type of dwelling to be placed on the land. It does not appear to be the intention of the Commissioner to maintain a mobile home park, despite the fact that correspondence to the applicants continues to refer to the area as the Rycon Trailer Court.

The Northland Mobile Home Park in Yellowknife it situated on lands which are also zoned R5, which allows single detached dwellings as well as mobile homes. However the tenancy agreements between the landlord and tenant specifically obligate the tenant to place only a mobile home on the land.

The tenancy agreement used by the Hay River Mobile Home Park in Hay River, NT does not specifically restrict the tenant to a mobile home but the municipal zoning does. Therefore only mobile homes may be placed on lands within the park.

To interpret the definition of “rental premises” so broadly as to include any leased land used for a mobile home would, in my opinion, extend the application of the *Residential Tenancies Act* to landlord /tenant relationships which were not intended.

In my opinion, the Commissioner did not intend on restricting the dwellings placed on the land leased to the applicants to a mobile home nor did the Commissioner intend to maintain the area as a mobile home park.

For the reasons I have outlined, the land can not be considered to be rental premises. The agreement between the parties can not be considered a tenancy agreement. The *Residential Tenancies Act* does not apply and the application must therefore be dismissed.

Hal Logsdon
Rental Officer