

IN THE MATTER between **KOTANEELEE HOUSING ASSOCIATION AND NORTHWEST TERRITORIES HOUSING CORPORATION**, Landlord, and **JACK D.R.O. YEADON**, Tenant;

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 LIARD, NT**.

BETWEEN:

KOTANEELEE HOUSING ASSOCIATION AND NORTHWEST TERRITORIES HOUSING CORPORATION

Landlord

- and -

JACK D.R.O. YEADON

Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 30(4)(a) of the *Residential Tenancies Act*, the landlord shall comply with their obligation to maintain the premises known as the Senior's facility, Lot 244, LTO 1910, Fort Liard, NT by completing the following repairs no later than December 31, 2007 or as weather permits.
 - a) Repair or replace closet bifold door track in bedroom of unit C and install doors.
 - b) Repair door closing mechanism on main door to unit C and repair damage done to drywall by the mechanism.

- c) Ensure GFI circuit and circuit breaker are working properly. Inspect and repair as required.
- d) Patch and paint front entrance area to building.
- e) Repair door to boiler room and ensure door complies with section 3.6.2 of the *National Building Code*.
- f) Repair leaking fuel line in crawl space.
- g) Repair or replace leaking sewage tank and clean up spillage in the surrounding area.
- h) Repair door knob on back door to unit C to ensure proper operation and locking.
- i) Backfill around building to fill low areas and ensure proper drainage away from structure.
- j) Repair or replace damaged or missing fascia and soffit.
- k) Repair or replace damaged eavestrough.

2. Pursuant to section 30(4)(a) of the *Residential Tenancies Act*, the landlord shall comply with their obligation to maintain the premises known as the Unit 812, Lot 145, LTO 910, Caragana Circle, Fort Liard, NT by completing the following repairs no later than November 30, 2007 or as weather permits.

- a) Seal opening around oil line where it penetrates building envelope to prevent air infiltration.
- b) Seal opening around main electrical cable where it penetrates building envelope to prevent air infiltration.
- c) Repair moisture barrier on floor of crawl space to ensure continuous and complete coverage of soil.
- d) Repair or replace eavestrough over back porch to prevent leakage.
- e) Install downspout elbows to ensure rain water is directed away from building.
- f) Repair flashing under front porch to ensure continuity.

g) Restore heat to premises and inspect furnace to ensure normal and safe operation.

3. Pursuant to sections 42(3)(a) and 42(3)(d) the tenant shall comply with his obligation to repair damage to the Seniors residential complex by removing the shed on the property no later than 45 days after the filing date of this order. Should the tenant fail to remove the shed, the landlord shall be authorized to remove or dispose of the structure after 45 days have elapsed from the filing date of this order.

DATED at the City of Yellowknife, in the Northwest Territories this 11th day of October, 2007.

Hal Logsdon
Rental Officer

IN THE MATTER between **KOTANEELEE HOUSING ASSOCIATION AND NORTHWEST TERRITORIES HOUSING CORPORATION**, Landlord, and **JACK D.R.O. YEADON**, Tenant.

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

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BETWEEN:

**KOTANEELEE HOUSING ASSOCIATION AND NORTHWEST TERRITORIES
HOUSING CORPORATION**

Landlord

-and-

JACK D.R.O. YEADON

Tenant

REASONS FOR DECISION

Date of the Hearing: October 2, 2007

Place of the Hearing: Fort Liard, NT

Appearances at Hearing: Ioan Astle, representing the landlord
Jack Yeadon, Tenant

Date of Decision: October 11, 2007

REASONS FOR DECISION

A written tenancy agreement was made between Kotaneelee Housing Association and Jack Yeadon and Barbara Bertrand on September 3, 2002 to commence on October 1, 2002 for premises located on lot 145 (also known as unit 812) in Fort Liard, NT. The premises are subsidized public housing. The premises fell into disrepair and in December, 2003 the NWT Housing Corporation began extensive repairs to renovate the house. Rather than seeking termination of the tenancy agreement pursuant to section 59 of the *Residential Tenancies Act*, the NWT Housing Corporation permitted Mr Yeadon and his family to reside in Unit C in the Senior Citizens facility until the repairs to unit 812 were completed. No rent has been charged during the time the tenant has resided in the Senior's facility.

