

IN THE MATTER between **FORT SMITH HOUSING AUTHORITY**, Applicant, and **MARLENE ABRAHAM AND CARL GIROUX**, 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 SMITH, NT**.

BETWEEN:

FORT SMITH HOUSING AUTHORITY

Applicant/Landlord

- and -

MARLENE ABRAHAM AND CARL GIROUX

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 ten thousand eight hundred twenty five dollars (\$10,825.00).
2. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondents shall pay the applicant repair costs in the amount of fifty six dollars and fifty cents (\$56.50).
3. Pursuant to sections 41(4)(c) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Unit #4, 51 St. Ann's Street, Fort Smith, NT shall be terminated on May 30, 2008 and the respondents shall vacate the

premises on that date, unless the rent arrears and repair costs in the total amount of ten thousand eight hundred eighty one dollars and fifty cents (\$10,881.50) are paid in full.

DATED at the City of Yellowknife, in the Northwest Territories this 11th day of April, 2008.

Hal Logsdon
Rental Officer

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MARLENE ABRAHAM AND CARL GIROUX

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: March 14, 2008

Place of the Hearing: Fort Smith, NT via teleconference

Appearances at Hearing: Kevin Mageean, representing the applicant
Gary Nickolson, representing the applicant
Jim Kipling, witness for the applicant
Marlene Abraham, respondent

Date of Decision: April 10, 2008

REASONS FOR DECISION

The applicant alleged that the respondents had breached the tenancy agreement by failing to pay rent and by failing to repair damages to the rental premises. The applicant sought an order requiring the respondents to pay the alleged rent arrears and repair costs and terminating the tenancy agreement between the parties.

This application actually refers to two separate tenancies; one with Ms Abraham as sole tenant and another with Ms Abraham and Mr. Giroux as joint tenants.

The respondent, Marlene Abraham occupied unit #12 pursuant to a tenancy agreement with the applicant as the sole tenant. On or about April 1, 2003 Ms Abraham accepted a transfer to unit #4. An order (file#10-8189) was issued on January 5, 2005 requiring Ms Abraham to pay rent arrears (\$714.00) and repair costs (\$3276.96) in monthly installments of \$200 until the arrears and repair costs were paid in full. The repair costs related to damages to unit #12. The applicant testified that this order had been breached.

On April 1, 2006 the applicant entered into a month-to-month tenancy agreement with Ms Abraham and Mr. Giroux as joint tenants for unit #4. That tenancy agreement remains in effect.

The applicant sought an order for the following relief:

1. Rescinding the previous order against Ms Abraham (file #10-8189) and ordering the lump sum payment of the remaining balance of \$3272.85.

2. Ordering Ms Abraham to pay repair costs of damages to Unit #4 which occurred prior to April 1, 2006 in the amount of \$907.62.
3. Ordering both respondents to pay rent arrears in the amount of \$21,517.
4. Ordering both respondents to pay repair costs of damages to Unit #4 which occurred after April 1, 2006 in the amount of \$56.50.

THE PREVIOUS ORDER

The applicant provided a statement regarding the repairs to unit #12 which indicated a balance owing in the amount of \$3272.85. The last repair charge on this account was July 15, 2003 and the last payment on the account was February 2, 2006. The previous order was filed on January 5, 2005. Since the order was issued, the applicant has implemented a different accounting system and I am unable to reconcile the evidence provided at the January, 2005 hearing with the evidence now provided nor can I determine from the evidence all of the transactions that have taken place on the account. It is clear from the statement, however, that the breach of the previous order occurred no later than March, 2005 and probably occurred before that date.

Section 68(1) of the *Residential Tenancies Act* requires that applications be made in a timely manner.

68.(1) An application by a landlord or a tenant to a rental officer must be made within six months after the breach of an obligation under this Act or the tenancy agreement or the situation referred to in the application arose.

This requirement ensures that matters are resolved in an expeditious manner and that reliable

evidence is available in order for a fair and correct determination to be made. This application, which includes a request to rescind the previous order and order the lump sum payment of the balance owing due to Ms Abraham's breach of the order was not filed until February 8, 2008, nearly three years after the previous order was breached. Although a rental officer may extend the time limitation set out in section 68(1), I do not think it is fair to do so as I am unable to conclusively determine an amount owing from the evidence. The applicant had adequate time to file a more timely application and could not have reasonably concluded that the repair costs would have been paid without resort to legal action. For these reasons, I shall not consider the applicant's claim for relief regarding the previous order.

