

IN THE MATTER between **FORT SMITH HOUSING AUTHORITY**, Applicant, and **DAVID BOURKE AND JENNIFER BOURKE**, 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 SMITH, NT**.

BETWEEN:

FORT SMITH HOUSING AUTHORITY

Applicant/Landlord

- and -

DAVID BOURKE AND JENNIFER BOURKE

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondents shall pay the applicant rent arrears in the amount of thirteen thousand seventy nine dollars (\$13,079.00).
2. Pursuant to section 41(4)(b) of the *Residential Tenancies Act*, the respondents shall pay future rent on time.
2. Pursuant to sections 41(4)(c) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement for the premises known as 0047-77 Pine Crescent, Fort Smith, NT shall be terminated on February 27, 2004 and the respondents shall vacate the premises on that

date, unless rent arrears in the amount of thirteen thousand seventy nine dollars (\$13,079.00) are paid in full.

DATED at the City of Yellowknife, in the Northwest Territories this 3rd day of December, 2003.

Hal Logsdon
Rental Officer

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BETWEEN:

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Applicant/Landlord

-and-

DAVID BOURKE AND JENNIFER BOURKE

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: November 28, 2003

Place of the Hearing: Fort Smith, NT

Appearances at Hearing: Ruth White, representing the applicant

Date of Decision: December 3, 2003

REASONS FOR DECISION

The respondents were served Notices of Attendance on November 18, 2003 but failed to appear at the hearing. The hearing was held in their absence.

The applicant alleged that the respondents had breached the tenancy agreement by failing to pay the full amount of the rent and by failing to cut the grass in the yard. The applicant sought an order for the payment of the alleged rent arrears and costs related to cutting the grass on behalf of the respondents.

The applicant provided a statement of the rent account which indicated a balance of rent owing as at October 27, 2003 in the amount of \$13,079. The applicant testified that since that date, no payments of rent had been received. The respondents entered into an agreement with the applicant on May 2, 2002 to pay the accumulated arrears in bi-weekly payments. That agreement was breached by the respondents and another payment agreement was entered into on February 10, 2003 to pay the arrears in reduced bi-weekly payments. The ledger indicates that agreement was also repeatedly breached by the respondents. I find the applicant's statement of rent in order.

The applicant indicated that they would like to provide the tenants with an opportunity to pay the arrears prior to the end of February, 2004.

In the matter of the grass cutting expenses, a work order and invoice indicate that the applicant

cut the grass for the tenants incurring cost of \$53.86. In my opinion, this is the responsibility of the landlord. Section 30 of the Act obligates a landlord to maintain "the premises, the residential complex and all services and facilities provided by the landlord" in a good state of repair. In my opinion, a private yard is part of the "rental premises" and a common yard is part of a "residential complex". In either case, I believe the obligation to maintain the yard in reasonable order is the landlord's. The tenant's failure to cut the grass can not be considered a breach of section 42 as it is not damage caused by a wilful or negligent act by the tenant. (see Carter and Randall (1983) 145 DLR (3rd) 572 (B.C. Co. Ct.)). The applicant's request for an order requiring the respondents to pay for the costs of cutting the grass is therefore denied.

I find the respondents breached the tenancy agreement by failing to pay rent and find the rent arrears to be \$13,079. In my opinion, the amount of arrears and history of rent payments are sufficient grounds to terminate the tenancy agreement. The applicant's request that the tenants be given three months to pay the arrears is reasonable.

An order shall issue requiring the respondents to pay the applicant rent arrears in the amount of \$13,079 and terminating the tenancy agreement on February 27, 2004 unless those arrears are paid in full.

Hal Logsdon
Rental Officer