The landlord now alleges that unit 812 is ready for occupancy and the tenant will not vacate the unit in the Seniors facility and take possession of the renovated unit. The landlord filed an application on July 17, 2007 seeking an order terminating the tenancy agreement unless Mr Yeadon takes possession of unit 812.

The landlord also alleges that the tenant constructed a shed on the Seniors facility property without the permission of the landlord required by article 12 of the tenancy agreement. The landlord sought an order requiring the tenant to remove the structure.

The tenant, Mr. Yeadon filed an application on August 16, 2007. The tenant alleges that the

landlord has breached their obligation to maintain both the Seniors facility and unit 812 in a good state of repair and fit for habitation. The tenant also alleges that the landlord agreed to safely store his personal belongings while he and his family were residing in the Seniors facility and that many of his personal belongings and his vehicle were damaged or destroyed during that period of time. The tenant sought an order requiring the landlord to undertake repairs to both residential complexes and to compensate him for the loss of his personal property.

Section 57(c) of the *Residential Tenancies Act* permits a rental officer to terminate a tenancy agreement between a landlord and a tenant for subsidized public housing where the tenant is no longer eligible to occupy the premises.

57. Where, on the application of a landlord, a rental officer determines that

- (a) a tenant who, as a student or a staff member was provided with living accommodation that is not exempt from this Act by an educational institution, has ceased to meet the requirement for occupancy of the living accommodation,**
- (b) a tenant of subsidized public housing has ceased to meet the requirement for occupancy of the rental premises, or**
- (c) a landlord and a tenant who share a bathroom or kitchen facility have had personal differences that make the continuation of the tenancy unfair to either of them,**

the rental officer may make an order terminating the tenancy on a date specified in the order and ordering the tenant to vacate the rental premises on that date.

The senior's facility is designed to accommodate elderly individuals and couples. It is not intended as family accommodation. Mr. Yeadon was, in fact, never eligible to occupy premises in the Senior's facility. The premises were provided to him on a temporary basis only while unit

812 was being renovated. If unit 812 is now ready for occupancy, there is no requirement or justification for Mr. Yeadon and his family to continue to live in the Senior's facility.

Since Mr. Yeadon alleged that unit 812 was not in a good state of repair and fit for habitation, the premises were inspected by the rental officer with Mr. Yeadon and a representative from the NWT Housing Corporation. The inspection report is included as Appendix A. While there are several existing deficiencies, the premises are generally in excellent repair. An order shall issue requiring the landlord to address the several deficiencies noted during the inspection. The landlord acknowledged these deficiencies and stated that they would be addressed promptly. Of these, the most critical is the moisture barrier on the floor of the crawl space. It is ripped in one area and is entirely missing in an area once occupied by tankage. Given the extremely slow progress completing the work on these premises, I believe it would be prudent to require this repair prior to occupancy of the premises to ensure it gets done before moisture can accumulate and create problems for the occupants and the building. The landlord should also confirm that the furnace is operating normally and safely prior to occupancy. The proper operation of the furnace could not be determined at the inspection as the heat was off.

I would expect Mr. Yeadon to commence occupancy of unit 812 upon the completion of the moisture barrier and the confirmation of normal safe operation of the furnace. Unit 812 is in vastly superior condition than his current premises. Should he fail to do so, the landlord may file a statutory declaration with the rental officer confirming that the moisture barrier work has been completed as ordered and the furnace has been inspected and found to be in normal, safe

operating condition. On receipt of the statutory declaration, an order shall be issued, ex parte, terminating the tenancy agreement unless Mr. Yeadon moves to unit 812.

In the matter of the shed constructed on the Senior's site, article 12 of the tenancy agreement between the parties requires the landlord's authorization for alterations.

