File #10-9632

IN THE MATTER between **NWT HOUSING CORPORATION**, Applicant, and **JERRY SANDERSON AND DELORES DAWSON**, 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 RESOLUTION, NT.**

BETWEEN:

NWT HOUSING CORPORATION

Applicant/Landlord

- and -

JERRY SANDERSON AND DELORES DAWSON

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 sixteen thousand nine hundred twenty two dollars ($16,922.00).

DATED at the City of Yellowknife, in the Northwest Territories this 9th day of August, 2007.

Hal Logsdon
Rental Officer

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REASONS FOR DECISION

Date of the Hearing:	**August 8, 2007**
Place of the Hearing:	**Yellowknife, NT via teleconference**
Appearances at Hearing:	**Tom Makepeace, representing the applicant** **Yvonne Burke, representing the applicant** **Jerry Sanderson, respondent** **Delores Dawson, respondent** **Tom Beaulieu, witness for the respondents**
Date of Decision:	**August 9, 2007**

REASONS FOR DECISION

The applicant alleged that the respondents had breached the tenancy agreement by failing to pay rent. The applicant stated that the respondents gave up possession of the premises on August 3, 2007. The applicant withdrew the request for an order terminating the tenancy agreement and sought only an order for the respondents to pay the alleged rent arrears.

The applicant offered to rent a house to the respondents for a rent of $250 for a two year term to enable the respondents to save a down payment and qualify for a bank mortgage to purchase the house at the end of the term. In a letter dated October 27, 2003, the District Manager for the NWT Housing Corporation outlined the terms of the agreement and delivered it to the respondents, asking them to indicate their agreement by their signatures. The respondents were permitted to take possession of the premises but never signed the letter.

On November 19, 2003 a formal draft tenancy agreement was faxed to Delores Dawson by the Program Advisor for the Housing Corporation for her “perusal”. The terms of the draft agreement were similar to those outlined in the previous letter in terms of rent paid, obligations of the tenants and term. In addition it outlined a mechanism whereby the Corporation would, at the time of sale, buy the respondents’ current house and apply the proceeds against the cost of the new house. The draft agreement was never signed by either party. The respondents paid the applicant rent of $250 for each month during the term except one.

Prior to the expiry of the term, the applicant notified the respondents that they could proceed with the sale and forwarded an offer to purchase for their signatures. The respondents were notified in writing on November 29, 2005 that if the sale did not go through, the monthly rental payments would be assessed based on 25% of the respondents' gross household income.

The respondents were unable to obtain the necessary financing to purchase the house. The applicant agreed to extend the current rent arrangement for three months to enable the respondents to save the necessary down payment. The respondents continued to pay the monthly rent of $250.

After the three month extension, the respondents were still unable to obtain financing and the applicant notified them in writing on May 25, 2006 that the monthly rent effective April 1, 2006 was $1402. The respondents failed to pay any rent after the rent was increased to $1402/month. The applicant sought rent arrears in the amount of $22,682.

The respondents stated that when they were unable to obtain financing, they approached the Housing Corporation for financial assistance to repair their former residence and obtained a Band Council Resolution supporting their application. They stated that they were not provided with the repair assistance and therefore had no other place to live. The respondents argued that the rent of $1402 was unreasonable when compared to the value of the premises and what others in the community were paying.

In my opinion, the District Manager's letter of October 27, 2003 serves as a written tenancy agreement. Although not in the usual form of a tenancy agreement, it does set out the rent, the term and the basic obligations of the tenant and was intended to be signed by both parties. It was signed by the District Manager and the respondents were permitted to take possession of the premises. Section 9(4) of the *Residential Tenancy Act* deems such tenancy agreements to be in writing even though one party has not signed the agreement.

> **9.(4) A tenancy agreement shall be deemed to be in writing where it has been signed by one party or his or her agent, given to the other party or his or her agent and the landlord permits the tenant to take occupancy of the rental premises.**

In my opinion, the later draft agreement has no legal effect as it was not signed by either party.

For the rent increase on April 1, 2006 to be effective, it must have been applied in accordance with the *Residential Tenancies Act*. Sections 47(1), 47(2), 47(3) and 47(6) set out the provisions pertaining to rent increases.

