

IN THE MATTER between **BASSETT PETROLEUM DISTRIBUTORS LTD.**,  
Applicant, and **KATHLEEN RUMAN**, 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:

**BASSETT PETROLEUM DISTRIBUTORS LTD.**

Applicant/Landlord

- and -

**KATHLEEN RUMAN**

Respondent/Tenant

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 59(1)(c) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as 115 Kam Lake Road, Yellowknife, NT shall be terminated on July 31, 2008 and the respondent shall vacate the premises on that date.

DATED at the City of Yellowknife, in the Northwest Territories this 5th day of June, 2008.

Hal Logsdon  
Rental Officer

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-and-

**KATHLEEN RUMAN**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:** June 3, 2008

**Place of the Hearing:** Yellowknife, NT

**Appearances at Hearing:** Douglas G. McNiven, representing the applicant  
Peter Lane, witness for the applicant  
Kathleen Ruman, respondent

**Date of Decision:** June 5, 2008

### **REASONS FOR DECISION**

The applicant initiated this application by originating notice to the Supreme Court of the Northwest Territories filed on March 13, 2008. The application sought to terminate the tenancy agreement between the parties for various reasons. The application was heard in Chambers on March 28, 2008. The Court declined to hear the application as the matter had not been brought before a rental officer and there was no agreement between the parties to bring the application before the Court.

The applicant filed an application to a rental officer on April 4, 2008 with the originating notice to the Supreme Court, an affidavit of Peter Lane, a notice of termination and written reasons for application as attachments. Prior to the hearing, which was set for April 29, 2008, the applicant filed a written argument and a witness statement for Peter Lane. The application named sections 52 and 54(4) of the *Residential Tenancies Act* as the relevant sections relating to the order for termination of the tenancy agreement which was requested.

The application provided the following reasons why an order for termination should be granted:

1. Notice of termination was given by landlord and received by the tenant at the latest on February 26, 2008;
2. Affidavit of Peter Lane outlines other reasons for termination by landlord including unfounded complaints against other tenants to the RCMP;
3. Accommodating unauthorized tenants;

4. Abuse of utilities and washing facilities;
5. Pets living in premises.

Mr. Lane's affidavit also states in paragraph 5,

“As part of the said agreement Bassett and ARS agreed the property was ultimately to be used as a staff house in Yellowknife for use by travelling truckers, contractors or others working with Bassett or ARS can stay (sic) for business purposes.”

Mr. Lane's affidavit also stated that the tenancy agreement between the parties was a monthly verbal agreement commencing on the first of the month. The rental premises consist of a room in a 3-bedroom mobile home with shared kitchen, common area and laundry facilities.

At the April 29<sup>th</sup> hearing and having heard the applicant and briefly heard the respondent, I determined that none of the five reasons specifically stated in the application constitute a breach of the tenancy agreement or serve to terminate the terminate the tenancy agreement.

**1. Notice of termination was given by landlord and received by the tenant at the latest on February 26, 2008.**

The applicant argued that the notice of termination, dated February 1, 2008, was sufficient to terminate the tenancy agreement thirty days after service, pursuant to section 52(2) of the *Residential Tenancies Act*.

**52.(1) Where a tenancy agreement does not specify a date for the termination of**

the tenancy agreement, the tenant may terminate the tenancy on the last day of a period of the tenancy by giving the landlord a notice of termination,

- (a) in the case of a weekly tenancy, at least seven days before the termination date stated in the notice of termination;
- (b) in the case of a monthly tenancy that has continued for less than 12 months, at least 30 days before the termination date stated in the notice of termination; or
- (c) in the case of a monthly tenancy that has continued for 12 months or more, at least 60 days before the termination date stated in the notice of termination.

- (2) A landlord who has rented his or her only residence in the Territories may terminate a periodic tenancy agreement in accordance with subsection (1).

In my opinion, “residence” can not be interpreted as “residential property” and a residence is not applicable to a corporation. Neither can section 54 of the Act be relied upon to give effect to the February notice as it does not contain any of the reasons outlined in that section. In fact, the notice names no reasons for the termination, contrary to the requirements contained in section 55 of the Act. Consequently, the February notice is of no effect.

2. **Affidavit of Peter Lane outlines other reasons for termination by landlord including unfounded complaints against other tenants to the RCMP**

While it is clear that there were disputes between the respondent and others, the evidence suggests that the cook, other occupants of the complex and others associated with the business venture initiated many of these disputes. Mr. Lane, did not consider one employee’s

comments regarding the respondent to be appropriate and told him so. Mr. Lane also prevented the landlord's business partner from interfering with vital services to the respondent's rental premises. Contrary to the allegation that the respondent disturbed others, the evidence suggests the opposite. I find insufficient evidence to conclude there has been a breach of the respondent's obligation to not disturb the landlord or other tenants.

**3. Accommodating unauthorized tenants**

The applicant alleged that the respondent's brother was staying at the premises. The respondent denied the allegation but regardless, there is no written tenancy agreement between the parties limiting the number of occupants. I find no breach of the tenancy agreement.

