

IN THE MATTER between **GISELE FORGET AND MATTHEW GROGONO**,
Landlords, and **PHILIP MCNEIL**, Tenant;

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:

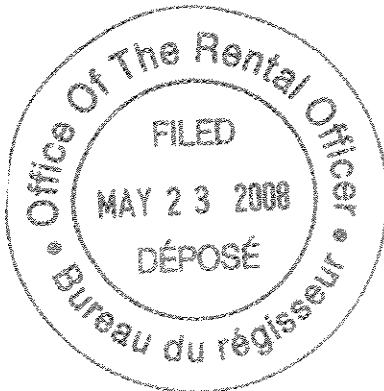
GISELE FORGET AND MATTHEW GROGONO

Landlords

- and -

PHILIP MCNEIL

Tenant




ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the tenant shall pay the landlords rent arrears in the amount of nine hundred dollars (\$900.00).
2. Pursuant to sections 41(4)(c) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as the Enterprize houseboat adjacent to south east side of Joliffe Island, Yellowknife Bay, Yellowknife, NT shall be terminated on June 2, 2008 and the tenant shall vacate the premises unless the rent arrears and the rent for June, 2008 in the total amount of one thousand two hundred dollars (\$1200.00) are paid in full.

3. Pursuant to section 41(4)(b) of the *Residential Tenancies Act*, the tenant shall pay future rent on time.

DATED at the City of Yellowknife, in the Northwest Territories this 23rd day of May, 2008.



Hal Logsdon
Rental Officer

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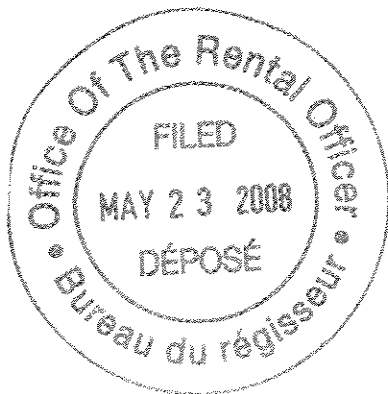
GISELE FORGET AND MATTHEW GROGONO

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Tenant



REASONS FOR DECISION

<u>Date of the Hearing:</u>	May 20, 2008
<u>Place of the Hearing:</u>	Yellowknife, NT
<u>Appearances at Hearing:</u>	Philip McNeil, tenant Matthew Grogono, landlord Gisele Forget, landlord
<u>Date of Decision:</u>	May 23, 2008

REASONS FOR DECISION

Both parties filed applications on April 21, 2008. Both applications pertain to the same tenancy agreement and the same rental premises. With the consent of the parties, both applications were heard at a common hearing.

The rental premises consist of a houseboat moored in Yellowknife Bay. In May, 2007 the tenant moved into the premises, which he described as “the cab of a one ton truck on a floating raft”.

The landlords commenced to “retrofit” the houseboat and made an arrangement with the tenant to supply certain labour to complete the project. There was no written tenancy agreement at this time but the parties agree that the rent was set at \$300/month.

The parties entered into a written tenancy agreement commencing on March 1, 2008 for a term of three months. The tenancy agreement is in the form of the Schedule with three additional provisions added. There is no mention in the tenancy agreement regarding the contribution of labour by the tenant or compensation for that labour. The rent is set out as \$300/month.

The landlords alleged that the tenant breached his obligation to pay rent by failing to pay any rent for March, April and May, 2008 and sought an order requiring the tenant to pay the alleged rent arrears and terminating the tenancy agreement.

On April 14, 2008 the landlords served a notice to the tenant demanding the rent and stating, “If

we do not receive the cash or an agreeable payment plan from you, we will be obtaining a notice of eviction with the Rental board agency to be delivered to you by April 20th, 2008.” Another similar notice was served on the tenant on April 18, 2008 along with a notice of early termination for repeated non-payment of rent.

On April 24, 2008 the landlords filed additional materials with the rental officer and served copies to the tenant. In these materials, the landlords itemised the work done by the tenant and their understanding of how the credit for the work would be applied. The material also outlined six additional reasons why the landlords felt the tenancy should be terminated:

1. Improper storage of gasoline and matches.
2. Unsightly items left on the deck and lake ice surrounding the houseboat.
3. The tenant’s antagonistic attitude.
4. Slander.
5. Unattended operation of a dangerously malfunctioning propane light.
6. Refusal to contact landlords regarding rent arrears.

