

Annual Report on the Activities Of the Rental Office

April 1, 2013 to March 31, 2014

Submitted by
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Rental Officer

The Role of the Rental Office

A Provider of Information to Landlords and Tenants

The Rental Office is a convenient and accessible place for landlords and tenants to obtain information regarding their rights and obligations. Many landlord-tenant problems are solved simply by providing landlords and tenants with information concerning their respective rights and responsibilities. Many tenants and a surprising number of landlords are unaware of the legislation that governs their relationship or the tenancy agreement that forms the contract between them. The provision of information is probably the single most important function of the office, often serving to eliminate conflict and problems before they start.

The Rental Office maintains a toll-free telephone number which can be used anywhere in Canada. We receive numerous calls each day seeking information concerning rights and obligations of landlords and tenants and the process for filing applications and resolving disputes. Increasingly, we also receive and respond to e-mail inquiries which can be made via our webpage.

The Rental Office also provides written information, including a simple to read booklet outlining the major aspects of the *Residential Tenancies Act*, short fact sheets on selected topics and numerous standard forms. All of this material was updated and revised to reflect the revisions to the Act which came into effect in September, 2010. This material helps both landlords and tenants acquire an understanding of mutual rights and responsibilities to help solve problems before they start.

The Department of Justice maintains a website for the Rental Office that contains all of the written material as well as a link to the legislation and a searchable database of rental officer decisions.

The rental officer is also available to make presentations or participate in forums with tenants, property managers or others involved in residential tenancy matters. We provide these services free of charge in the belief that informed and knowledgeable landlords and tenants are more likely to respect the rights and obligations of each other and less likely to end up in a conflict situation.

Dispute Resolution

Landlords and tenants are encouraged to attempt to resolve disputes themselves. Often, the information provided to the parties regarding their legal rights and obligations helps the parties resolve the dispute but a dispute resolution process is available to both landlords and tenants. The dispute resolution process can be initiated by a landlord or tenant by filing an *Application to a Rental Officer*.

On the filing of an application, a rental officer may investigate to determine the facts related to the dispute. Applications involving the physical condition of premises are often best understood through an inspection of the unit. Similarly, applications involving third parties, such as utility suppliers are often investigated.

Occasionally, the investigation leads to a resolution of the dispute by agreement. For example, a tenant may file an application when a security deposit has not been returned and no statement of the deposit has been provided to the tenant. A brief investigation into the matter may reveal that the landlord was unaware of the new address of the former tenant or of his responsibility to produce a statement. The production of the statement may lead to agreement between the parties and the withdrawal of the application.

Occasionally, the parties will agree to a mediated solution to the problem without recourse to a formal hearing or the issuance of an order. If the parties wish to try to settle the issue by mediation, the rental officer will assist them in the resolution of the matter and the preparation of a mediated agreement.

Often, landlords and tenants cannot agree or, more often, one of the parties wants a decision which can be enforced, should the other party fail to abide by that decision. In these cases, the rental officer will hold a hearing and, after hearing the evidence and testimony of both parties, render a decision. The rental officer will issue a written order along with reasons for the decision. Orders by a rental officer may be filed in the Territorial Court and are deemed to be an order of that court when filed. Most disputes are settled in this manner as the majority of disputes concern non-payment of rent and an enforceable decision is desired by the applicant.

Market Trends ¹

The Yellowknife apartment vacancy rate continued to increase and was reported to be 5.9% in April, 2014 by Canada Mortgage and Housing Corporation. This represents an increase of 2% from the vacancy rate in April, 2013. For units common to both surveys, the rent for two-bedroom units did not increase significantly.

The drop in vacancy rates and the stabilization of market rents was attributable to a net out-migration, continued low interest rates and an expanding condominium market in the city. The universe of rental units in the city declined during 2013/2014 due to conversion of apartment units to hotels.

