

IN THE MATTER between **SHELTER CANADIAN PROPERTIES LTD.**, Applicant,
and **BEATRICE GOOSE**, 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:

SHELTER CANADIAN PROPERTIES LTD.

Applicant/Landlord

- and -

BEATRICE GOOSE

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 45(4)(a) of the *Residential Tenancies Act*, the respondent shall comply with her obligation to not permit more than four persons to occupy the rental premises on an ongoing basis.

DATED at the City of Yellowknife, in the Northwest Territories this 26th day of March,
2008.

Hal Logsdon
Rental Officer

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and **BEATRICE GOOSE**, Respondent.

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BETWEEN:

SHELTER CANADIAN PROPERTIES LTD.

Applicant/Landlord

-and-

BEATRICE GOOSE

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: March 18, 2008

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Trudy Spence, representing the applicant

Date of Decision: March 18, 2008

REASONS FOR DECISION

The respondent was served with a Notice of Attendance sent to the rental premises by registered mail. The respondent failed to appear at the hearing and the hearing was held in her absence.

The applicant stated that since the application was filed all rent had been paid in full. The applicant stated that the respondent had breached the tenancy agreement by permitting persons other than those listed on the tenancy agreement to occupy the premises, specifically the respondent's father and the boyfriend of the respondent's sister. The applicant testified that the respondent had permitted more than 4 persons to occupy the premises.

Article 1 of the written tenancy agreement between the parties sets out a restriction on who may occupy the premises.

1. In addition to the Tenant, only the following and no other person may occupy the rented premises:
Desmond Goose - Son
Tommy Goose - Son
Erin Goose - Daughter
together with any natural increase in the Tenant's family, but in any event, not exceeding a total of 3 persons, provided however, that nothing herein shall give any legal right to such occupants to occupy the rented premises other than at the will of the Landlord, and in any case upon termination or expiration or other ending of the tenancy of the Tenant, such persons shall immediately vacate the rented premises.

Whether the number of persons permitted is three or four is not clear from the tenancy agreement. The applicant stated that the name of Erin Goose may have been added after the

execution of the agreement. If that is so, I assume it was with the mutual consent of the parties and the intention was to raise the total number of persons to four.

Section 45(3) of the *Residential Tenancies Act* prohibits overcrowding.

45(3) A tenant shall not permit such number of persons to occupy the rental premises on a continuing basis that results in the contravention of health, safety or housing standards required by law or in a breach of the tenancy agreement.

There is a significant difference between the restriction contained the tenancy agreement and the provision contained in section 45(3) of the Act. The Act permits a landlord to set out in a tenancy agreement a restriction on the *number* of persons who may occupy the premises while the tenancy agreement restricts not only the number but the identities.

An obligation contained in a written tenancy agreement must not be inconsistent with the Act and must be reasonable in all circumstances. In my opinion, the restriction on who may occupy the premises contained in this tenancy agreement is not reasonable and therefore not enforceable.

There is, however, evidence that the respondent has permitted more than the number of persons named in the tenancy agreement to occupy the premises. Therefore, in my opinion, there has been a breach of section 45(3) of the Act and Article 1 of the tenancy agreement. As the matter appears to have been rectified, termination is not an appropriate remedy.

An order shall issue requiring the respondent to comply with her obligation to not permit more

than four persons to occupy the rental premises on an ongoing basis.

Hal Logsdon
Rental Officer