

IN THE MATTER between **YELLOWKNIFE HOUSING AUTHORITY**, Applicant,
and **ROBERT KUSSY AND GOOTA ASHOONA**, 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 **YELLOWKNIFE, NT.**

BETWEEN:

YELLOWKNIFE HOUSING AUTHORITY

Applicant/Landlord

- and -

ROBERT KUSSY AND GOOTA ASHOONA

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 45(4)(a) of the *Residential Tenancies Act*, the respondents shall comply with their obligation to report the household income in accordance with the tenancy agreement by providing monthly income and expense statements to the landlord or their subsidy agent for the months of October, November and December, 2006.

DATED at the City of Yellowknife, in the Northwest Territories this 25th day of January,
2007.

Hal Logsdon
Rental Officer

IN THE MATTER between **YELLOWKNIFE HOUSING AUTHORITY**, Applicant,
and **ROBERT KUSSY AND GOOTA ASHOONA**, 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.

BETWEEN:

YELLOWKNIFE HOUSING AUTHORITY

Applicant/Landlord

-and-

ROBERT KUSSY AND GOOTA ASHOONA

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: January 18, 2007

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Julie Forget, representing the applicant
Norma Jeremick'ca, witness for the applicant
Robert Kussy, respondent
Goota Ashoona, respondent

Date of Decision: January 25, 2007

REASONS FOR DECISION

This application was filed on September 1, 2006. The matter has been set for hearing on several occasions but adjourned at the request of the applicant to permit the parties and the Department of Education, Culture and Employment (ECE) an opportunity to resolve the issues which involve the tenants' obligation to report income and the determination of rent.

The premises are subsidized public housing. Tenants are obligated to report the household income in accordance with the written tenancy agreement. A rent, based on the household income is then calculated.

In April, 2006 the procedure for reporting income and assessment of rent was changed. Tenants are now required to report the household income to the Income Security Officer (ECE) or the landlord and the rent is calculated by ECE and communicated to the landlord.

The rent statement provided in evidence by the applicant indicates that the respondents had a credit balance of \$578.50 as at March 31, 2006. The statement indicates that a monthly rent of \$143 had been assessed from June, 2005 to March, 2006. The rent statement indicates that the full unsubsidized rent of \$1337 has been charged for every month after March, 2006. A number of credits for electricity payment have been applied to the account since April 1, 2006 but no rent has been paid. The statement indicates a balance of rent owing in the amount of \$11,217.50.

The respondents are self-employed artists whose income varies from month to month. Article 6 of the tenancy agreement obligates the tenant to report the household income and any changes to the household income, size of the family or number of residents. I note that the tenancy agreement between the parties has not been amended to reflect the changes to the income reporting and rent assessment process but, in my opinion, the change was adequately communicated to all tenants in writing prior to implementation.

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.

Mr. Kussy expressed a great deal of frustration concerning the requirements that were being imposed on him by ECE to report the household income. He stated that the forms that were provided to him were difficult to understand and the requirement to provide an income and expense statement every month extremely onerous. He explained that he was out of town for extended periods and found it difficult to report the household income every month. Mr. Kussy and the applicant noted that prior to April 1, 2006 the rent was set annually based on income tax returns.

Mr. Kussy testified that he had provided income and expense statements for every month in 2006 except for October, November and December and provided several statements in evidence.

Two questions arise from this matter. First, is the obligation to provide a monthly statement of income and expenses in order to enjoy a rent based on income enforceable? Second, if the obligation to provide a monthly statement of income and expenses is enforceable, are the respondents in breach of that obligation?

Obligations of a landlord or tenant that are not specifically set out in the *Residential Tenancies Act* can be included in a tenancy agreement and are enforceable provided they are not inconsistent with the Act and are reasonable in all circumstances. The obligation to report income set out in Article 6 of the tenancy agreement is not inconsistent with the Act and is reasonable. In *Inuvik Housing Association and Gary Harley* (CV04815, filed December 3, 1993) the Hon. Mr. Justice J.E. Richard found the requirement to provide regular monthly income information to the landlord reasonable. Justice Richard wrote:

In the present case, it is an express term of the tenancy agreement that the tenant is to provide income data on a regular monthly basis to the landlord. The tenant by entering into the tenancy agreement, obliges himself to do so. This is not an unreasonable obligation. On the contrary, it is entirely reasonable. In the context of a regime of subsidized public housing it could fairly be said to be a necessary obligation to impose on a tenant. The information which the tenant is obliged to provide is within the tenant's knowledge and it is surely not an onerous requirement for him to provide that information to the landlord.

Such an obligation is not “inconsistent” with the provisions of the *Residential Tenancies Act*. Rather it is “reasonable in all circumstances” within the context of s.12 of the Act.

I recognize that the obligation to report monthly is somewhat more onerous for the self-employed tenant than it is for the tenant who works for wages. I also suspect that reporting the income once a year by providing a tax return is considerably less work for both parties.

However, in my opinion the requirement to produce a simple statement of income and expenses each month is not unreasonable and is not inconsistent with the Act. It is therefore enforceable.

If the obligation is enforceable then are the respondents in breach of that obligation? Ms. Norma Jeremick'ca, Regional Manager with the Income Security Program attended the hearing at the request of the applicant and was asked to examine the income and expense statements provided by the respondent. Ms. Jeremick'ca stated that she had not seen the statements prior to the hearing but, in her opinion, they should be sufficient to assess the monthly rent. Ms. Jeremick'ca did not know why the statements had not been deemed sufficient by the Income Security Officer but stated that she would follow up on the matter.

I concur with Ms. Jeremick'ca. The information contained in the income and expense statements, in my opinion, satisfy the requirements set down in Article 6 of the tenancy agreement. I have seen no evidence of any written guidelines that specify the required format of an income and expense statement and the documents provided by the respondents in evidence appear to represent the income and expense categories specific to their business. I can not find the respondents in breach of their obligation to report income for the months they have provided statements to the landlord or ECE.

I do find the respondents in breach of their obligation to report income for the months of October, November and December, 2006 and find the application of the full unsubsidized rent

reasonable for the months of November and December, 2006 and January 2007. I am unable to calculate the rents for January through October, 2006 but assume that these assessments will now be forthcoming. Notwithstanding the unknown rent amounts, I find rent arrears to be \$2088.50 calculated as follows:

Balance as at March 31, 2006	(\$578.50)
November, 2006 rent	1337.00
December, 2006 rent	1337.00
January, 2006 rent	1337.00
Electricity credits paid	<u>(1344.00)</u>
Balance owing	\$2088.50

Should the respondents submit income and expense statements to the landlord or ECE, the rents shall be adjusted to income for the months of November and December, 2006 and January, 2007.

It is quite possible that if the respondents comply with their obligation to provide the missing income information for October, November and December, 2006 and if ECE calculates the rent in accordance with the income statements, the arrears will be negligible or non-existent. In my opinion, the most appropriate order to consider at this time is an order requiring the respondents to comply with their obligation to provide income information in accordance with the tenancy agreement by submitting income and expense statements for the missing months. Should the respondents fail to comply with the order or promptly pay any rents which may be assessed, the applicant may file another application seeking relief.

Hal Logsdon
Rental Officer