

IN THE MATTER between **FRED DAVIES AND JOANNE DAVIES**, Applicants, and  
**DUNCAN MILNE**, 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:

**FRED DAVIES AND JOANNE DAVIES**

Applicants/Landlords

- and -

**DUNCAN MILNE**

Respondent/Tenant

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to sections 41(4)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant rent arrears in the amount of seven hundred dollars (\$700.00).
2. 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 5107 47<sup>th</sup> Street, Yellowknife, NT shall be terminated on November 7, 2008 and the respondent shall vacate the premises on that date, unless the rent arrears and the rent for November, 2008 in the total amount of one thousand four hundred dollars (\$1400.00) are paid in full.
3. Pursuant to section 58(1)(c) of the *Residential Tenancies Act*, the tenancy agreement

between the parties for the premises known as 5107 47<sup>th</sup> Street, Yellowknife, NT shall be terminated on November 30, 2008 and the respondent shall vacate the premises on that date.

DATED at the City of Yellowknife, in the Northwest Territories this 15th day of October, 2008.

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Hal Logsdon  
Rental Officer

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BETWEEN:

**FRED DAVIES AND JOANNE DAVIES**

Applicants/Landlords

-and-

**DUNCAN MILNE**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:**                      **October 14, 2008**

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

**Appearances at Hearing:**                      **Fred Davies, applicant**  
   **Joanne Davies, applicant**

**Date of Decision:**                              **October 14, 2008**

### **REASONS FOR DECISION**

The respondent was sent a Notice of Attendance by registered mail. A voice mail message was also left at the telephone number of the respondent advising him that a hearing would be held and that a notice had been sent to him by registered mail outlining the date, place and time of the hearing. The respondent failed to appear at the hearing and the hearing was held in his absence.

The applicants purchased the property on August 22, 2008. The applicants live in the residential complex which contains a suite that is rented to the respondent. The applicants stated that upon the purchase of the property, they advised the respondent that rent was to be paid to them as the new landlords. The applicants stated that the rent for September, 2008 had not been paid. The October, 2008 rent has been paid in full. The rent for the premises is \$700/month. The applicants testified that they wished to use the entire complex as their own residence and sought an order terminating the tenancy agreement pursuant to section 58 of the *Residential Tenancies Act*. The applicants also sought relief for the alleged September, 2008 rent arrears.

Section 58 permits a rental officer to issue an order terminating a tenancy agreement where the applicants wish to use the rental premises as their own residence.

- 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.

Section 41 of the *Residential Tenancies Act* permits a rental officer to issue an order terminating a tenancy agreement where a tenant has failed to pay rent. The date of termination is at the discretion of the rental officer.

- 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.**
- (2) A tenant who pays his or her rent later than the dates specified by the tenancy agreement is liable to a penalty.**
- (3) The penalty referred to in subsection (2) is calculated for each day that the rent is late by multiplying**
- (a) the rent due,**
- by**
- (b) the bank deposit rate on deposit receipts for 30 days, as determined and published by the Bank of Canada in the periodic publication entitled the *Bank of Canada Review*, in effect on January 1 in the year that the late payment is calculated, and the total is divided by 365.**
- (4) Where, on the application of a landlord, a rental officer determines that a tenant has failed to pay rent in accordance with subsection (1), the rental officer may make an order**
- (a) requiring the tenant to pay the rent owing and any penalty for late payment;**
- (b) requiring the tenant to pay his or her rent on time in the future; or**
- ©) terminating the tenancy on the date specified in the order and ordering the tenant to vacate the rental premises on that date.**

There is no evidence to suggest that the application pursuant to section 58 was not made in good

faith and in my opinion the applicants are entitled to possession of the premises on December 1, 2008. However, I also find the respondent in breach of his obligation to pay rent. I find the rent arrears to be \$700. In my opinion, it is reasonable to terminate the tenancy agreement earlier unless the rent arrears are paid in full.

An order shall issue requiring the respondent to pay the applicants rent arrears in the amount of \$700 and terminating the tenancy agreement on November 7, 2008 unless the rent arrears and the November, 2008 rent in the total amount of \$1400 are paid in full. Provided the September and November, 2008 rents are paid by November 7, 2008, the tenancy agreement shall continue until November 30, 2008 or until the respondent gives notice in accordance with section 58(2) of the *Residential Tenancies Act*.

- 58(2) Where a tenant receives a copy of an application under subsection (1), the tenant may, at any time before the date specified for termination in the application, terminate the tenancy by**
- (a) giving the landlord not less than five days notice of termination specifying an earlier date of termination of the tenancy; and**
  - (b) paying to the landlord on the date the tenant gives notice of termination under paragraph (a) the proportionate amount of rent due up to the date the earlier termination is specified to be effective.**

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Hal Logsdon  
Rental Officer