¹ Rental Market Reports, Yellowknife Highlights, Canada Mortgage and Housing Corporation

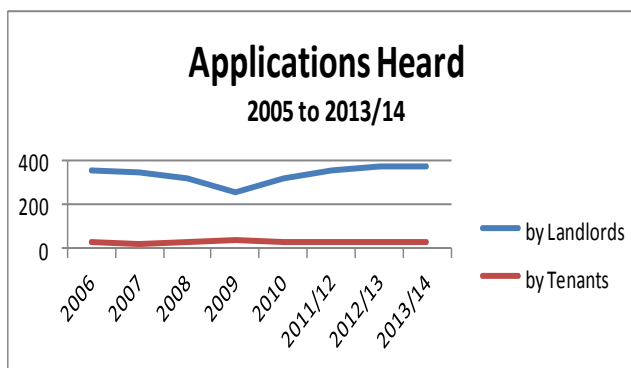
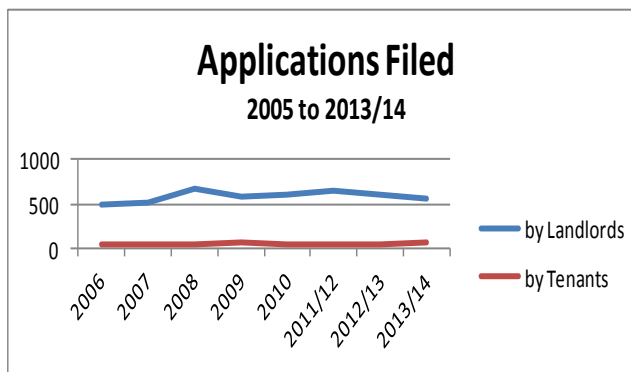
Rental Office Activities

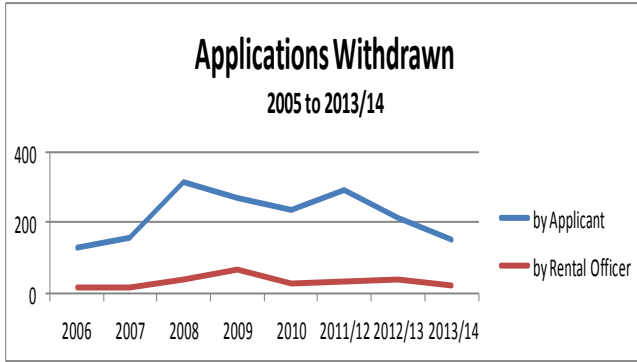
Ms Adelle Guigon was appointed as a Deputy Rental Officer on April 1, 2013. Hal Logsdon continued to serve as Rental Officer and Ms. Kim Powless continued to serve as the Rental Office Administrator. Ms Guigon's appointment was a welcome addition to the Rental Office that should assist with the current volume of applications.

The number of applications filed during the 2013/14 fiscal year declined slightly compared to 2012/13. However, the number of applications heard remained essentially the same.

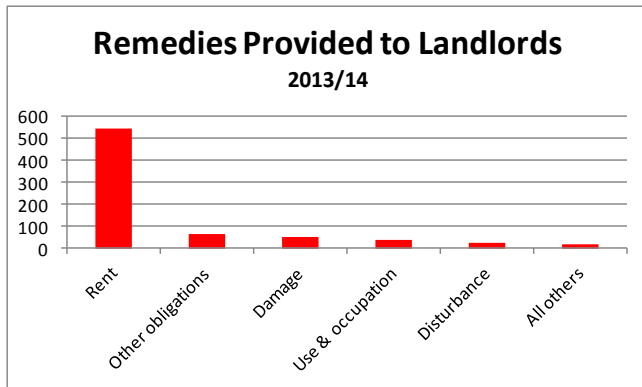
The NWT Housing Corporation has initiated a push to collect rent arrears and as a result we are receiving higher proportions of applications from housing associations and authorities, some of which rarely file applications. Most of these applications seek orders for rent arrears which have accumulated over many years and involve numerous assessments and re-assessments of rent. Not surprisingly, tenants will often contest the assessments and/or the amount of rent alleged to be owing. The review of public housing rent assessments to determine if the rent has been properly assessed is often a laborious task due to the size of the rent arrears and the length of time they have been allowed to accrue. Reviewing, hearing and determining these applications can be very time consuming and the resultant written reasons for decision lengthy. We are finding that the increased number of applications relating to NWT Housing Corporation programs are consuming increased time and that even though the number of applications heard has not increased overall, the time required to review and hear the applications and to write the orders is taking significantly more time.

