

IN THE MATTER between **THOMAS BEARD**, 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:

THOMAS BEARD

Applicant/Landlord

- and -

DAVE ROSE AND MILLY ROSE

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 45(4)(e) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as 2B Wong Court, Yellowknife, NT shall be terminated on May 31, 2010 and the respondents shall vacate the premises on that date, unless they are in compliance with their obligation to not keep pets on the premises.

DATED at the City of Yellowknife, in the Northwest Territories this 25th day of March, 2010.

Hal Logsdon
Rental Officer

IN THE MATTER between **THOMAS BEARD**, 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:

THOMAS BEARD

Applicant/Landlord

-and-

DAVE ROSE AND MILLY ROSE

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: March 24, 2010

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Thomas Beard, applicant
Dave Rose, respondent

Date of Decision: March 25, 2010

REASONS FOR DECISION

The applicant alleged that the respondents breached the tenancy agreement by keeping a pet on the premises and sought an order terminating the tenancy agreement.

The respondents entered into a written tenancy agreement with the former owners of the residential complex on July 1, 2007. Article 12 of that agreement clearly states that there are to be "no pets".

The respondents acquired a small dog in August, 2009. On August 28, 2009 the landlords advised the respondents in writing that they were in breach of the tenancy agreement and sought their response. The respondent stated that on September 1, 2009 Angela Tanton (one of the former landlords) verbally agreed that keeping the dog on the premises would be permitted provided the carpets were shampooed at the end of the tenancy agreement. A second notice was served on the respondents by the former landlords on January 23, 2010 advising them of their continued breach of the tenancy agreement.

On January 25, 2010 the former landlords filed an application (file #10-11346) against the respondents seeking termination of the tenancy agreement due to alleged breaches of the tenancy agreement regarding parking privileges and the "no pets" provision. The matter was heard on February 11, 2010 which was just four days before the house was to be sold. The rental officer found no breach of the parking provisions and because it was unknown if the new landlord would

tolerate the dog or want to try to enforce the written tenancy agreement, the application was dismissed.

At the February, 2010 hearing, Angela Tanton acknowledged the September 1, 2009 conversation with the respondent and stated that she felt under pressure to respond to his request to keep the dog but intended to speak to her husband before consenting to a change to the tenancy agreement.

The residential complex was sold on February 15, 2010 and the new landlord filed an application alleging the breach of the "no pets" provision and seeking termination of the tenancy agreement.

The respondents submitted that the tenancy agreement was effectively amended by the verbal discussion with the former landlord although no written amendment or waiver of the "no pets" provision was executed by the parties.

The "no pets" prohibition contained in the written tenancy is a significant term of the written tenancy agreement. Changing or waiving this term is, in my opinion, a material alteration of the terms of the tenancy agreement and should have resulted in the mutual agreement of the parties to terminate the original agreement and replace it with a new tenancy agreement with an alteration of article 12 or a clear, unequivocal and decisive waiver of the "no pets" provision.

To accept the respondents' argument that Article 12 of the tenancy agreement had been effectively altered by the parties, I would have to find, on the balance of probabilities, that the written tenancy agreement had been terminated and replaced by an oral agreement without the prohibition to keep a dog on the premises or that there was a clear, unequivocal and decisive verbal waiver of the "no pets" provision. In my opinion, the evidence does not support either of these criteria. There is no evidence that the written tenancy agreement has been terminated in accordance with the Act. The conversation between the parties in September, 2009 does not seem clear, unequivocal or decisive, particularly in the light of the written notices regarding the dog.

In my opinion, the respondents are in breach of their tenancy agreement and the applicant has the right to enforce the provisions of the agreement as originally written. However, I do note that the applicant acknowledged that permitting the dog on the rental premises had not created any issues. That being the case, I believe the respondents should be given an opportunity to comply with the tenancy agreement, or if they wish to keep the dog, be given a reasonable length of time to find other accommodation.

An order shall issue terminating the tenancy agreement on May 31, 2010 unless the respondents are in compliance with their obligation to not keep pets on the rental premises.

Hal Logsdon
Rental Officer