

IN THE MATTER between **ANGELA TANTON**, Applicant, and **DAVE ROSE AND MILLY ROSE**, 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 **YELLOWKNIFE, NT.**

BETWEEN:

ANGELA TANTON

Applicant/Landlord

- and -

DAVE ROSE AND MILLY ROSE

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 19th day of February, 2010.

Hal Logsdon
Rental Officer

IN THE MATTER between **ANGELA TANTON**, Applicant, and **DAVE ROSE AND MILLY ROSE**, 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:

ANGELA TANTON

Applicant/Landlord

-and-

DAVE ROSE AND MILLY ROSE

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: February 11, 2010

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Angela Tanton, applicant
Dave Rose, respondent
Milly Rose, respondent

Date of Decision: February 11, 2010

REASONS FOR DECISION

The applicant alleged that the respondents had breached the tenancy agreement by using too many parking spaces and by keeping a dog on the premises. The applicant sought an order terminating the tenancy agreement between the parties.

The tenancy agreement between the parties was made in writing in the form of the Schedule to the *Residential Tenancies Act*. Under article 5(3) of the tenancy agreement, the parties have agreed that the rent includes the following services and facilities:

heat, electricity, water, basic cable, appliances, parking (including winter plug-in).

Under article 12 of the tenancy agreement, the landlord and tenant have agreed to the following additions:

no pets, no smoking indoors.

The applicant stated that the tenancy agreement had been amended by the landlord's notice to restrict parking to two parking spots. One parking spot would be energized. The second spot would not be energized unless an additional fee of \$50/month was paid by the respondents. A copy of the notice, dated April 28, 2009 was provided in evidence.

The applicant stated that the respondents were using three parking spots and that they were keeping a dog on the premises. A notice, dated August 28, 2009, was served on the respondents

noting that they were in breach of their tenancy agreement by keeping a dog on the premises. Another notice, dated January 23, 2010, cited both alleged breaches of the tenancy agreement.

The respondents stated that at the commencement of the tenancy agreement the landlord had designated an area that they could use for parking. They stated that they had always used only that area and had kept the area free of snow throughout the winter.

The respondents stated that on September 1, 2009 the landlord verbally agreed that keeping the dog on the premises would be permitted provided the carpets were shampooed at the end of the tenancy. The applicant replied that she felt under some pressure to respond to the tenant's verbal request but intended to speak to her husband about the dog prior to consenting to a change in the tenancy agreement. The testimony from both parties indicates that in the months following that conversation, both parties were away from the premises for extended periods of time. The applicant stated that this contributed to her failure to take any concrete action on the issue until early 2010.

The applicant also indicated that the house had been sold and the closing date was imminent. On January 6, 2010 she provided a notice to the respondents stating that the house was for sale and expressing her opinion that the tenancy agreement would continue with any new owner.

A tenancy agreement is a contract between a landlord and tenant. With the exception of rent and house rules, neither party can change the rights and obligations set out in the tenancy agreement

without the consent of the other party. Parking is not a house rule. It is a service or facility. There is no indication that the applicant's "amendments" to the tenancy agreement concerning parking were accepted by the respondents. In my opinion, the restrictions imposed by the "amendments" have no legal effect and can not be enforced. Since the tenancy agreement does not specify the number of parking spots or vehicles permitted, and the parties appear to have agreed on an area for tenant parking, I can not find the respondents in breach of the parking provision in the agreement.

If the parties agreed to waive the "no pets" provision in the tenancy agreement they should have done so in writing. A verbal waiver of a right must be a clear, unequivocal and decisive act. The respondents acquired the dog without seeking any waiver of the "no pets" provision of the tenancy agreement. The applicant's verbal response to the dog issue, as it was described by the parties, does not imply, in my opinion, the absolute approval to keep a pet.

In considering a remedy in this matter, I have taken into consideration that the respondents will soon have another landlord, who may or may not want to have a dog on the rental premises, or for that matter, may or may not wish to continue to rent the premises. In my opinion, it would be

fair and prudent to permit the new landlord to consider the matter and decide if he/she wishes to try to enforce the "no pets" provision.

For these reasons, the application is dismissed.

Hal Logsdon
Rental Officer