> **47.(1) Notwithstanding a change in landlord, no landlord shall increase the rent in respect of a rental premises until 12 months have expired from**
>
> **(a) the date the last increase in rent for the rental premises became effective; or**
>
> **(b) the date on which rent was first charged, where the rental premises have not been previously rented.**
>
> **47.(2) The landlord shall give the tenant notice of the rent increase in writing at least three months before the date the rent increase is to be effective.**
>
> **47.(3) An increase in rent by a landlord is not effective until three months have expired from the date of the notice of the rent increase.**
>
> **47.(6) This section does not apply to subsidized public housing.**

The rent had not been increased for more than a year when the rent increase was applied on April 1, 2006. The applicant's notice of November 29, 2005 indicating that the rent would be based on 25% of the respondents' gross income is not, in my opinion an effective notice of rent increase as it does not state the dollar value of the rent. The May 25, 2006 notice that the rent would be set at $1402/month is an effective notice, but not for April 1, 2006. This notice would only be effective three months after the notice or September 1, 2006.

The provisions of section 47, however, do not apply to subsidized public housing which is defined in the Act as follows:

> **"subsidized public housing" means rental premises rented to an individual or family of low or modest income at a reduced rent determined by the income of the tenant and funded by the Government of Canada, the Government of the Northwest Territories or a municipality or an agency of the Government of Canada, the Government of the Northwest Territories or a municipality pursuant to the *National Housing Act* (Canada) or the *Northwest Territories Housing Corporation Act*.**

There are three elements to this definition which must be satisfied:

1. <u>The individual or family must have low or modest income.</u>

   The respondents' household income exceeds the NWT Housing Corporation core need income threshold by almost $21,000. The core need income threshold is an indicator of housing affordability defined by the Housing Corporation as "an income limit for each community that represents the amount of income a household must have to be able to afford the cost of owning and operating a home or renting in the private market without government assistance." Certainly, the respondents' household income could not

reasonably be considered to be low. It might be considered modest in the context of a small northern community such as Fort Resolution.

2. The premises must be rented at a reduced rent determined by the income of the tenant

Although there are few comparisons available in Fort Resolution, there is little doubt that the rent of $250/month is a reduced rent. The full unsubsidized rent for a 2-bedroom public housing unit in the community is $1159/month. However, I can see no relation between the rent and the income of the tenant. The rent appears to be set at flat rate of $250/month for the entire term of the agreement and does not appear to have been set on any income benchmark. Therefore, the premises do not satisfy this element of the subsidized public housing definition.

3. The premises must be funded pursuant to the *National Housing Act* or the *Northwest Territories Housing Corporation Act*.

The premises were originally built under the Homeownership Assistance Program which was funded pursuant to both Acts.

As the premises can not be considered subsidized public housing, the provisions for rent increases pursuant to section 47 of the *Residential Tenancies Act* apply and the rent increase to $1402/month can not be effective until three months have elapsed from the date of the notice, or September 1, 2006.

As well, since the premises can not be considered subsidized public housing, the security of tenure provisions pursuant to section 49(1) apply and the term agreement was deemed to be renewed on a month-to-month basis.

> **49.(1) Where a tenancy agreement ends on a specific date, the landlord and tenant shall be deemed to renew the tenancy agreement on that date as a monthly tenancy with the same rights and obligations as existed under the former tenancy agreement, subject to any rent increase that complies with section 47.**

There is no provision in the *Residential Tenancies Act* which limits the quantum of a rent increase or ties rental rates to any benchmark. The landlord is not obligated by the tenancy agreement to offer any repair assistance. The failure to receive repair assistance is not a reasonable defence for not paying rent.

I find the respondents in breach of their obligation to pay rent and find the rent arrears to be $15,672 calculated as follows:

Rent due @ $250/month (November 1/03 to August 31/06)	$8500
Rent due @ $1402/month (September 1/06 to July 31/07)	15,422
Less rent paid	(7000)
Amount due applicant	$16,922

An order shall issue requiring the respondent to pay the applicant rent arrears in the amount of $16,922.

Hal Logsdon
Rental Officer