

IN THE MATTER between **FORT MCPHERSON HOUSING ASSOCIATION**,
Applicant, and **LAURA NERYSOO AND ALFRED ITSI**, 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 MCPHERSON, NT**.

BETWEEN:

FORT MCPHERSON HOUSING ASSOCIATION

Applicant/Landlord

- and -

LAURA NERYSOO AND ALFRED ITSI

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 eight thousand thirty two dollars (\$8032.00).
2. Pursuant to section 45(4)(c) of the *Residential Tenancies Act*, the respondents shall pay the applicant costs of water and call-out charges in the amount of eighty seven dollars and eighty six cents (\$87.86).
3. Pursuant to section 84(2) of the *Residential Tenancies Act*, the respondents may pay the rent arrears and water costs in monthly installments of at least two hundred fifty dollars (\$250.00), the first payment becoming due on September 1, 2006 and payable thereafter,

along with the rent, on the first day of each month, until rent arrears and water charges are paid in full.

4. Pursuant to section 41(4)(b) of the *Residential Tenancies Act*, the respondents shall pay future rent on time.

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

Hal Logsdon
Rental Officer

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BETWEEN:

FORT MCPHERSON HOUSING ASSOCIATION

Applicant/Landlord

-and-

LAURA NERYSOO AND ALFRED ITSI

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: August 15, 2006

Place of the Hearing: Fort McPherson, NT via teleconference

Appearances at Hearing: Ina Arey, representing the applicant
Betty Firth, representing the applicant
Laura Nerysoo, respondent
Alfred Itsi, respondent

Date of Decision: August 17, 2006

REASONS FOR DECISION

The applicant alleged that the respondents had breached the tenancy agreement by failing to pay the full amount of the rent and sought an order requiring the respondents to pay the alleged rent arrears and terminating the tenancy agreement between the parties. The premises are subsidized public housing.

The applicant provided copies of the tenant ledger in evidence which indicated a balance owing in the amount of \$8119.86. The ledger indicates that no payments of rent have been received since January 20, 2006. The balance also includes charges for water which were delivered to the premises in excess of the normal delivery schedule in the amount of \$87.86.

The respondents disputed the allegations, stating that Mr. Itsi had requested that his name be removed from the tenancy agreement prior to taking a job outside of the community for several months. He stated that he had to pay rent for premises in the other location and for the premises in Fort McPherson. The applicant stated that the landlord refused to amend the tenancy agreement and continued to include Mr. Itsi's income in the determination of the rent. The respondents also questioned the accuracy of the rent assessments, particularly the adjustments which were made to the rents charged in January, February and March, 2006.

It should be noted that, except for \$100, all of these arrears have accumulated since January, 2006. The method of assessing rent was changed on April 1, 2006 and is reflected in a new

tenancy agreement which was executed by the parties on April 5, 2006. Up to April 1, 2006, the tenant was obligated to report the household income to the landlord who assessed the rent in accordance with the Northwest Territories Housing Corporation's rent scale. This is outlined in articles 6 and 7 of the former tenancy 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.

7. Rent Calculation

The Tenant promises to pay to the Landlord the rent, in Canadian Dollars each month, shown in Schedule "A".

As long as the Tenant is not in breach of any of the terms or promises of this Agreement, the Tenant shall pay a subsidized rent calculated by the Landlord. The Landlord shall calculate the subsidized rent the Tenant shall pay according to the Northwest Territories Housing Corporation's Rent Scale.

The Tenant agrees that no notice of rent increase is required so long as the rent assessed in any month does not exceed the amount shown in Schedule "A".

The Landlord agrees to provide notice of any increase to the amount shown in Schedule "A" at least one month in advance.

Commencing in April, 2006, the tenant was obligated to report the household income to the landlord or his subsidy agent. The rent required to be paid by the tenant is now calculated by the GNWT. There is no reference in the agreement as to how the rent is calculated. This is outlined in articles 6 and 7 of the current tenancy agreement.

6. Tenant's Income

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

7. Rent Calculation

The Tenant promises to pay to the Landlord the rent, in Canadian Dollars each month, shown in Schedule "A".