Applications which are withdrawn by landlords are usually the result of the dispute being resolved prior to the hearing being held. Some landlords who file for orders to pay rent will routinely withdraw the application if the rent is paid. We saw a significant decrease in the number of applications withdrawn by landlords in 2013/14, a trend which started in 2012/13. Applications withdrawn by a rental officer are usually the result of applicants failing to serve the filed application on the respondent.





A rental officer may withdraw an application and close the file if the application is not served on the respondent within 14 days. An applicant's failure to serve the application is often due to the inability to locate the respondent but may also indicate that the dispute has been resolved.



Landlord applications continue to comprise most of the applications filed and the majority of these applications involve the non-payment of rent. Many of these applications are undisputed by the tenant and result in an agreement between the landlord and tenant about how the arrears will be paid.

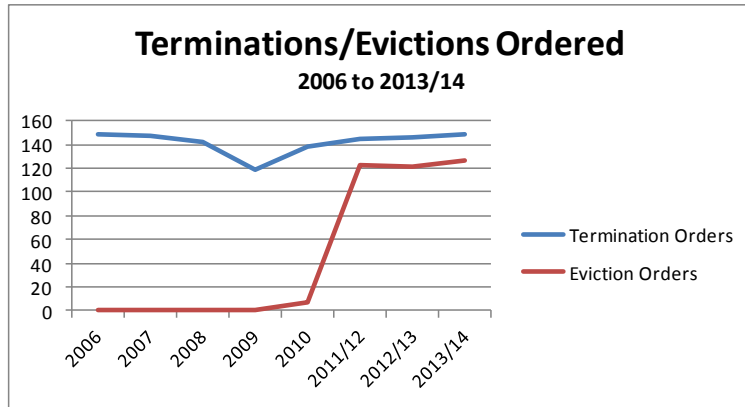
In many cases of rent arrears, a rental officer is able to mediate an agreement between the parties concerning how the rent arrears will be paid and issue an order reflecting that agreement. For example, it may be established at a hearing that a tenant owes rent to the landlord who is seeking an order to pay the rent and terminating the tenancy agreement. The rental officer may be able to arrange an agreement between the parties which would result in the continuation of the tenancy agreement if the rent arrears are paid by a certain date or in a certain manner. The result is a conditional termination order which provides the tenant with an opportunity to resolve the problem and continue the tenancy without subjecting the landlord to additional risk.

Since public housing rent is based on the household income, there are a considerable number of applications filed by public housing landlords seeking orders requiring tenants to accurately report their household income and/or terminating the tenancy agreement unless the tenant complies with that obligation. Remedies fall under section 45 of the Act which covers "other obligations contained in a tenancy agreement". There are also other obligations that fall into this category such as "no pets" provisions, parking rights and responsibility for utilities.

Landlords also frequently apply for orders regarding damages to the premises and disturbance. Compensation for use and occupation of the rental premises is frequently ordered when an eviction order is granted to a landlord. This compensation is usually granted on a per diem basis for each day after the termination of the tenancy agreement that the tenant remains in possession and provides compensation to the landlord until the eviction can be undertaken by a sheriff.

There are also a small number of orders which were granted for security deposits, illegal activities, compensation for lost rent following abandonment of the premises, abandoned personal property and no fault terminations.