12. The Tenant shall not alter the premises without the written consent of the Landlord.

The tenant acknowledged that the shed was built by him and that no written permission was given. However, the tenant stated that he had tried to obtain consent to construct the shed but was unable to determine who was authorized to provide the necessary permission. The tenant stated that since representatives of the owner of the building and the Kotaneelee Housing Association were aware of the shed construction, even once offering compliments on the structure, they had no objection to it's construction.

With or without permission, the shed constitutes a hazard in that it is very close to the Senior's facility and is heated with a wood stove vented through a chimney which is not approved for solid fuel. In my opinion, the shed must be removed in order to protect the Senior's facility from possible damage. The tenant shall remove the shed from the property. If the shed has not been removed within 45 days, the landlord shall be authorized by order to dispose of it as they see fit.

An inspection of Mr. Yeadon's premises and the common areas in the Senior's facility was conducted by the rental officer. The observations are contained in Appendix B. The premises are not in a good state of repair.

The most serious concern is the leakage of raw sewage in the crawl space of the building. One of the sewage holding tanks has a small crack in it which allows sewage to seep out of the tank.

Although the area around the tank is surrounded by a berm and membrane, there is some seepage of raw sewage through the membrane on to the wood floor. There is standing sewage around the leaking tank. There is no noticeable odour in the residential complex.

Another significant concern is the slumping of the soil around the exterior of the complex. In numerous locations around the foundation walls, the soil has slumped 12"-24" below the normal grade. Water coming off the eaves is now directed toward the building structure rather than away from it due to the improper grade.

The tenant stated that the premises contained mould around the window frames and sills but no evidence of mould was detected during the inspection.

In my opinion, all of the observations on the inspection report indicate a lack of maintenance and repair and an order requiring the landlord to undertake necessary repairs is reasonable.

The tenant testified that the arrangement for his family's temporary relocation to the Senior's facility included a commitment from the landlord that his possessions would be safely stored during the renovations. The tenant stated that the possessions had been taken by the contractor and their whereabouts were unknown. The tenant referred to a list of belongings which had been submitted to the Minister Responsible for the NWT Housing Corporation and their estimated

value. The tenant also alleged that his car, parked by unit 812 had been damaged, either by a loader or a plow used during the renovation work. The estimated value of the goods was stated as \$6790 and the damage to the car, a 1983 Thunderbird, estimated at \$1200.

The landlord testified that the landlord had purchased the following items for the tenant as compensation for the items that were contaminated by mould in unit 812

- 1 Sofa
- 1 Loveseat
- 3 double bed mattress sets
- 3 sets of double bed sheets
- 3 double bed comforter sets
- 3 packages of pillows

The landlord stated that they had expected the tenant to remove other items, which could have been cleaned from unit 812.

The evidence suggests that the mould in unit 812 was caused in large part by the failure of the landlord to maintain the premises. The parties agreed that the failure to repair a roof vent over a long period of time had permitted water to enter the attic, soaking the batt insulation. The unit was generally in a very poor state of repair due to neglected maintenance over a number of years. Section 30 of the *Residential Tenancies Act* obligates a landlord to maintain the premises and provides a remedy of compensation.

30. (1) A landlord shall

- (a) **provide and maintain the rental premises, the residential complex and all services and facilities provided by the landlord, whether or not included in a written tenancy agreement, in a good state of repair and fit for habitation during the tenancy; and**

- (b) ensure that the rental premises, the residential complex and all services and facilities provided by the landlord comply with all health, safety and maintenance and occupancy standards required by law.**
- (2) Any substantial reduction in the provision of services and facilities shall be deemed to be a breach of subsection (1).**
- (3) Subsection (1) applies even where a tenant had knowledge of any state of non-repair before the tenant entered into the tenancy agreement.**
- (4) Where, on the application of a tenant, a rental officer determines that the landlord has breached an obligation imposed by this section, the rental officer may make an order**
 - (a) requiring the landlord to comply with the landlord's obligation;**
 - (b) requiring the landlord to not breach the landlord's obligation again;**
 - (c) authorizing any repair or other action to be taken by the tenant to remedy the effects of the landlord's breach and requiring the landlord to pay any reasonable expenses associated with the repair or action;**
 - (d) requiring the landlord to compensate the tenant for loss that has been or will be suffered as a direct result of the breach; or**
 - (e) terminating the tenancy on a date specified in the order and ordering the tenant to vacate the rental premises on that date.**