THE ALLEGED DAMAGES TO UNIT #4 PRIOR TO APRIL 1, 2006

The applicant alleged that certain damages to unit #4 took place when Ms Abraham was the sole tenant. That tenancy agreement was terminated when Ms. Abraham and Mr. Giroux entered into a tenancy agreement with the applicant as joint tenants. Again, the provisions of section 68(1) apply. Although I can more readily determine from the evidence the nature of the repairs and the cost, I find no reason why the applicant could not have filed an application within six months of the end of that tenancy agreement. There have been no payments on this account since November 20, 2006. The applicant's claim for relief is denied.

RENT

The applicant provided a statement of the rent account for the current tenancy agreement which indicated a balance of rent owing in the amount of \$19,021 as at January 1, 2008. The applicant

testified that since that time, the February and March, 2008 rents had come due and had been assessed at \$1333/month and a payment of \$170 had been received on February 26, 2008 bringing the balance owing to \$21,517. The statement indicates that only three payments totalling \$461 have been made since October, 2006.

The respondent did not dispute the allegations concerning the rent arrears.

The full unsubsidized rent has been applied for each month since March, 2007. The applicant's witness, the Client Service Officer, testified that Mr. Giroux had provided income information from July, 2007 to December, 2007 but he had not had time to review the material. He stated that the information did not appear to be complete because not every household member had signed an application and a new tenancy agreement had not been provided. The witness stated that if the rent was set based on the income information provided, the rent payable by the tenants would be approximately \$513.

The tenancy agreement between the parties, which commenced on April 1, 2006 and runs from month to month, obligates the tenant to report the household income.

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.

The obligation set out in the tenancy agreement requires the tenant to provide an accurate statement of the household income. It does not specify how often such a statement must be

provided nor is there any other evidence that the respondents have been directed to report at certain intervals. For every month from June, 2006 to February, 2007 the rent was assessed at \$513, presumably based on the household income reported. The applicant's witness testified that if the income reported between July, 2007 and January, 2008 was used for rent determination, the rent would remain at approximately \$513/month. On the balance of probabilities, it appears that the reported income has not significantly changed during this tenancy agreement. I can not find the tenants in breach of their obligation to report income in accordance with article 6 of the tenancy agreement. In my opinion, the rent should be calculated on the income reported which appears to be constant throughout the tenancy agreement and would result in a monthly rent of \$513. I find the rent arrears to be \$10,825 calculated as follows:

Rent from June/06 to March/08 (22 months @ \$513)	\$11,286
Pmt, October 17, 2006	(148)
Pmt, December 1, 2006	(143)
Pmt, February 26, 2008	<u>(170)</u>
Rent arrears	\$10,825

It appears from the applicant's notices to the respondent and the testimony of the applicant's witness that the full unsubsidized rent was applied primarily because the respondent had not signed a new tenancy agreement and/or had not completed all the paperwork required to receive the subsidy. It should be noted that there is no requirement to sign a new tenancy agreement as the existing one is valid and there is no obligation in the tenancy agreement to report the household income in any particular format.

ALLEGED DAMAGES TO UNIT #4 AFTER APRIL 1, 2006

The applicant provided a statement of repair costs related to unit #4 after the current tenancy agreement was formed. One charge of \$56.50 appeared on the statement and a work order supporting the charge indicated that it related to cleaning food stains from the exterior of the premises. The respondent did not dispute the allegations.

I find the respondents in breach of their obligation to pay rent and their obligation to repair damages to the rental premises. I find the rent arrears to be \$10,825. I find the repair costs of \$56.50 to be reasonable. In my opinion, there are sufficient grounds to terminate this tenancy agreement unless the rent arrears are paid in full. The respondents appear to have little or no intention to pay the monthly rent.

An order shall issue requiring the respondents to pay the applicant rent arrears in the amount of \$10,825 and repair costs in the amount of \$56.50. The tenancy agreement shall be terminated on May 30, 2008 unless those amounts are paid in full.

Hal Logsdon
Rental Officer