

IN THE MATTER between **RAE-EDZO HOUSING AUTHORITY**, Applicant, and
MARY ADELE MACKENZIE, 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 **BEHCHOKO, NT**.

BETWEEN:

RAE-EDZO HOUSING AUTHORITY

Applicant/Landlord

- and -

MARY ADELE MACKENZIE

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 seven thousand two hundred ninety three dollars (\$7293.00).
2. Pursuant to section 41(4)(c) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Unit 260, Behchoko, NT shall be terminated on April 30, 2008 and the respondent shall vacate the premises on that date, unless rent arrears in the amount of nineteen thousand four hundred forty eight dollars (\$19,448.00) are paid in full.

DATED at the City of Yellowknife, in the Northwest Territories this 29th day of
February, 2008.

Hal Logsdon
Rental Officer

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-and-

MARY ADELE MACKENZIE

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: February 21, 2008

Place of the Hearing: Behchoko, NT

Appearances at Hearing: John St. Louis, representing the applicant
Mike Keohane, representing the applicant
Rose Dryneck, representing the applicant
Mary Adele Mackenzie, respondent
Monique Mackenzie, occupant of the premises

Date of Decision: February 29, 2008

REASONS FOR DECISION

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay rent. The applicant sought an order requiring the respondent to pay the alleged rent arrears and terminating the tenancy agreement. The premises, known as Unit 260, are subsidized public housing.

The applicant provided a copy of the tenant ledger in evidence which indicated a balance of rent owing in the amount of \$58,634. The full unsubsidized rent has been applied in each month since May, 2005. The applicant stated that they believed some income information had been provided to the Income Security Officer but no subsidies had been received from the Public Housing Rental Subsidy Program. The applicant also believed the Income Security Officer was requiring an updated tenancy agreement prior to assessing the rent and providing the subsidy. A statutory declaration from Berna Wellin, the Income Security Officer declared that “Mary Adele and Monique Mackenzie and John Quitte Mantla have not applied for the Public Housing Rental Subsidy with ECE, GNWT.” It was sworn on November 16, 2007.

A previous order (file #10-8742, filed on December 20, 2005) required the respondent to pay rent arrears in the amount of \$12,155. In that order the rental officer declined to terminate the tenancy agreement because the respondent testified that she had vacated the premises. The applicant stated that they had not filed that order with the Court.

The tenant ledger indicated that no rent has been paid since December, 2004. Up to that date, however, the rent appears to have been paid regularly and the balance on the account as at December, 2004 was zero.

The respondent stated that although she had vacated the premises when the matter was last heard, she found her new accommodation uninhabitable and moved back into Unit 260. The respondent testified that she had provided some income information to the Income Security Officer but was informed that she had to produce a new tenancy agreement in order to receive assistance. It is not clear what period of time the income information related to or when it was reported. The respondent did not dispute the allegation that no rent had been paid since December, 2004.

The tenancy agreement between the parties commenced on February 6, 1997 and runs from month to month. Although there are several notices asking the respondent to sign a new tenancy agreement, it does not appear the February 6, 1997 tenancy agreement was superceded or amended by the parties.

The tenancy agreement between the parties entitles the tenant to a subsidized rent based on the household income, provided that the household income is reported. The evidence leaves considerable doubt as to whether the respondent is in breach of her obligation to report income for all of the 31 months it has been applied. The failure to sign a new tenancy agreement, when there is a valid periodic agreement in place, is certainly not a reason to apply the full unsubsidized rent.

The Public Housing Rental Subsidy Program came into effect on April 1, 2006. Prior to that date, tenants reported their income to the landlord who calculated the subsidized rent. The NWT Housing Corporation provided the subsidy to the landlord. Beginning April 1, 2006 tenants were required to report the income to the Income Security Officer, who calculated the tenant's subsidized rent and authorized the subsidy to be paid to the landlord. Prior to April 1, 2006 a public housing landlord could testify with certainty if a tenant had reported the household income, now they must rely on evidence provided by the Income Security Officer.

In this matter, I can not conclude from the evidence that the respondent has breached the obligation to provide the income information, justifying the application of the full unsubsidized rent. I can not conclude from the statutory declaration that the income information was not provided after it was sworn in November, 2007. Both parties stated that some income information was provided by the respondent and assumed the landlord's subsidy was being withheld because no new tenancy agreement has been executed.

I can conclude, however, that no income information was provided prior to April 1, 2006 because prior to that date it was to be provided to the landlord. The landlord testified at the previous hearing that no income information was provided by the respondent and there is no evidence to suggest she has reported the information since. Although I am unable to determine what the rent should be from April 1, 2006 to present, I am confident that the respondent owes \$19,448 calculated as follows:

Amount determined owing at previous hearing	\$12,155
Rent paid since the previous hearing	0
Rent assessed since previous hearing	<u>7293</u>
Rent arrears to March 31, 2006	\$19,448

In my opinion, even disregarding any rent from April 1, 2006 to the present, there are sufficient grounds to terminate the tenancy agreement. The respondent has not shown any intention to address the rent arrears or her failure to report the household for the period prior to April 1, 2006.

Since a previous order was issued requiring the respondent to pay rent arrears of \$12,155, I shall issue an order requiring the respondent to pay the remaining \$7293. The order shall also terminate the tenancy agreement between the parties on April 30, 2008 unless the full amount of the arrears, \$19,448, is paid in full. In determining a termination date I have taken into consideration the possibility that the respondent may wish to report the income for the missing months prior to April 1, 2006 so that a subsidized rent may be calculated. If she were to report that income in accordance with the tenancy agreement, the amount owing may be significantly reduced. I have also considered that the landlord may wish to arrange alternate accommodation for the respondent's 77 year old mother who currently lives with the respondent. Given the amount of the arrears and the lack of attention the landlord has given to collection, I am confident any further loss of revenue due to the termination date will be minor in comparison to the loss they have already incurred.

Hal Logsdon
Rental Officer