IN THE MATTER between **YELLOWKNIFE HOUSING AUTHORITY**, Applicant, and **ROBERT NAYALLY AND SALLY NAYALLY**, 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 NAYALLY AND SALLY NAYALLY

Respondents/Tenants

<u>ORDER</u>

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 one thousand eight hundred dollars and fifty cents ($1800.50).

2.   Pursuant to sections 45(4)(e) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as 2032 Sissons Court, Yellowknife, NT shall be terminated on November 7, 2008 and the respondents shall vacate the premises on that date, unless the complete and accurate household income information for the months of July, August and September, 2008 is reported to the subsidy agent in accordance with article 6 of the tenancy agreement between the parties.

DATED at the City of Yellowknife, in the Northwest Territories this 16th day of October, 2008.

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Hal Logsdon
Rental Officer

IN THE MATTER between **YELLOWKNIFE HOUSING AUTHORITY**, Applicant, and **ROBERT NAYALLY AND SALLY NAYALLY**, Respondents.

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:

YELLOWKNIFE HOUSING AUTHORITY

Applicant/Landlord

-and-

ROBERT NAYALLY AND SALLY NAYALLY

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: **October 14, 2008**

Place of the Hearing: **Yellowknife, NT**

Appearances at Hearing: **Julie Forget, representing the applicant**

Date of Decision: **October 16, 2008**

REASONS FOR DECISION

The respondents were served with Notices of Attendance sent by registered mail and confirmed delivered. The respondents failed to appear at the hearing and the hearing was held in their absence.

The applicant alleged that the respondents had breached the tenancy agreement by failing to pay rent and by failing to report the household income. The applicant sought an order requiring the respondents to pay the alleged rent arrears and terminating the tenancy agreement between the parties.

The applicant provided a statement of the rent in evidence which indicated a balance of rent owing in the amount of $6032.50. The applicant stated that a subsidy credit for July, 2008 of $926 had not been applied to the account bringing the balance owing to $5106.50. The full unsubsidized rent of $1653/month has been applied for the months of August, September and October, 2008. A memo from the subsidy agent indicates that incomplete income information was provided by the respondents for July and August, 2008 resulting in the application of the full unsubsidized rents in August and September, 2008. The memo indicates that no household income information was provided for September, 2008 resulting in the application of the full unsubsidized rent in October, 2008.

Article 6 of the tenancy agreement obligates the tenant to provide household income information.

> **6. Tenant's Income**
> The Tenant promises to provide a subsidy agent appointed by the Landlord with an accurate report of the Tenant's income, the income of any occupant of the Premises, the size of the Tenant's family, and the number of occupants residing on the Premises, whenever, and as often as, the subsidy agent requests such a report.

The practice of assessing the full unsubsidized rent when household income information is available but allegedly incomplete or inaccurate is not consistent with decisions of the NWT Supreme Court. In *Inuvik Housing Authority and Gary Harley*, [1994] NWTR 131, The Hon. Justice J.R. Richard wrote,

> "In Inuvik Housing Authority vs Stewart and Kendi (Rental Officer decision, January 11, 1993) the landlord alleged that the tenant had provided inaccurate income data and accordingly assessed full economic rent. Although the rental officer granted termination of the tenancy as the ultimate remedy, he reassessed the rents for the relevant months at a lower figure based on the income data that was provided (even though allegedly inaccurate)."

Justice Richard continues in line 29 of the decision,

> "The rental officer's decisions in Sharpe and Allain, Tingmiak, Stewart and Kendi and Day appear to be consistent with the decision of this Court in Koe."

The application of the full unsubsidized rent for October, 2008 is reasonable as the evidence indicates that no income information was provided for the month of September, 2008 on which to calculate a subsidized rent. However, the evidence indicates that some income information

was provided for the months of July and August, 2008. It does appear from the evidence that the information is incomplete.

Because the subsidy agent calculates the rent in accordance with the *GNWT Public Housing Rental Subsidy Program* and I do not have access to that method of calculation, I am unable to determine the rents which should have been applied for August and September, 2008. Ignoring those months I find rent arrears of $1800.50, calculated as follows:

Balance as per statement	$6032.50
Less July/08 subsidy	(926.00)
Less rents applied in Aug. And Sept./08	(3306.00)
Balance	$1800.50

In my opinion, there are sufficient grounds to terminate this tenancy agreement unless the household income is reported in accordance with Article 6 of the tenancy agreement.

An order shall issue requiring the respondents to pay the applicant rent arrears in the amount of $1800.50 and terminating the tenancy agreement on November 7, 2008 unless the complete and accurate household income information for the months of July, August and September, 2008 is reported to the subsidy agent in accordance with article 6 of the tenancy agreement.

_____
Hal Logsdon
Rental Officer