File #10-14358

IN THE MATTER between **YELLOWKNIFE HOUSING AUTHORITY**, Applicant, and **TIM CAISSE AND HELEN CAISSE**, 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 **YELLOWKNIFE, NT.**

BETWEEN:

YELLOWKNIFE HOUSING AUTHORITY

Applicant/Landlord

- and -

TIM CAISSE AND HELEN CAISSE

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 45(4)(a) and 45(4)(b) of the *Residential Tenancies Act*, the respondents shall comply with their obligation to not keep pets in the rental premises and shall not breach that obligation again.
2. Pursuant to section 45(4)(e) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Apartment 102, 5123 - 53rd Street shall be terminated on January 15, 2015 and the respondents shall vacate the premises on that date unless the respondents have complied with their obligation to not keep pets in the rental premises.

DATED at the City of Yellowknife, in the Northwest Territories this 3rd day of December, 2014.

Hal Logsdon
Rental Officer

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

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BETWEEN:

YELLOWKNIFE HOUSING AUTHORITY

Applicant/Landlord

-and-

TIM CAISSE AND HELEN CAISSE

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing:	**November 18, 2014**
Place of the Hearing:	**Yellowknife, NT**
Appearances at Hearing:	**Ella Newhook, representing the applicant** **Cameron O'Keefe, witness for the applicant** **Tim Caisse, respondent** **Helen Caisse, respondent**
Date of Decision:	**November 26, 2014**

REASONS FOR DECISION

The applicant alleged that the respondents had breached the tenancy agreement by keeping a cat in the rental premises and sought an order terminating the tenancy agreement between the parties and evicting the respondents. The premises are subsidized public housing.

The applicant stated that a cat litter box, containers of cat food and cat litter were discovered in the respondents' apartment on September 9, 2014 during an inspection of the premises. The applicant provided a tenancy agreement between the parties in evidence which prohibited pets in the premises. The applicant's witness testified that he personally conducted the inspection on September 9, 2014 and saw the cat box and containers. He testified that the cat box contained fresh urine. Picture of the cat box and containers were provided in evidence.

A previous order (file #10-13922, filed on May 6, 2014) required the respondents to comply with the no pets provision contained in the tenancy agreement by removing pets from the premises no later than May 31, 2014. A file memo, dated June 2, signed by Ella Newhook stated that she had been advised by Helen Caisse that the cat and dog were no longer in the apartment and noted that she saw no evidence of any pets in the premises.

The respondents did not dispute the allegation but submitted that the written tenancy between the parties was made for a term that had expired at noon on August 31, 2010. There was no evidence provided by either party that a new written tenancy agreement had been executed. As I

understand the respondents' submission, they claimed that they were no longer bound by the pet prohibition as the tenancy agreement containing the no pets provision was no longer in effect. The applicant disagreed with that position stating that the tenancy agreement had been automatically renewed on a monthly basis with the same terms and conditions and in any case, the respondents had breached the previous order.

The respondents also referred to a dispute between them and the NWT Housing Corporation inferring, I believe, that the current application was in some way related to that incident. I find no connection between the two matters and shall consider only the evidence directly related to the alleged breach.

A significant change to the *Residential Tenancies Act* was brought into force on September 1, 2010. Prior to that date, section 49 of the Act read as follows:

> **49. (1) Where a tenancy agreement ends on a specific date, the landlord and tenant are deemed to renew the tenancy agreement on that date as a monthly tenancy with the same rights and obligations as existed under the former tenancy agreement, subject to any rent increase that complies with section 47.**
>
> **(2) Subsection (1) does not apply**
>
> **(a) where the landlord and tenant have entered into a new tenancy agreement;**
>
> **(b) where the tenancy has been terminated in accordance with this Act; or**
>
> **(c) the residential complex is composed of one rental premises that was the only residence of the landlord in the Territories.**
>
> **(3) This section does not apply to subsidized public housing or to rental premises provided by an employer to an employee as a benefit of employment.**

On September 1, 2010 subsection (3) was repealed. Therefore it appears that the term tenancy

agreement between the parties expired 12 hours before the repeal of section 49(3) came into force.

There is no doubt that the parties have entered into a new tenancy agreement. The premises are subsidized public housing and the parties have continued to carry on their relationship exactly as before the legislative change. The tenants have continued to report the household income, the landlord has continued to charge a rent and apply a subsidy that is calculated based on that income and the tenants have paid those rents. If a new tenancy agreement had not been formed the applicant would have no doubt sought an eviction order and compensation for use and occupation at the unsubsidized rate long before now. In my opinion, a new tenancy agreement was formed, albeit not in writing, and the provisions of the new implied tenancy agreement can be determined by the actions of the parties, namely that nothing has changed from the provisions set out in the former written tenancy agreement.

Section 45 permits a landlord to specify obligations of a tenant in a written tenancy agreement which are not specifically set out in the Act, provided that they are not inconsistent with the Act and are reasonable.

> **45. (1) Where in a written tenancy agreement a tenant has undertaken additional obligations, the tenant shall comply with the obligations under the tenancy agreement and with the rules of the landlord that are reasonable in all circumstances.**

The requirement for writing contained in section 45 gives rise to the question whether the applicant can now enforce the no pets provision if the tenancy agreement where it was originally

expressed in writing has expired, no written tenancy agreement has replaced it but the actions of the parties suggest that the written tenancy agreement was renewed on a monthly basis and the terms and conditions of the original written agreement remain in place. In my opinion and in the circumstances in this case, the no pets provision continues to exist in the current implied tenancy agreement. There is no evidence to suggest that either party intended the terms and conditions of the original written tenancy agreement to change. I also note that the respondents appeared to accept this interpretation when they complied with the previous order by removing the pets from the premises.

I do not find the respondents in breach of the previous order which required compliance with the no pets provision by removing the pets from the premises . The evidence suggests that this order was satisfied.

This tribunal has determined on several other occasions that a no pets provision is reasonable and enforceable (*Yellowknife Housing Authority v Giroux [#10-13873, December 11, 2013], Yellowknife Housing Authority v Porter [#10-8824, January 18, 2006] and Yellowknife Housing Association v Tim Caisse and Helen Caisse #10-13922, May 6, 2014]*).

Is the evidence provided by the applicant sufficient to conclude that a cat is being kept on the premises? Unlike the previous matter between these parties where the applicant saw and photographed a cat in the premises, the evidence in this matter is circumstantial. However, the existence of a cat litter box, particularly one with fresh urine in it, would certainly lead a

reasonable observer to conclude that a cat was kept in the apartment. In my opinion and on the balance of probabilities it is reasonable to assume that the respondents are again keeping a cat in the apartment and are in breach of the current tenancy agreement.

In my opinion, there are sufficient grounds to terminate the tenancy agreement unless the respondents comply with the no pets provision and remove the cat from the premises. Since there is no evidence that the cat is a nuisance to other tenants or is causing any damage to the premises, I believe the respondents should be given a reasonable period of time to find a suitable home for the animal or find another apartment which permits pets.

An order shall issue requiring the respondents to comply with their obligation to not keep pets in the rental premises and to not breach that obligation again. The tenancy agreement between the parties shall be terminated on January 15, 2015 unless the respondents have removed the cat from the premises on or before that day. Should the respondents fail to comply with the order and fail to vacate the premises, the applicant may file an application with evidence of the continuing breach, requesting an eviction order.

Hal Logsdon
Rental Officer