At the hearing the landlords stated that the large number of items on the houseboat were endangering the premises by compromising the available floatation. The landlords testified that they had repeatedly warned the tenant about hazards of storing matches and gasoline before the tenant took any action to remedy the situation. The landlords stated that on one occasion, the premises were found to be unoccupied but a propane lamp was operating without a mantle, creating a fire hazard. The landlords stated that the tenant had now placed a number of wooden

pallets on the ice that interfered with established snowmobile trails and perhaps the aircraft runway. Photographs of the premises and surrounding area were also provided in evidence at the hearing.

The tenant stated that he had refused to pay the rent for the past three months because the landlords owed him money for the work he had performed on the premises. The tenant did not dispute that he had improperly stored matches and gasoline and operated the propane light without a mantle in the past but stated that he had remedied these hazardous situations. He acknowledged placing the wood pallets on the ice and stated that he intended to use them to facilitate getting on and off the ice as it began to melt.

In the matter of rent, I find no evidence in the tenancy agreement that the landlord and tenant have agreed that the tenant would undertake any work on the premises or any agreement as to compensation for work done. The tenant is not alleging that the premises were not maintained by the landlord and that he should be compensated for carrying out repairs on behalf of the landlord. The tenant is claiming that the rent owed to the landlord should be offset by the amount he alleges the landlord owes him for carrying out certain renovations on the premises. In my opinion, there are two contracts at play here and, as rental officer, I have jurisdiction only with regard to the tenancy agreement. The tenant may have a claim for monies owing to him, or he may not. It is not within my jurisdiction to determine. I find the respondent in breach of his obligation to pay rent and find the rent owing to be \$900.

While I must agree with the landlords that the tenant's carelessness concerning the storage of gasoline and matches, his improper use of the propane light and his inconsiderate and potentially harmful storage of the wooden pallets are a cause for concern, I can not see how any constitute a breach of the written tenancy agreement or the Act. None caused any damage, none disturbed the landlords or other tenants, none constituted criminal activities and the premises do not appear to be unclean.

The allegations that the tenant overloaded the houseboat is not supported by the evidence. While there is a lot of clutter on the deck as shown in the photographs, much of what appears to be heavy is the property of the landlord (BBQ and propane tanks). A notice from the landlords in October, 2007 also indicates that the landlords stored construction equipment on the premises. In any case, if the houseboat was adequately constructed it should have sufficient floatation to accommodate the loads which are evident in the photographs.

Section 12 of the *Residential Tenancies Act* distinguishes between rights and obligations and rules. Rules may be established or modified from time to time provided that they are made in writing and made known to the tenant. Rights and obligations are contained in a written tenancy agreement and may only be modified by mutual consent.

12.(1) In addition to the rights and obligations contained in the residential tenancy agreement set out in the Schedule, a landlord and tenant may provide in a written tenancy agreement for other rights and obligations that are not inconsistent with this Act.

(2) Where an additional obligation concerns the tenant's use, occupancy or maintenance of the rental premises or residential complex, the obligation

cannot be enforced unless it is reasonable in all circumstances.

- (3) A landlord shall not establish, modify or enforce rules concerning the tenant's use, occupancy or maintenance of the rental premises or residential complex, unless the rules are reasonable in all circumstances, in writing and made known to the tenant.**
- (4) A landlord or tenant may apply to a rental officer to determine whether an obligation or rule is reasonable.**
- (5) A rental officer who receives an application under subsection (4) may determine whether an obligation or rule is reasonable and order the landlord or tenant to comply.**

Had some or all of the objectionable activities of the tenant been prohibited by rules, set out in writing and made known to him, the landlords could have attempted to enforce them.

In my opinion, a prudent landlord of a houseboat would ensure that the unique requirements of successful and safe houseboat living would be clearly spelled out in a comprehensive set of written rules for the tenant and modify them as the need arises. Unless rules of this nature are set out by the landlord, it is unlikely they can be enforced by relying on the tenant obligations in the *Residential Tenancies Act*.

In summary, I find the tenant only in breach of his obligation to pay rent. In my opinion, there are sufficient grounds to terminate the tenancy agreement unless the rent arrears are promptly paid.

At the hearing, the tenant expressed his desire to remain in the premises for the summer. It does not appear that the tenant has given notice to terminate the tenancy agreement so I assume the parties will enter into another agreement or the current agreement will automatically renew on a monthly basis. I will assume that the rent will remain at \$300 month for June, 2008 in either

case.

An order shall issue requiring the tenant to pay the landlords rent arrears in the amount of \$900 and terminating the tenancy agreement on June 2, 2008 unless the rent arrears and the June rent in the total amount of \$1200 are paid in full. Should the tenancy agreement continue, the tenant is also ordered to pay future rent on time.



Hal Logsdon
Rental Officer