

IN THE MATTER between **TYWS**, Applicant, and **GG**, 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,

BETWEEN:

**TYWS**

Applicant/Landlord

-and-

**GG**

Respondent/Tenant

**REASONS FOR DECISION**

<b><u>Date of the Hearing:</u></b>	<b>August 10, 2021</b>
<b><u>Place of the Hearing:</u></b>	<b>Yellowknife, Northwest Territories</b>
<b><u>Appearances at Hearing:</u></b>	<b>NS, representing the Applicant SL, representing the Applicant  GG, Respondent MS, representing the Respondent</b>
<b><u>Date of Decision:</u></b>	<b>August 20, 2021</b>

### **REASONS FOR DECISION**

Prior to holding this hearing, I spoke to Kathy Yurris, property manager for TC Enterprises. I provided the information I received from her to the Applicant and the Respondent at the hearing. Neither party disputed any of that information.

The Respondent previously rented a two-bedroom apartment at Bartesko Court, operated by TC Enterprises, for approximately two years. He wished to move to a smaller, less expensive apartment but smaller units were unavailable in the Landlord's portfolio at that time. However, TC Enterprises owned Arnica Inn, a hotel, and agreed to rent the Respondent a room at Arnica Inn on an interim basis, commencing in December 2019 for \$1,200 per month until he could arrange other accommodation or a smaller apartment became available in their inventory.

At that time the Applicant was actively pursuing the purchase of Arnica Inn to use as transitional housing. The Applicant had strong support from the City of Yellowknife and was pursuing financing from Canada Mortgage and Housing Corporation. The Respondent was advised he would have to leave when the anticipated transfer of the property to the Applicant occurred, but no specific date was provided. The Respondent paid the monthly rent to TC Enterprises.

TC Enterprises continues to own Arnica Inn, but possession of the building was effectively transferred to the Applicant on May 1, 2020, while the Applicant proceeds to arrange financing for the purchase of the building.

TC Enterprises gave notice to vacate to the occupants of Arnica Inn prior to the transfer and all of the occupants did so except the Respondent. A notice dated April 23, 2020, from TC Enterprises to the Respondent was provided in evidence. The notice reminds the Respondent that the Applicant will be taking over Arnica Inn and that his last day of occupancy will be April 30, 2020. TC Enterprises returned the Bartesko Court security deposit and informed the Respondent he would be contacted if another apartment became available at TC Enterprises. The Respondent refused to vacate the room.

Representations on behalf of the Respondent were made and the Applicant agreed to permit the Respondent to continue to occupy the room due to the COVID-19 pandemic. The Respondent had limited income at that time and would have been at risk if he had become homeless. The Respondent ceased paying rent to TC Enterprises and no rent was paid to the Applicant. There is no evidence that any rent was demanded by the Applicant. There was no direct evidence provided concerning the agreement between the parties to continue occupancy.

A notice dated January 29, 2021, was served on the Respondent by the Applicant demanding vacant possession of the room. A similar notice dated March 8, 2021, from the Applicant's lawyer was provided in evidence. An Application was filed on June 29, 2021, for the following relief:

1. A declaration that the Respondent has no tenancy agreement with the Applicant and is not a lawful occupant of the rental premises or, if a tenancy agreement is found,
2. An order terminating the tenancy agreement due to failure to pay rent and terminating the tenancy agreement (s. 41(4)(c)) or,
3. An order terminating the tenancy agreement pursuant to section 59(1.1)(a)(ii) and ordering the Respondent to vacate the rental premises.

*Is there a tenancy agreement between the Applicant and the Respondent?*

There was a valid tenancy agreement between TC Enterprises and the Respondent for the Bartesko Court apartment. That tenancy agreement was terminated when the Respondent vacated that apartment.

There is no evidence that any written agreement was made for the room at Arnica Inn, but TC Enterprises was the rightful owner, permitted the Respondent to take possession, and collected rent from him. In those respects the Arnica Inn agreement, albeit verbal, meets the definitions of "tenancy agreement", "landlord", and "tenant" contained in the *Residential Tenancies Act* (the Act).

The Applicant submits that the agreement was terminated by TC Enterprise's notice of April 23, 2020, and that the return of his security deposit is evidence that the tenancy agreement ended. I disagree. There is no provision in the Act to terminate a tenancy agreement of this type by the Landlord's notice. I also note that the returned security deposit appears to be related to the Bartesko Court tenancy, not the Arnica Inn agreement. The tenancy agreement with TC Enterprises would transfer to the Applicant when they assumed possession.

The Act does not apply to certain types of accommodation. Should the Arnica Inn accommodation be excluded, a Rental Officer would have no jurisdiction and could not determine this matter. Subsection 6(2) sets out one of these exclusions:

*6. (2) This Act does not apply*

*(a) transient living accommodation provided in a hotel, motel, tourist establishment, hostel or other similar accommodation;*

Clearly, the Arnica Inn was a hotel and operated primarily to provide short-term accommodation for the vacationing or business traveller. TC Enterprises acknowledged that they occasionally rented rooms to non-resident workers working on local contracts. It appears that most, if not all, of Arnica Inn's guests had permanent addresses elsewhere and few, if any, anticipated long term stays.

