

IN THE MATTER between **NWT HOUSING CORPORATION**, Applicant, and  
**LEONARD NADIA AND STELLA NADIA**, 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 **FORT SIMPSON, NT**.

BETWEEN:

**NWT HOUSING CORPORATION**

Applicant/Landlord

- and -

**LEONARD NADIA AND STELLA NADIA**

Respondents/Tenants

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 67(4) of the *Residential Tenancies Act*, the respondents shall pay the applicant rent arrears in the amount of two thousand nine hundred eleven dollars and seventy seven cents (\$2911.77).
2. Pursuant to section 41(4)(c) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the rental premises known as a three bedroom detached house

located on Lot 445, Plan 1084, Fort Simpson, NT shall be terminated on March 15, 2002 and the respondents shall vacate the rental premises on that date.

DATED at the City of Yellowknife, in the Northwest Territories this 28th day of February, 2002.

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Hal Logsdon  
Rental Officer

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-and-

**LEONARD NADIA AND STELLA NADIA**

Respondents/Tenants

**REASONS FOR DECISION**

**Date of the Hearing:** February 26, 2002

**Place of the Hearing:** Yellowknife, NT via teleconference

**Appearances at Hearing:** Kim Squires, representing the applicant  
Stella Nadia, representing the respondents

**Date of Decision:** February 28, 2002

**REASONS FOR DECISION**

The parties executed a lease to purchase agreement on April 26, 1996. The agreement provided for an initial two year lease commencing on February 1, 1996 and terminating on January 31, 1998. The rent for the premises was set in the lease to purchase agreement as \$1172.27, subject to a rent subsidy. A letter to the respondents from Robert Hardisty, Program Officer for the applicant dated April 22, 1996, set out subsidy details and a monthly payment amount of \$581.27.

The applicant alleged that during the two year lease period the respondents failed to make any payments of rent. A statement of account produced by the applicant as evidence indicates no payments were made during this period. The respondents testified that they did not know the amount of rent to be paid. During this period, it appears the applicant sent one notice (February 7, 1997) to the respondents concerning arrears and demanding payment.

At the end of the two year lease period, one of four things could have occurred pursuant to the lease to purchase agreement.

- 1. Pursuant to Part B of the agreement, the applicant could have transferred the property to the respondents and provided the respondents with a mortgage loan.**

It is unclear as to how such a mortgage loan would have been registered as the land appears to be reserved land for Indian use and was allocated to the respondents by Band Council Resolution in 1994. There do not appear to have been any loan documents executed however most notices from the applicant to the respondents, including the one during the lease period, refer to mortgage payments and refer to a mortgage number. It would seem unlikely that the applicant would consider the option available under Part B of the lease to purchase agreement as the respondent was clearly in default of the lease provisions. The applicant testified that at the expiry of the lease period, none of the purchase provisions contained in the agreement were exercised.

**2. Pursuant to section 18(a)(i) of the agreement the applicant could have offered to renew the lease for a further term of not more than three years.**

There is no evidence to indicate that any offer to renew the lease was made by the applicant or that the original agreement was renewed or that a new lease agreement was executed. Section 49(3) of the *Residential Tenancies Act* specifically exempts subsidized public housing from the security of tenure provisions of the Act. In my opinion the premises meet the definition of subsidized public housing contained in section 1 of the Act. The applicant testified that none of the cancellation or renewal options contained in section 18 of the lease to purchase agreement were formally exercised.

**3. Pursuant to section 18(a)(2) of the agreement, the applicant could have terminated the lease to purchase agreement, and entered into a tenancy agreement under the regular rental housing program.**

There is no evidence of a new tenancy agreement under the rental program.

**4. Pursuant to section 18(a)(3) of the agreement, the applicant could have terminated the agreement and evicted the respondent.**

There is no indication of any notice to terminate or any action to terminate other than the applicant's application of January 14, 2002. Although the *Residential Tenancies Act* specifically exempts subsidized public housing from the security of tenure provisions of the Act, it does not set out any notice requirements in order for a landlord to terminate a term agreement at the end of the term. Nor does the agreement itself set out any notice requirements by a landlord to exercise this option.

After January 31, 1998 the applicant continued to intermittently demand payment, sending seven notices to the respondents. The applicant testified that over the next four years the respondents failed make any payments. The statement provided as evidence supports these allegations. The respondents testified that they were unsure of the amount of rent to be paid. The respondents also indicated that they had tried to set up repayment plans with the applicant on occasion, without success. They also indicated that they had been renting the premises to another party although they did not always receive payment.

The applicant made application to a rental officer on January 14, 2002 seeking termination of the tenancy agreement and payment of alleged rent arrears of \$43,143.

In my opinion, this tenancy agreement was terminated at the end of the term, January 31, 1998. The tenants became overholding tenants at the applicant's sufferance. In my opinion, the applicant could have simply given reasonable notice to the respondents to terminate the tenancy at sufferance. However, since the application was made, I believe it is reasonable for me to issue an order for termination based on the failure of the tenant to pay rent. In my opinion it is reasonable to order the tenancy terminated on March 15, 2002 and require the respondents to vacate the premises on that date.

In my opinion the rent arrears amount to \$14,184, being the amount of rent which became due during the two year lease term and remains unpaid. I shall not consider the applicants claim for this amount as the tenancy agreement expired some four years ago. Pursuant to section 68 of the *Residential Tenancies Act*, an application must be filed within six months of the breach. I see no reason why an extension of time should be considered.

The remainder of the alleged arrears is, in my opinion, compensation for use and occupation of the premises after the tenancy agreement expired. Such compensation is subject to the landlord's actions to mitigate damages. In my opinion, no reasonable action to mitigate loss was taken until the applicant commenced the application process. The notices, of which numbered only eight in six years were clearly of no effect. The applicant could not have reasonably believed that they would result in the commencement of payments. In my opinion, compensation for use and occupation for the period following the commencement of the application process, at the full, unsubsidized rate of \$1172.27/month is sufficient and reasonable. I find that amount to be \$2911.27 calculated as follows:

January, 2002	\$1172.27
February, 2002	1172.27
March 1-15, 2002	567.23
<b>TOTAL</b>	<b>\$2911.77</b>

An order shall be issued for the respondents to pay the applicant compensation for use and occupation of the rental premises in the amount of \$2911.77 and terminating the tenancy agreement between the parties on March 15, 2002. The respondents shall surrender possession of the rental premises to the applicant on that date.

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Hal Logsdon  
Rental Officer