

IN THE MATTER between **RADILIH KOE ASSOCIATION**, Applicant, and
GLADYS GULLY AND DAVID PROCTOR, Respondents;

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 GOOD HOPE, NT.**

BETWEEN:

RADILIH KOE ASSOCIATION

Applicant/Landlord

- and -

GLADYS GULLY AND DAVID PROCTOR

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 26th day of
February, 2013.

Hal Logsdon
Rental Officer

IN THE MATTER between **RADILIH KOE ASSOCIATION**, Applicant, and
GLADYS GULLY AND DAVID PROCTOR, 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:

RADILIH KOE ASSOCIATION

Applicant/Landlord

-and-

GLADYS GULLY AND DAVID PROCTOR

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: February 22, 2013

Place of the Hearing: Yellowknife, NT via teleconference

Appearances at Hearing: Angela Grandjambe, representing the applicant
Mabel Boniface, witness for the applicant
Gladys Gully, respondent
David Proctor, respondent

Date of Decision: February 26, 2013

REASONS FOR DECISION

The application was filed naming both Ms Gully and Mr. Proctor as respondents. The written monthly tenancy agreement was made between the applicant and Ms. Gully as sole tenant.

Although Mr. Proctor signed the agreement, he is clearly named only as an occupant on Schedule B to the agreement. Mr. Proctor is not a tenant.

The applicant alleged that the respondents had breached the tenancy agreement by committing an illegal act in the rental premises; namely by illegally selling alcoholic beverages. The applicant also alleged that Ms. Gully had failed to pay the full amount of rent. The applicant sought an order requiring the payment of the alleged rent arrears and terminating the tenancy agreement. The premises are subsidized public housing.

The applicant stated that the board of directors had discussed complaints about the illegal sale of liquor at Ms Gully's rental unit at a special board meeting and had sent a notice to the respondents on April 19, 2012 warning them that continuation of this activity would result in a notice terminating the tenancy. A copy of the April 19, 2012 notice was provided in evidence.

The applicant stated that a notice of termination was served on the respondents on August 14, 2012 terminating the tenancy agreement on September 14, 2012. The notice was not provided in evidence. The applicant stated that the respondents indicated to her that they were not going to move out. The application was filed on November 20, 2012.

The applicant provided the following notarized statement by Elizabeth Kelly.

"In June 2012, Mr David Proctor sold me two Smirnoff mickeys and my spouse three mickeys also delivered three mickeys for my father in law to my public housing residence. This is while he was living in the residence of Gladys Gully's public housing Unit #49."

Ms Kelly did not attend the hearing and was therefore unavailable to answer any questions concerning the matter.

The applicant provided a copy of the tenant ledger in evidence which indicated a zero balance as at September 14, 2012. The applicant stated that they had assessed the full unsubsidized rent of \$1445 in each month thereafter because the tenancy agreement had been terminated and the respondents were no longer eligible for a subsidized rent. The applicant also stated that the respondents had not reported the household income since September, 2012. The applicant stated that since September, 14, 2012 the respondents had paid a total of \$420. The balance would therefore be \$6805 calculated as follows:

Rent, October, 2012 to February, 2013	
5 months @ \$1445/month	\$7225
Rent paid since September 14, 2012	<u>(420)</u>
Total	\$6805

The respondents disputed the allegations. Mr. Proctor acknowledged that he had illegally sold liquor in the past but had not done so since he became an occupant of public housing. Mr. Proctor testified that he left the community on May 18, 2012 and did not return until July 15, 2012. Electronic airline ticket receipts showing travel on those dates were provided in evidence.

The applicant provided a "Rent Calculation" document signed by Mr. Proctor, Ms Gully and Ms Grandjambe on May 24, 2012. Ms Boniface testified that she was present when the document was signed and that Mr. Proctor and Ms Gully signed the document together on May 24, 2012. She also noted that the document contained a date on which the document was printed which also read May 24, 2012. The applicant submitted that Mr Proctor could not have been absent from the community during the period May 18 - July 15, 2012 if he signed the "Rent Calculation" document on May 24, 2012.

Mr. Proctor testified that, on the advice of the applicant, he came to their office and signed the form before he left the community. The respondents testified that Ms Gully later signed the form on May 24, 2012, the day before she left the community to join Mr. Proctor.

The respondents acknowledged that they had not provided income information since September. Mr. Proctor testified that he was told by the applicant not to bother reporting the household income as the full unsubsidized rent would be applied.

Section 46 of the *Residential Tenancies Act* prohibits tenants from committing an illegal Act in the rental premises.

46. (1) A tenant shall not commit an illegal act or carry on an illegal trade, business or occupation, or permit another person to do so, in the rental premises or in the residential complex.

Ms Kelly's statement is not entirely clear as to whether the alleged sale took place in Ms Gully's premises or whether the premises were the base of the alleged operations. Ms Kelly's statement

does not indicate when the alleged offence occurred except to state that it was in June. Without the benefit of being able to question Ms Kelly, the details of the allegations cannot be determined.

The airline receipts do not unequivocally establish that Mr. Proctor was not in the community during the month of June, 2012. The dated "Rent Calculation" document does not establish that Mr. Proctor was present in the community in June, 2012. If Ms. Kelly's statement is accepted as fact, it does not clearly establish that the illegal act was committed in the premises or that the premises were being used to carry on the illegal trade. On the balance of probabilities I cannot conclude that the respondents are in breach of section 46 of the Act.

The notice of termination as described by the applicant does not meet the criteria set out in section 51(5) of the Act.

51. (5) Where a tenancy agreement for subsidized public housing is renewed as a monthly tenancy under subsection 49(1), a landlord may terminate the tenancy on the last day of a period of the tenancy, by giving the tenant a notice of termination not later than 30 days before that day.

I cannot determine from the evidence if the now monthly tenancy agreement was renewed from a previous term agreement but the termination date of September 14, 2012 is clearly not the last day of that month. Therefore the applicant's termination notice was not effective and the tenancy agreement was not terminated. The respondents are entitled to a subsidized rent. The respondents should submit the household income information and the applicant must consider a subsidized rent in accordance with the rent scale. I cannot determine if there are any rent arrears

as I do not have the income information.

In summary, I do not find sufficient evidence to conclude that the respondents are in breach of their obligations and shall dismiss the application.

Hal Logsdon
Rental Officer