As long as the Tenant is not in breach of any of the terms or promises of the Agreement, the Tenant will be eligible for a rent subsidy calculated by the GNWT. The GNWT shall calculate the subsidized rent the Tenant shall pay.

The Tenant agrees that no notice of rent increase is required so long as the rent assessed in any month does not exceed the amount shown in Schedule "A".

The Landlord agrees to provide notice of any increase to the amount shown in Schedule "A" at least one month in advance.

Both tenancy agreements name Laura Nerysoo and Alfred Itsi as joint tenants. A tenancy agreement is a contract and, except for a change in the amount of rent, can only be changed with the consent of all parties. The landlord was not obligated to revise the tenancy agreement simply because Mr. Itsi planned to work outside of the community for a period of time. In order for Mr. Itsi to relieve himself of the obligation to pay rent, the tenancy agreement would have to be terminated by the tenants' notice to the landlord and the premises vacated. In my opinion, Mr. Itsi remained a tenant while he was temporarily working outside the community and in accordance with article 6 of the tenancy agreements, his income should be reported. The NWT Housing Corporation rent scale does not exempt such income from rent assessment. Therefore, I find that the income used by the landlord to calculate the rents to March 31, 2006 are in accordance with the tenancy agreement and the provisions of the rent scale.

I have reviewed the assessments of rent for the months of January, February and March and the adjustments made to those rents in April. I find them to be in accordance with the tenancy agreement and the NWT Housing Corporation rent scale.

I have no jurisdiction to check the rents assessed from April 1, 2006 to date. The tenancy agreement does not obligate the landlord to utilize any specific mode of calculation. It is simply a subsidized rent provided to the tenant by the GNWT.

The tenancy agreements obligate the tenant to pay for water during the term of the tenancy agreement but state that the landlord may assist with those costs. In this matter, the landlord has only passed along water costs to the tenants in excess of the regularly scheduled deliveries including the applicable call-out charges. This, in my opinion, is consistent with the tenancy agreement and is reasonable.

I find the respondents in breach of their obligation to pay rent and in breach of their obligation to pay for water costs. I find the rent arrears to be \$8032 and the water costs to be \$87.86.

In determining whether this tenancy agreement should be terminated, I have considered several factors.

1. In determining the April, 2006 rent the GNWT assessed income which was earned in February, 2006. The February, 2006 rent assessed by the landlord was also assessed on the February, 2006 income. Similarly, in determining the May, 2006

rent, the GNWT assessed income earned in March, 2006. The March, 2006 rent assessed by the landlord was also assessed on the March 2006 income.

Notwithstanding that this results in rents that are based on income which has already been used for previous rent assessment, it has also contributed, in this case, to a more rapid accumulation of rent arrears.

2. Despite the fact that the respondents disagreed with the income included in the assessment and questioned the accuracy of the assessment, they elected to pay no rent whatsoever. This has also resulted in the rapid accumulation of rent arrears.

3. The respondents accumulated significant rent arrears in 2005 and entered into an agreement with the landlord to pay the arrears in monthly installments of \$250. Although the respondents did not adhere to the agreement, they did make reasonably regular payments and had reduced the arrears to \$100 by January, 2006.

In my opinion, the tenancy agreement should be permitted to continue provided the respondents pay the monthly rent on time and regularly pay the rent arrears in monthly installments along with the rent. In my opinion, monthly payments of \$250 plus the assessed rent is reasonable.

An order shall issue requiring the respondents to pay rent arrears of \$8032 and water costs of \$87.86 in monthly payments of no less than \$250 and to pay the monthly rent on time. The first payment shall be due on September 1, 2006 and shall be payable thereafter on the first day of

every month, along with the rent, until the rent arrears and water costs are paid in full.

Should the respondents fail to pay the monthly rent on time or fail to make arrears payments in accordance with this order, the applicant may make another application seeking termination of the tenancy agreement and the immediate payment of any balance of arrears.

Hal Logsdon
Rental Officer