**4. Abuse of utilities and washing facilities**

It was acknowledged in Mr. Lane's affidavit that one of the services and facilities included in the verbal tenancy agreement was the use of laundry facilities. A landlord may establish rules that concern a tenant's use of a service or facility but such rules must be in writing and made known to the tenant (section 12(3) of the Act). I find no evidence of any rules concerning the respondent's use of the laundry facilities. I find no breach of the tenancy agreement.

**5. Pets living in premises**

There was no written tenancy agreement between the parties prohibiting pets. Such an obligation would have to be contained in a written tenancy agreement as an obligation of the

tenant pursuant to section 12 of the Act. I find no breach of the tenancy agreement.

The applicant stated that they wished to use the entire property, including the respondent's premises, for the use stated in paragraph 5 of Mr. Lane's affidavit. Mr. Lane stated that truckers employed or contracted by Bassett or ARS often required overnight accommodation in Yellowknife, particularly during the busy winter road resupply season. Currently the property, except the respondent's premises, was used for this purpose. These were not tenancy agreements with the occupants, but licenses to occupy for short periods of time. The applicant stated that they wished to have the respondent's tenancy terminated in order to change the use of premises currently rented by the respondent to something other than rental premises, specifically as part of rest of the property which could be described as a bunkhouse.

The matter was adjourned sine die and the applicant directed to prepare an affidavit describing in detail the intended use of the property.

The hearing continued on June 3, 2008. A further affidavit of Peter Lane was provided to the rental officer and served on the respondent.

Section 59 of the *Residential Tenancies Act* permits a rental officer to order the termination of a tenancy agreement when a landlord intends to convert the rental premises to another use.

**59. (1) Where, on the application of a landlord, a rental officer determines that the landlord, in good faith,**

- (a) requires possession of a rental premises for the purposes of
  - (i) demolition,
  - (ii) changing the use of the rental premises to a use other than that of rental premises, or
  - (iii) making repairs or renovations so extensive as to require a building permit and vacant possession of the rental premises, and
- (b) the landlord has obtained all necessary permits or other authority that may be required,

the rental officer may make an order terminating the tenancy

- (c) on the last day of a period of the tenancy not earlier than 90 days after the application is made, or
- (d) at the end of the tenancy agreement,

whichever is earlier, and ordering the tenant to vacate the rental premises on that date.

The applicant stated that they wished to use the entire property, including the respondent's premises, as transient accommodation for employees who are, for the most part truck drivers requiring accommodation between trucking hauls. The applicant stated that they wanted vacant possession of the premises as soon as possible because they intended to undertake some renovations to the property but were relying only on the change of use provisions of section 59(1)(a) (ii).

The respondent opposed the application on the basis that the respondent had not complied with the



provisions of 59(1)(b) requiring the acquisition of all permits or other authorities. If the applicant was relying on section 59(1)(a) (iii) I would assume that one or more municipal permits would be required. However the applicant is relying on section 59(1)(a)(ii) and most of the building is already being used as a bunkhouse. While it is true that permits will have to be obtained to undertake the renovations, there is no evidence that additional permits will be required to change the use of one bedroom from rental premises to a bedroom in an already existing bunkhouse. I find no evidence that additional permits or authority will be required to change the use of the respondent's rental premises.

The respondent also opposed the application on the basis that the application was not made pursuant to section 59 of the Act. Notwithstanding that a rental officer may make orders that are justified and could have been applied for as well as orders that have been applied for (section 83 of the Act), the applicant did outline in the March 13, 2008 affidavit of Mr. Lane that it was the intention of the applicant to use the property as accommodation for travelling truckers, contractors and other employees. As well, when the hearing was adjourned on April 29 it was made clear to the parties that I would continue the hearing considering only section 59 as I considered all of the other reasons to terminate the tenancy agreement contained in the application to be inadequate.

In my opinion, the applicant has demonstrated that he intends to use the premises of the respondent for a use other than rental premises. The proposed use is not, in my opinion, a landlord/tenant relationship involving a tenancy agreement but a license to occupy granted by the applicant to the occupants. The occupants do not have exclusive possession for a fixed term for a stated rent. The

relationship is similar to that found in *Chartrand v. Abil-Mona*, 2002 NWTSC 69. I believe the application is made in good faith as the applicant requires the entire property devoted to business use and having a rental premise in the same building and sharing common areas with a bunkhouse must surely be incongruous. In my opinion, the applicant is entitled to an order terminating the tenancy agreement.

The applicant argued that I should consider the 90 day period referred to in section 59(1)(c) to have started on March 13, 2008, the date the applicant's originating notice was filed in the Supreme Court rather than April 4, 2008, the date the application was filed with the rental officer. I respectfully disagree for two reasons. First, the application should not have been filed with the Court without the consent of the respondent. Second, the reasons for the application were numerous but the reference to change of use was veiled, at best. Had it been clear from the outset that the landlord sought termination for change of use, the respondent might well have started thinking about her right to give short notice rather than concentrate on her defence of the alleged breaches of the tenancy agreement. In my opinion, it should have become clear to both parties when the matter was adjourned on April 29, 2008 that if the tenancy agreement was to be terminated by order, that order would only be made pursuant to section 59. In my opinion, July 31, 2008 is the most reasonable date to order the termination of the tenancy agreement.

An order shall issue terminating the tenancy agreement on July 31, 2008 and requiring the respondent to vacate the premises on that date.

Hal Logsdon  
Rental Officer

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