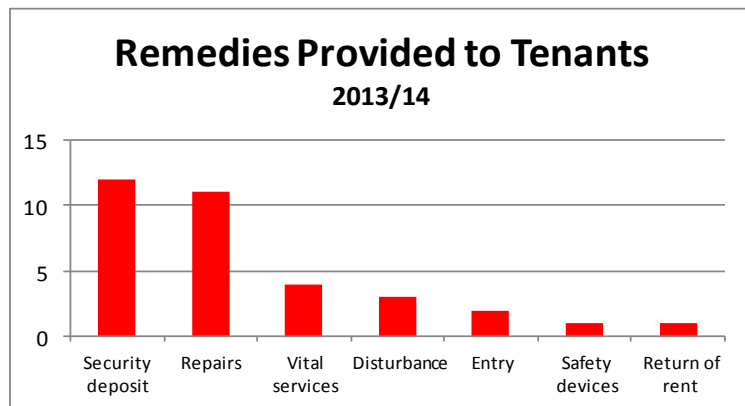
Commencing September 1, 2010 eviction orders could be obtained from a rental officer on the application of a landlord. Prior to the amendments, a rental officer could issue an order that terminated the tenancy agreement but if the tenant remained in possession, the landlord had to obtain an



Supreme Court. The number of eviction orders granted since the amendments came into force has remained relatively constant at about 30% of the applications that are heard.

Landlords are able to apply for an order terminating the tenancy agreement and evicting the tenant in a single application. The eviction order expires six months after it is issued unless it is filed in the Supreme Court. Like termination orders, many eviction orders contain conditions which act to invalidate the order if the conditions are met, such as the payment of rent by a specific date.

Tenant applications rose to almost 11% of the total applications filed in 2013/14. The most common remedies provided to tenants involve the return of security deposits and repairs to the rental premises.



If a landlord retains all or part of a security deposit, they are obligated to issue a statement

to the tenant itemizing the deductions. Only rent arrears and the costs to repair damages may be deducted. If a tenant does not receive a statement, objects to a deduction or feels that the costs claimed are unreasonable, they may file an application.

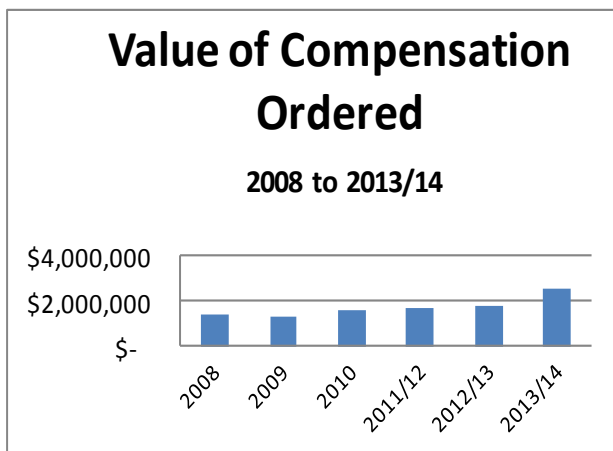
In most cases, a landlord is obligated to provide and maintain the rental premises in a good state of repair. If a landlord breaches this obligation a tenant may file an application requesting an order for relief. The tenant may also request an order requiring the rent be paid to a rental officer.

Landlords are prohibited from deliberately interfering with the supply of any vital service which includes heat, water and electricity. Landlords are also prohibited from interfering with a tenant's possession or quiet enjoyment of the rental premises. A landlord is entitled to enter a tenant's premises only for specific reasons and must give written notice 24 hours before the intended time of entry. Landlords are obligated to provide safety devices which prevent the unauthorized entry to the residential complex. If a landlord breaches any of these obligations, the tenant may file for relief.

Although landlords are the most frequent users of dispute resolution, we receive many requests for information from tenants by phone, through the website and email, and at the office.

Applications from 26 communities were heard in 2013/14 which is a significant increase in the distribution of applications in 2012/13. Forty one percent of applications heard related to premises in the City of Yellowknife. As mentioned previously, there has been a marked increase of applications filed by housing authorities/associations and the NWT Housing Corporation, many from communities which rarely file applications.

