

IN THE MATTER between **YELLOWKNIFE HOUSING AUTHORITY**, Applicant,
and **VIOLA LECLAIR**, Respondent;

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 **YELLOWKNIFE, NT**.

BETWEEN:

YELLOWKNIFE HOUSING AUTHORITY

Applicant/Landlord

- and -

VIOLA LECLAIR

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant rent arrears in the amount of nine hundred fifty six dollars (\$956.00).
2. Pursuant to section 45(4)(e) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Apartment 3, 5024 - 53 Street, Yellowknife, NT shall be terminated on January 17, 2007 and the respondent shall vacate the premises on that date unless
 - a) the respondent has reported her household income to the landlord or the subsidy agent in accordance with the tenancy agreement for the months of September, October and November, 2006 and

- b) the respondent has provided the Department of Education, Culture and Employment Income Security Program Officer her written authorization, in the usual form, to verify the household income reported by the respondent.

DATED at the City of Yellowknife, in the Northwest Territories this 17th day of December, 2006.

Hal Logsdon
Rental Officer

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-and-

VIOLA LECLAIR

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: December 13, 2006

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Julie Forget, representing the applicant
Wanda Powder, witness for the applicant
Viola LeClair, respondent

Date of Decision: December 15, 2006

REASONS FOR DECISION

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay rent and sought an order requiring the respondent to pay the alleged rent arrears and terminating the tenancy agreement. The premises are subsidized public housing.

The applicant provided a statement of the rent account in evidence which indicated a balance of rent owing in the amount of \$7532. All of the rent arrears have accumulated since April 1, 2006. The full unsubsidized rent of \$1096 was charged for the months of April, May, June, July, August, September, October, November and December, 2006.

The applicant stated that the respondent had provided income information for some months since April, 2006 but in the opinion of the Income Security Officer, the information was incomplete. For other months no income information was provided. As a result, no subsidy was provided to the landlord and the landlord assessed the rents for April - December, 2006 at the unsubsidized rate.

The applicant's witness, an Income Security Officer testified that in her opinion, the respondent had not provided pay slips for all earned income on which to base the rents for April, May, June, July and August. The applicant's witness also testified that the respondent had not provided any income information whatsoever on which to base the rents for September, October, November and December. The applicant's witness stated she had therefore withheld subsidy payments to the

landlord and had not calculated any rent based on income for those months.

The applicant provided nine pay slips which had been submitted by the respondent to the Income Security Officer in evidence. The slips covered a period from January 15, 2006 to August 12, 2006. The applicant noted that the slips indicated bi-weekly pay periods but there was not a slip for each two week period. The applicant and her witness concluded that there must therefore be income slips that were not submitted.

The respondent testified that she had provided complete income information except for September, October and November. She stated that she did not provide any income information for those months. The respondent explained that she had worked on both a temporary basis and on a term basis during 2006. When she worked on a temporary basis, she was only paid every other pay period. When she worked on a term basis she was paid every two weeks. The respondent provided two letters from her employer in evidence. The first, dated August 1, 2006 states that the respondent received only one cheque each month. The second, dated June 26, 2006 confirms that the respondent is a temporary employee.

The tenancy agreement between the parties was made for a four month term commencing on June 1, 2005 and was renewed for an additional year on October 1, 2005. The tenant was obligated to report income in accordance with article 6 of that agreement.

6. **Tenant's Income**

The Tenant promises to provide the Landlord with an accurate report of the Tenant's income and the income of all of the residents of the premises and

shall notify the Landlord of any changes in any resident's income, in the size of the Tenant's family, or number of residents of the premises.

On March 1, 2006, the applicant served a notice on the respondent informing her of a change in process for the reporting of income and setting of rents. Effective April 1, 2006, tenants would be required to report their income to the Canada/NWT Service Centre who would also calculate the rent the tenant was required to pay to the landlord.

When the tenancy agreement expired on September 30, 2006 the parties entered into a new one year term tenancy agreement which reflected the change in income reporting and rent assessment.

