

IN THE MATTER between **ERNIE W. LOUITT**, Applicant, and **ESTHER MERCREDI AND RANDY MERCREDI**, 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 **FORT SMITH, NT**.

BETWEEN:

ERNIE W. LOUITT

Applicant/Landlord

- and -

ESTHER MERCREDI AND RANDY MERCREDI

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondents shall pay the applicant rent arrears in the amount of five thousand six hundred seventy dollars (\$5670.00).
2. Pursuant to section 45(4)(a) of the *Residential Tenancies Act*, the respondents shall comply with their obligation to not keep dogs on the premises.
3. 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 18 Dickens Street, Fort Smith, NT, shall be terminated on November 30, 2004 and the respondents shall vacate the

premises on that date, unless this order is fully satisfied.

DATED at the City of Yellowknife, in the Northwest Territories this 10th day of
November, 2004.

Hal Logsdon
Rental Officer

IN THE MATTER between **ERNIE W. LOUITIT**, Applicant, and **MERCREDI AND RANDY MERCREDI**, 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:

ERNIE W. LOUITIT

Applicant/Landlord

-and-

ESTHER MERCREDI AND RANDY MERCREDI

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	November 10, 2004
<u>Place of the Hearing:</u>	Yellowknife, NT by teleconference
<u>Appearances at Hearing:</u>	Ernie Loutit, applicant Randy Mercredi, respondent
<u>Date of Decision:</u>	November 10, 2004

REASONS FOR DECISION

The applicant alleged that the respondents had breached the tenancy agreement by failing to pay rent and sought an order requiring the respondents to pay the alleged rent arrears and terminating the tenancy agreement.

The applicant stated that the tenancy agreement was not meant to be long term and that he had asked the tenants to vacate and they refused to do so. The applicant also alleged that the respondents kept three dogs on the premises which was a breach of the written tenancy agreement. The applicant provided three invoices for rent which totalled \$6066.90 and sought relief in that amount.

The tenancy agreement between the parties is unconventional in that it sets a daily rent of \$45 and states that "payments are due when Ernie Loutit says there [sic] due." Normally, tenancy agreements require that a set monthly or weekly rent be paid on a set day of the week or month. However, section 41 of the *Residential Tenancies Act*, sets out the tenant's obligation to pay rent as follows:

41. (1) A tenant shall pay to the landlord the rent lawfully required by the tenancy agreement on the dates specified by the tenancy agreement.

In my opinion, the rent provisions of the written tenancy do not conflict with section 41. I do not find the rent provisions unreasonable as the applicant has not invoiced for any rent in advance.

The respondent acknowledged that he had not paid any rent since the commencement of the

tenancy agreement. The agreement states a commencement date of June 24, 2004.

The respondent acknowledged that he kept four dogs on the premises and had stated that he had no intention of removing them from the premises.

Prior to the hearing, a third party provided information to the rental officer concerning the title to the property. It appears from the evidence provided by the third party that a caveat has been filed claiming that the Transfer of Land did not transfer beneficial interest in the property to Ernie Loutit. In my opinion, this is not a matter for a rental officer to determine. The *Residential Tenancies Act* sets out a definition of a landlord.

"landlord" includes the owner, or other person permitting occupancy of rental premises, and his or her heirs, assigns, personal representatives and successors in title and a person, other than a tenant occupying rental premises, who is entitled to possession of a residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent.

In my opinion, the applicant is the landlord and the agreement between the parties is a tenancy agreement. The dispute regarding the Transfer of Land is a matter for the court to determine.

I remind the applicant of the security of tenure provisions contained in sections 48 and 49 of the *Residential Tenancies Act*. Regardless of the intention that the tenancy agreement should be of short duration, there are no provision in the Act which permit a landlord in these circumstances to terminate a tenancy agreement by notice alone.

I do find the respondents in breach of their obligation to pay rent and in breach of their obligation to not keep pets on the premises. I find the amount of rent demanded by the landlord to be in excess of the amount set out in the tenancy agreement. The tenancy agreement sets out \$45/day. The landlord has added GST to that amount. I find the amount of rent owing to be \$5670 calculated as follows:

Invoice	Sept 21/04	89 days	\$4005
Invoice	Oct 11/04	21 days	945
Invoice	Oct 27/04	16 days	<u>720</u>
Total rent due			\$5670

In my opinion, there are sufficient grounds to terminate the tenancy agreement unless the respondents pay the outstanding rent arrears and comply with their obligation to not keep pets on the premises. An order shall issue requiring the respondents to pay rent arrears to the applicant in the amount of \$5670 and requiring them to comply with their obligation to not keep dogs on the premises. The order shall terminate the tenancy agreement on November 30, 2004 and require the respondents to vacate the premises on that date unless the order is satisfied.

Hal Logsdon
Rental Officer