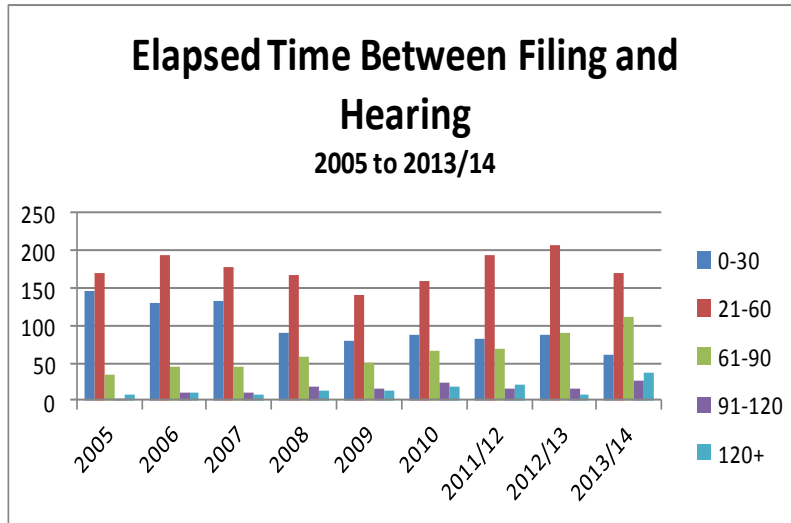
Hearings are scheduled approximately every three weeks in Yellowknife and the docket is often filled to capacity. Hearings are scheduled in other communities as applications are received. Hearings by telephone are frequently used when only a few applications are received from a location. Telephone hearings help to ensure that disputes outside of Yellowknife are resolved as rapidly as possible. Forty one percent of the hearings held in 2013/14 were conducted by telephone.



A total of 326 orders granting monetary relief were issued in 2013/14 with a total value of nearly \$2.54 million. The average relief increased to \$7787 from \$5293 in 2012/13. This is due to the increase in the number of applications from housing associations/authorities and the NWT Housing Corporation whose tenants commonly have very high levels of rent arrears. Monetary relief is most commonly awarded for rent arrears or when there have been damages to

rental premises, but can also be provided for lost rent when premises are abandoned and for loss of possession or enjoyment of the premises.

The length of time it takes from the time an application is filed to the time it is heard depends on a number of factors, some of which are outside the control of the Rental Office. Users of the services occasionally complain about the length of time it takes to resolve a dispute and we continue to do what we can to make the administration of the process move as rapidly as possible.



From 2005 through 2007 we heard 80% of the applications within 60 days of filing. In 2008 however, we dropped below that target, hearing 74% of applications within 60 days. The 74% target was maintained in 2009. In 2010 the number of applications heard within 60 days dropped to 70%. For the past two fiscal years (2011/12 and 2012/13)

we maintained a 72% record but in 2013/14 the number of applications heard within 60 days of filing dropped to 57% despite the appointment of a deputy rental officer.

Several factors contributed to this increased time between filing and the hearing. The increase in applications from communities other than Yellowknife have required additional time to arrange hearing facilities and in some cases travel arrangements. Since the parties must be notified of the hearing, additional time is required to ensure service is successful. More cases are adjourned due to lack of service and rescheduled at a later date. Hearings in Sachs Harbour and Paulatuk were delayed by adjournments and problems with service that resulted in much longer than normal wait times for hearing. The number of applications from these two communities somewhat skewed the overall wait time statistics.

Issues

In my 2011/12 and 2012/13 annual reports, I outlined a number of issues which I felt should be addressed in Residential Tenancies Act. During 2013, the Department of Justice conducted a consultation process regarding changes to the *Residential Tenancies Act*. That consultation closed on September 30, 2013. The Department of Justice published the results of the consultation, “What we Heard” on December 18, 2013.

The security of tenure for public housing tenants and the inclusion of transitional housing are two issues which generated much discussion during the consultation process. These two issues are, in my opinion, very important ones and have not received the consideration they deserve. I also have a minor concern with the proposed amendment to the Act regarding applications by condominium corporations.

Security of Tenure – Public Housing

In market housing, a landlord must make an application to terminate a tenancy agreement. A rental officer then hears the matter to determine if the tenant is in breach of the tenancy agreement or the Act. If the tenant is found to be in breach, the rental officer must determine if the breach justifies the termination of the tenancy agreement or if another remedy is more appropriate. A tenancy agreement in market housing may only be terminated by order of a rental officer, notice by the tenant or my mutual agreement between the landlord and the tenant. There are no provisions for a market housing landlord to terminate a tenancy agreement by notice unless they have rented their only residence in the NWT.