6. **Tenant's Income**

The Tenant promises to provide the Landlord or his subsidy agent an accurate report of the Tenant's income, the income of any resident, the size of the Tenant's family, or number of residents of the premises.

The respondent has provided income information on which to calculate a rent based on income for the months of April, May, June, July, August and September, 2006. She has testified that it is accurate and complete and her evidence is consistent with her testimony. The applicant (and the subsidy agent) believe it is incomplete. Their suspicion is based on the number of pay slips submitted compared to the total number of pay periods and the amounts of each cheque. The evidence, in my opinion, is hardly conclusive although it does raise questions as to whether all of the earned income has been documented.

The tenancy agreements require the tenant to provide an *accurate* report of the household income. In my opinion, there is an implied obligation of the tenant to permit the verification of

the reported income by the landlord or subsidy agent. In fact, the Income Security Program Policy requires verification by the Income Security Officer and requires the tenant to formally authorize the release of income information for the purposes of the program. It is unclear, from the evidence presented at the hearing, whether such authorization was given by the respondent or not.

In my opinion, if a dispute arises between a landlord and tenant as to the accuracy or completeness of the household information provided by the tenant, the tenant is obliged to provide the necessary authorization to enable the landlord (or subsidy agent) to verify the information but the onus is on the landlord or subsidy agent to verify the information provided by the tenant. When a tenant provides income information he/she submits documents to verify the income, declares that the information is accurate and authorizes the employer to release information to the subsidy agent. If there is a question as to the accuracy or completeness of the information, the onus is on the landlord (or subsidy agent) to seek verification.

In my opinion, the subsidy agent should have taken measures to verify the income information the respondent provided for rent assessment. If she has not already done so, the respondent should be compelled to provide the necessary authorization to enable the landlord or subsidy agent to verify the income information provided. I can not find the respondent is in breach of her obligation to report income in accordance with the tenancy agreement for the months she provided information to the subsidy agent or landlord, nor should the full unsubsidized rent have been applied for the months of April, May, June, July, August or September, 2006. The rent

should have been assessed for those months based on the income which was reported. This is consistent with the precedent established by *Inuvik Housing Authority v Koe* (1991), 85 D.L.R. (4th) 548, [1992] N.W.T.R. 9 (S.C.)].

There is no question that the respondent failed to report income earned in September, October and November, 2006. Therefore the application of the full unsubsidized rent of \$1096 is reasonable for the months of October, November and December, 2006 and the respondent is in breach of her obligation to report income in accordance with article 6 of the tenancy agreement. Should the respondent subsequently report the household income for these periods, the rent shall be reassessed based on the income provided.

I am unable to calculate the rent which should have been assessed for the months of April, May, June, July, August and September. I am only able to calculate the rent ignoring those months. I note that the balance of rent owing as at March 31, 2006 was \$0. Applying the unsubsidized rent and the payments made since that date, I find rent arrears in the amount of \$956, calculated as follows:

Balance as at March 31/06	\$0
October/06 rent	1096
November/06 rent	1096
December/06 rent	1096
Payments made	<u>(2332)</u>
Balance of rent owing	\$956

It can not be determined from the evidence whether the respondent has completed the authorizations required to verify the income reported for February, March, April, May, June, July

or August, 2006. If the program procedures have been followed, it is likely the necessary forms have been completed. If they have not been completed, they must be.

I find the respondent in breach of her obligation to report income for the months of September, October and November, 2006 in accordance with the tenancy agreement. In my opinion, there are sufficient grounds to terminate the tenancy agreement unless this income is reported and authorization to verify all income reported to the landlord or his subsidy agent is provided by the respondent.

An order shall issue requiring the respondent to pay the applicant rent arrears in the amount of \$956 and terminating the tenancy agreement on January 17, 2007 unless the household income for September, October and November, 2006 is reported to the landlord or the subsidy agent and the respondent authorizes the verification of all income reported.

Hal Logsdon
Rental Officer