The Respondent did not dispute that he was informed that occupancy of the room was temporary until the property was transferred to the Applicant. It would appear that the parties initially agreed that the room would only be available until that unidentified date.

There were some differences, however, between this agreement and that normally extended to other hotel guests. The Respondent did not enjoy daily room cleaning or linens. The Respondent appears to have sole possession of the room, but I doubt either party would argue he enjoyed the right of assignment or sublet.

"Transient accommodation" implies non-permanent. It may also suggest that the accommodation is provided to persons "in transit" from one place or situation to another. For example, a vacationer, travelling business person, or family moving from one location to another. A certain duration of time is usually anticipated, e.g. one-week vacation or two-day business trip, but occupancy is normally permitted daily. Both hotelier and occupant may terminate at will. This agreement was certainly intended to be non-permanent but it was also open-ended, much like a monthly periodic tenancy agreement. The Respondent had no other place of abode. He was not in transit from one place to another.

There is no single fact that is conclusive in this determination such as duration of stay, predominant use of building, or how rent is paid. In order to determine if this agreement is exempt from the Act it is necessary to consider the nature of the premises, the agreement between the parties, and their intentions.

Initially, I felt that the agreement between TC Enterprises and the Respondent for the room at Arnica Inn was exempt from the Act pursuant to paragraph 6(2)(a). However, several factors now lead me to the opposite conclusion. Notwithstanding that the Arnica Inn is operated as a typical hotel, the arrangement between TC Enterprises and the Respondent was not typical and more resembled a monthly periodic tenancy agreement than a license to occupy. The services normally provided by a hotel were absent and rent was charged monthly. The Respondent's right to occupy was indeterminate.

In my opinion, there was a valid verbal tenancy agreement between TC Enterprises and the Respondent. Pursuant to section 19(1) of the Act, that tenancy agreement would transfer to the Applicant.

*19. (1) Where there is a change of landlord, all rights and obligations arising under this Act, and any additional rights and obligations arising under a written tenancy agreement, bind the new landlord.*

*Is the Respondent in breach of Section 41?*

With the transfer of the tenancy agreement to the Applicant on May 1, 2020, the Respondent's obligation to pay rent to the Applicant commenced. The Applicant claimed that no tenancy agreement existed but agreed to permit the Respondent to occupy the room. There was no direct evidence as to what this verbal agreement was or whether it had any effect to alter the original verbal agreement or the amount of rent required. In the Applicant's written notice of January 29, 2021, the Applicant writes, "We do not have a rental agreement with you and you have not been paying us rent."

Without additional evidence regarding the agreement to allow the Applicant to continue occupancy and some accounting on the alleged rent owing, I cannot find the Applicant in breach of section 41 and the Applicant's request for an order terminating the tenancy agreement pursuant to paragraph 41(4)(c) is denied without prejudice.

*Does the Residential Tenancies Act apply to the accommodation provided by the Applicant at the former Arnica Inn?*

Paragraphs 6(2)(d) and 6(2)(e) set out additional exceptions regarding certain forms of accommodation:

*6. (2) This Act does not apply to*

*(d) living accommodation occupied by a person for penal, correctional, rehabilitative or therapeutic purposes or for the purpose of receiving care;*

*(e) living accommodation established to temporarily shelter persons in need;*

The Applicant operates "The Spruce Bough" program at the former Arnica Inn. The program provides transitional and emergency housing in cooperation with the Department of Health and Social Services. The program provides meals and a managed alcohol program for those in need. The Applicant stated that there is currently a waiting list for admission to the program and the Respondent's continued occupancy limits their ability to serve as many clients as possible.

In my opinion, the Spruce Bough program meets the definitions contained in paragraphs 6(2)(d) and 6(2)(e) of the Act and consequently the Act does not apply to accommodation provided under this program.

*Is the Applicant changing the use of the rental premises?*

Section 59(1)(a)(ii) permits the termination of a tenancy agreement by order where a Landlord intends to change the use of the rental premises to a use other than rental premises:

*59. (1) A landlord may apply to a rental officer to terminate a tenancy if the landlord*

*(a) requires possession of the rental premises for the purposes of*

*(ii) changing the use of the rental premises to a use other than that of  
rental premises;*

In my opinion, the Applicant intends to use the premises currently occupied by the Respondent as a Spruce Bough program unit. The termination of the tenancy is justified, particularly because the Applicant has indicated he has been offered other accommodation commencing in September.

An order shall issue terminating the tenancy agreement between the Applicant and the Respondent and requiring the Respondent to vacate the premises no later than September 30, 2021.

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Hal Logsdon  
Rental Officer