In public housing, the landlord may terminate a monthly tenancy by giving notice for the end of any month at least 30 days before that date. A term agreement may be terminated at the end of the term by giving 30 days notice before the end of the term. The Act requires that the notice include a reason for the termination but does not require any particular reason or reasons to be valid. No application or hearing is required. There is no opportunity for a tenant to appeal the termination to a rental officer. A tenant's only recourse is to refuse to give up possession, forcing the landlord to apply for an eviction order and argue at the eviction hearing that the eviction is not justified.

I seriously question why public housing tenants should not have the benefit of having an impartial adjudicator determine if there are sufficient grounds to terminate their tenancy agreement. To my mind, the right to a fair and impartial hearing should apply equally to both market housing and public housing tenants. To deprive the public housing tenant that right is, in my opinion, discriminatory.

The Department of Justice consultation document notes that the NWT Housing Corporation (which is not the only provider of subsidized public housing) has policies and procedures which provide several levels of appeal outside the *Residential Tenancies Act* should a tenant disagree with a notice of termination. I assume that this suggests that the appeal process of the NWT Housing Corporation is somehow equivalent to the dispute resolution process contained in the Act. It is not.

Referring a termination to the housing association board or the NWT HC district director is not an appeal – it is plea. Neither of these bodies is impartial. They are, in fact, the landlord or the agent of the landlord. Furthermore, the public housing landlord is entitled to charge the full unsubsidized rent after the termination notice becomes effective.

Tenants who believe that their tenancy agreement should not be terminated must refuse to give up possession, exercise their right to appeal and finally force the landlord to make an application to a rental officer for an eviction order if all appeals are lost. During this prolonged period, created primarily by the NWT HC appeal process, the tenant's rent arrears will increase significantly due to the monthly application of the full unsubsidized rent. The public housing tenant will no doubt realize that should he/she lose the final appeal to the rental officer, the accrued rent arrears will be crippling. Similar to a high stakes plea bargain, the tenant is encouraged to give up any appeal.

The Department of Justice consultation document also notes, without providing any detail, that most other jurisdictions in Canada treat public housing tenancies differently than market rental units. This is also true in the NWT. There are numerous provisions in the NWT *Residential Tenancies Act* which apply only to subsidized public housing and act to permit the program to operate properly and thus achieve its objectives. I fail to find any valid argument that the failure to provide public housing landlords with the ability to terminate tenancy agreements by notice in any way seriously impedes the operation of the program or frustrates the program objectives nor do I understand how the NWT HC appeal process could possibly be considered to be a fair or expeditious substitute for the dispute resolution process set out in the *Residential Tenancies Act*.

Application of the Act to Transitional Housing

Transitional housing is an intermediate step between living in a shelter or homelessness and independent living. Transitional housing is typically provided for a term and offers tenants their own private rooms and a supportive living environment including opportunities to develop the life skills necessary to maintain independent living. This form of housing is gaining in popularity and is considered by many to be a missing component in the efforts to fight homelessness.

It is not entirely clear whether the Act excludes this form of housing or not. Some providers of transitional housing argued for exemption during the consultation which is somewhat curious as the same providers have made applications under the Act in the past. While it is clear that providers of temporary shelter such as the Salvation Army and the Alison Mcateer House are exempt, it is not so clear that providers of transitional housing who enter into agreements with their tenants for a year or more fall into the same category. During the consultation, it was suggested that perhaps the duration of occupancy could be used to distinguish between the two forms of shelter. I respectfully disagree.

In my opinion, the distinction between transitional housing and other forms of tenancies relates to the services offered by the provider. Transitional housing provides counseling and training services along with shelter. Continued eligibility depends on the continuing willingness of the tenant to avail themselves of these services. When the services are declined or the tenant is deemed to no longer be in need of them, the tenancy should be terminated.

