

IN THE MATTER between **DAVID HARE AND CAROLINE HARE**, Applicants, and
MARTHA SHOLLENBURG, 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:

DAVID HARE AND CAROLINE HARE

Applicants/Landlords

- and -

MARTHA SHOLLENBURG

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 11th day of June,
2008.

Hal Logsdon
Rental Officer

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MARTHA SHOLLENBURG

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REASONS FOR DECISION

Date of the Hearing: June 3, 2008

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: David Hare, applicant
Caroline Hare, applicant
Martha Shollenburg, respondent

Date of Decision: June 3, 2008

REASONS FOR DECISION

The rental premises consist of a suite which is contained in a house occupied by the applicants who recently purchased the property. The tenancy agreement was made between the respondent and the previous owner of the property. The written tenancy agreement is made in the form of the Schedule to the *Residential Tenancies Act* and lists the following services and facilities included in article 5(3) as "Heat, water, 1 stall garage parking, 1 stall exterior parking, snow removal, landscaping". The applicants no longer wish to provide the garage parking or the exterior parking to the respondent and made an application pursuant to section 58 of the Act.

The applicants provided numerous reasons why they required the entire garage and driveway for their own use. The respondent opposed the application.

Section 58 permits a rental officer to terminate a tenancy agreement where the landlord requires the rental premises for the purpose of a residence for the landlord or his/her immediate family.

58.(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 purpose of a residence for the landlord, the spouse, child or parent of the landlord, or a child or parent of the spouse of the landlord, or**
- (b) has entered into an agreement of sale of a residential complex, and**

- (i) is required by the agreement of sale to deliver vacant possession of a rental premises to the**

purchaser, and

- (ii) the purchaser requires possession of the rental premises for the purpose of a residence for the purchaser, the spouse, child or parent of the purchaser, or a child or parent of the spouse of the purchaser,

the rental officer may make an order terminating the tenancy

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

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

"Rental premises" and "services and facilities" are defined in section 1(1) of the Act.

"rental premises" means a living accommodation or land for a mobile home used or intended for use as rental premises and includes a room in a boarding house or lodging house.

"services and facilities" includes furniture, appliances and furnishings, parking and related facilities, laundry facilities, elevator facilities, common recreational facilities, garbage facilities and related services, cleaning or maintenance services, storage facilities, intercom systems, cable television facilities, heating facilities or services, air-conditioning facilities, utilities and related services, and security services or facilities.

Clearly, the "1 stall garage parking" and "1 stall exterior parking" listed in article 5(3) of the

tenancy agreement are services and facilities and not part of the rental premises. The rental premises are living accommodation, not the garage or driveway. Since section 58 refers specifically to rental premises and not the withdrawal of a service of facility it can not be used as grounds to terminate the tenancy. There is no evidence to suggest that the applicants wish to use the rental suite as their own residence or cease using it as a rental property.

Consequently, the application must be dismissed.

Hal Logsdon
Rental Officer
