

IN THE MATTER between **BOB MCLARNON**, Applicant, and **YVES ST. CYR**,
Respondent;

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter
R-5 (the "Act") and amendments thereto;

AND IN THE MATTER of a Hearing before, **HAL LOGSDON**, Rental Officer,
regarding the rental premises at **FORT SMITH, NT.**

BETWEEN:

BOB MCLARNON

Applicant/Landlord

- and -

YVES ST. CYR

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant rent arrears in the amount of four thousand one hundred forty dollars (\$4140.00).

DATED at the City of Yellowknife, in the Northwest Territories this 20th day of January,
2011.

Hal Logsdon
Rental Officer

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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.

BETWEEN:

BOB MCLARNON

Applicant/Landlord

-and-

YVES ST. CYR

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: January 13, 2011

Place of the Hearing: Yellowknife, NT via teleconference

Appearances at Hearing: Bob McLarnon, applicant
Yvonne Crawford, representing the applicant
Allan Crawford, witness for the applicant
Yves St. Cyr, respondent

Date of Decision: January 20, 2011

REASONS FOR DECISION

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay rent and sought an order requiring the respondent to pay the alleged rent arrears.

The applicant's representative stated that the respondent renovated the applicant's mobile home and when the renovations were complete asked if he could stay in the home until it was sold. The parties agreed that the respondent took up residence in the premises on October 1, 2009. There is no evidence of a written tenancy agreement or any discussion of rent at that time.

On October 28, 2009 the applicant's representative sent an e-mail to the respondent stating, "We need to discuss rent for the trailer, we believe \$600.00 would be reasonable." She sent another e-mail to the respondent on November 5, 2009 stating in part, "Just a reminder that rent is due, \$600." Additional e-mails were sent on November 19, 2009 and November 23, 2009 inquiring about the rent.

The respondent replied on December 15, 2009 stating that he was insulted by the demands for rent after he had completed two renovations for them.

E-mails were sent to the respondent in December, 2009 and January 2010 expressing the representative's view that the rent demanded was fair and reasonable. Finally on March 7, 2010 the representative demanded that the respondent either pay rent or vacate the premises. On May

19, 2010 she informed the respondent that they intended to initiate legal action to collect the rent.

The applicant's representative stated that the respondent moved out on July 31, 2010 and calculated the rent arrears to be \$6000 (10 months @ \$600/month).

The respondent stated that the arrangement was that he could live in the premises until they were sold at which time the parties intended to divide the profits between the applicant and the respondent. He stated that there was no agreement to pay rent when he moved in on October 1, 2009. The applicant's representative acknowledged that no agreement on rent had been formed when the respondent took up residence in the premises on October 1, 2009.

The respondent disputed the applicant's representative statement that the premises were vacated on July 31, 2010 and testified that he vacated on June 1, 2010. The applicant's representative agreed to accept the June 1, 2010 date.

Section 6 of the *Residential Tenancies Act* sets out the application of the Act.

6. (1) Subject to this section, this Act applies only to rental premises and to tenancy agreements, notwithstanding any other Act or any agreement or waiver to the contrary.

The following definitions are set out in the Act:

"tenancy agreement" means an agreement between a landlord and a tenant for the right to occupy rental premises, whether written, oral or implied, including renewals of such an agreement.

"landlord" includes the owner, or other person permitting occupancy of rental

premises, and his or her heirs, assigns, personal representatives and successors in title and a person, other than a tenant occupying rental premises, who is entitled to possession of a residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent.

"tenant" means a person who pays rent in return for the right to occupy rental premises and his or her heirs, assigns and personal representatives.

In my opinion, there was no tenancy agreement formed on October 1, 2009. At that time neither the applicant or his representative attempted to enforce the right to collect rent. In fact, it appears that rent was not even discussed. The respondent did not pay rent for the right to occupy the premises nor was rent demanded. There being no landlord or tenant, there can be no tenancy agreement. I believe the same condition applied until November 5, 2009 when the applicant's representative ceased to simply suggest a reasonable rent amount and demanded \$600/month.

In my opinion, a tenancy agreement was formed on November 5, 2009 when the applicant's representative demanded rent. Implied in that demand was that the respondent must now pay rent for the right of occupancy. The respondent could not avoid becoming a tenant at this point by refusing to pay rent; only by vacating the premises. The application of the *Residential Tenancies Act* also became effective at this point in time.

I find the respondent in breach of his obligation to pay rent. I find the rent arrears to be \$4140 calculated as follows:

November 5-30, 2009 (26 days)	\$520
December 1/09 to May 31/10 (6 months @ \$600/month)	3600
June 1, 2010 (1 day)	<u>20</u>
Rent arrears	\$4140

An order shall issue requiring the respondent to pay the applicant rent arrears in the amount of \$4140.

Hal Logsdon
Rental Officer