Personally, I feel that providers and tenants of transitional housing would both benefit from the provisions of the Act through clearly defined rights and obligations and a simple and inexpensive dispute resolution process but there would have to be specific provisions for transitional housing to ensure the program meets its objectives and can operate correctly just as there are in public housing.

Regardless of whether transitional housing is exempt from the provisions of the Act or not, a more concise definition of the program is essential in order to make a determination whether any particular program is subject to or exempt from the Act. Otherwise there will be continuing arguments by both landlords and tenants as to the applicability of the Act to any particular project. The current exemptions are imprecise and ambiguous as they pertain to transitional housing. It would be relatively easy to more clearly define transitional housing in the Act and either include it or not. At the very least, a definition of transitional housing should be included in the revisions to the Act and a clear statement regarding the application of the Act to this important form of housing

2. Condominium Act

The Department of Justice has recognized the inconsistency between the *Residential Tenancies Act* and the *Condominium Act*. The proposed amendment to the *Residential Tenancies Act* would permit a condominium corporation to file an application where a tenant of a condominium owner causes excessive damage, creates disturbance or poses a danger to other occupants. I suggest that the legislation require that the owner of the condominium be named as a party to any application made by a condominium corporation as well as the occupant of the rental premises.

**Statistics for the Year
April 1, 2013 to March 31, 2014
With comparisons to previous years**

Note: Annual reports prior to 2011 were based on the calendar year. Later reports are based on the fiscal year from April 1-March 31.

Applications to a Rental Officer

| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011/12 | 2012/13 | 2013/14 |
|-------------------------------|------|------|------|------|------|------|---------|---------|---------|
| Applications Filed | 591 | 534 | 544 | 711 | 635 | 643 | 690 | 644 | 628 |
| By Landlords | 551 | 489 | 502 | 667 | 576 | 599 | 641 | 595 | 566 |
| By Tenants | 40 | 45 | 42 | 44 | 59 | 44 | 49 | 49 | 62 |
| Applications Heard | 362 | 390 | 374 | 346 | 299 | 356 | 382 | 410 | 409 |
| By Landlords | 336 | 359 | 351 | 318 | 259 | 321 | 352 | 377 | 376 |
| By Tenants | 26 | 31 | 23 | 28 | 40 | 35 | 30 | 33 | 33 |
| Applications Withdrawn | 210 | 143 | 168 | 352 | 333 | 262 | 323 | 250 | 177 |
| By Applicant | 172 | 126 | 155 | 315 | 269 | 238 | 293 | 211 | 154 |
| By Rental Officer | 38 | 17 | 13 | 37 | 64 | 24 | 30 | 39 | 23 |

Hearings Held by Community and Type – 2013/14

| Community | In Person | By Phone | Total |
|------------------|------------|------------|------------|
| Behchoko | 25 | 3 | 28 |
| Deline | 3 | | 3 |
| Ft. Liard | | 6 | 6 |
| Ft. McPherson | | 14 | 14 |
| Ft. Providence | | 2 | 2 |
| Ft. Resolution | | 4 | 4 |
| Ft. Simpson | | 10 | 10 |
| Ft. Smith | 6 | 8 | 14 |
| Gameti | | 2 | 2 |
| Hay River | | 35 | 35 |
| Inuvik | 24 | 23 | 47 |
| Jean Marie River | | 1 | 1 |
| Kakisa | | 1 | 1 |
| Lutsel'Ke | | 3 | 3 |
| Nahanni Butte | | 1 | 1 |
| Norman Wells | | 5 | 5 |
| Paulatuk | 17 | 2 | 19 |
| Sachs Harbour | 8 | 2 | 10 |
| Trout Lake | | 2 | 2 |
| Tsiigehtchic | | 1 | 1 |
| Tuktoyaktuk | | 18 | 18 |
| Tulita | | 7 | 7 |
| Wekweeti | | 1 | 1 |
| Whati | | 4 | 4 |
| Wrigley | | 2 | 2 |
| Yellowknife | 158 | 11 | 169 |
| TOTAL | 241 | 168 | 409 |