The landlord has already provided some compensation for the loss of the soft furniture due to the mould contamination by replacing this furniture. In a letter from Minister Krutko, entered in evidence by the landlord, the Minister states, "The Northwest Territories Housing Corporation has already met its commitment to assist you with new furniture." and "The remaining items on your list are items that could have been cleaned to remove any possible mould or mould spores". Removing the value of the replaced items from the tenant's list of damaged and missing items, the amended value is \$4190, not including the alleged damage to the vehicle.

In my opinion, it is necessary to consider the abatement of rent that the landlord has provided to

the tenant since he was relocated from unit 812. The respondent has been provided with accommodation at no cost since December, 2003. Even at a nominal monthly rent of \$90 and ignoring the depreciated value of the tenant's goods, the value of the foregone rent exceeds the value of the goods lost. In my opinion, the tenant has already received adequate compensation for the loss of his personal belongings and his claim for compensation must be denied.

In the matter of the damaged vehicle, I find insufficient evidence to conclude that the damage to the vehicle was the direct result of the landlord's failure to repair the premises. The vehicle was not damaged by mould as was the tenant's furniture. It was damaged by a negligent or wilful act of an unknown person, presumably operating another vehicle or piece of equipment. The tenant's claim for compensation for damage to his vehicle is denied.

In summary, I find the landlord in breach of their obligation to maintain unit 812, unit C in the Seniors facility and other areas of that residential complex. An order shall issue requiring the landlord to undertake repairs in unit 812, unit C and other areas of the Senior's facility.

I find Mr. Yeadon ineligible for continued occupancy in the Senior's facility. I shall not order the termination of Mr. Yeadon's tenancy agreement at this time as I expect Mr. Yeadon will move to unit 812 voluntarily after the moisture barrier is repaired in the crawl space and the furnace is determined to be operating normally and safely. Should Mr. Yeadon refuse to move after these two deficiencies are corrected, the landlord may file a statutory declaration certifying that the work has been completed, inspected by a competent authority and found to be acceptable.

On receipt of the statutory declaration I shall issue an order, ex parte, terminating the tenancy agreement on an appropriate date unless Mr. Yeadon gives up possession of unit C in the Senior's facility and takes possession of unit 812.

I find the shed built by Mr. Yeadon to constitute damage to the residential complex. An order shall issue requiring the tenant to remove the structure from the property and authorizing the landlord to dispose of the structure 45 days after the filing date of this order if the shed is not removed by the tenant.

Hal Logsdon
Rental Officer

APPENDIX A

Inspection Report - Unit 812- Fort Liard, NT

October 2, 2007

1. Oil line not sealed at entry to house.
2. Main electrical supply is not sealed at entry to house
3. Moisture barrier on crawl space floor is not continuous and is ripped in one area.
4. Eavetrough is damaged over back porch permitting water from roof to pour on porch
5. No elbows on bottom of down spouts. Water is not directed away from structure
6. Flashing between foundation and exterior wall is not continuous under from porch

APPENDIX B

Inspection Report - Senior Citizens Facility - Fort Liard, NT
October 1, 2007

1. Bifold closet doors not installed in bedroom of Unit C. Track is bent. Doors are in premises.
2. Door closer on main entrance to Unit C is broken. Arm has damaged drywall.
3. GFI circuit trips breaker. Breaker is faulty or there is a short in the circuit.
4. Holes in walls in front entrance to building. Entire area requires patching and painting.
5. Solid core boiler room door is split and damaged.
6. Oil line is leaking in crawl space.
7. One sewage tank is cracked and leaking. Raw sewage is standing in berm area and penetrating the berm and membrane.
8. Back door knob to Unit C is inoperative
9. Ground is slumping in several areas around building foundation.
10. Soffit and fascia is damaged or missing
11. Eavetrough is damaged.