Remedies Provided to Landlords 2013/14

| Remedy | Number of remedies |
|-----------------------------------|--------------------|
| Non-payment of rent | 544 |
| Other obligations | 66 |
| Damage | 53 |
| Compensation – use and occupation | 38 |
| Disturbance | 23 |
| Security deposit | 7 |
| Loss of future rent | 5 |
| Illegal Activities | 4 |
| Abandoned personal property | 2 |
| No fault termination | 1 |

* Many orders contain multiple remedies. Therefore the total remedies applied, exceed the total number of orders. For example, there are three available remedies which may be applied for non-payment of rent. Often an order made for non-payment of rent contains more than one.

**Remedies Provided to Tenants
2013/14**

| Remedy | Number of remedies |
|------------------------|--------------------|
| Security deposit | 12 |
| Repairs | 11 |
| Vital services | 4 |
| Disturbance | 3 |
| Entry | 2 |
| Safety devices | 1 |
| Return of prepaid rent | 1 |

Terminations/Evictions Ordered *
2005- 2013/14

| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011/12 | 2012/13 | 2013/14 |
|---|------|------|------|------|------|------|---------|---------|---------|
| Termination Requested by Tenant | 2 | 2 | 1 | 3 | 4 | 2 | 3 | 0 | 5 |
| Termination Requested by Landlord | 158 | 147 | 146 | 139 | 115 | 136 | 144 | 146 | 149 |
| Terminations as % of Applications Heard | 44% | 38% | 39% | 41% | 40% | 38% | 38% | 36% | 36% |
| Evictions Ordered | - | - | - | - | - | 7 | 123 | 121 | 127 |
| Evictions as % of Applications Heard | - | - | - | - | - | - | 32% | 30% | 31% |

* includes orders which terminate tenancy agreements or evict tenants only if specific conditions are not met.

**Value of Compensation Ordered
2008 – 2013/14**

| | 2008 | 2009 | 2010 | 2011/12 | 2012/13 | 2013/14 |
|---------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Total Orders Granting Monetary Relief | 286 | 251 | 292 | 308 | 330 | 326 |
| Total Value of Orders Issued | \$1,399,362 | \$1,334,456 | \$1,596,625 | \$1,695,226 | \$1,746,655 | \$2,538,478 |
| Average Value | \$4893 | \$5317 | \$5468 | \$5504 | \$5293 | \$7787 |

**Elapsed Time between Filing Date and Hearing Date
Applications Heard During Period – 2005 to 2013/14**

| | 2005 | % | 2006 | % | 2007 | % | 2008 | % | 2009 | % |
|-------------|------|-------|------|-------|------|-------|------|-------|------|-----|
| 0-30 days | 146 | 40.0% | 131 | 33.6% | 133 | 35.6% | 90 | 26.0% | 80 | 27% |
| 31-60 days | 169 | 46.7% | 193 | 49.5% | 178 | 47.6% | 167 | 48.3% | 140 | 47% |
| 61-90 days | 35 | 10.0% | 45 | 11.5% | 44 | 11.7% | 59 | 17.1% | 50 | 17% |
| 91-120 days | 3 | 0.8% | 10 | 2.6% | 10 | 2.7% | 18 | 5.2% | 15 | 5% |
| 120+ days | 9 | 2.5% | 11 | 2.8% | 9 | 2.4% | 12 | 3.5% | 14 | 4% |

| | 2010 | % | 2011/12 | % | 2012/13 | % | 2013/14 | % |
|-------------|------|-----|---------|-----|---------|-----|---------|-----|
| 0-30 days | 88 | 25% | 82 | 21% | 88 | 21% | 62 | 15% |
| 31-60 days | 159 | 45% | 193 | 51% | 208 | 51% | 171 | 42% |
| 61-90 days | 65 | 18% | 69 | 18% | 91 | 22% | 111 | 27% |
| 91-120 days | 25 | 7% | 16 | 4% | 16 | 4% | 27 | 7% |
| 120+ days | 19 | 5% | 22 | 6% | 7 | 2% | 38 | 9% |