File #10-10077

IN THE MATTER between **JACK D.R.O. YEADON**, Applicant, and **NORTHWEST TERRITORIES HOUSING CORPORATION OR FT. LIARD SOCIAL HOUSING PROGRAM**, 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 **FORT LIARD, NT.**

BETWEEN:

JACK D.R.O. YEADON

Applicant/Tenant

- and -

NORTHWEST TERRITORIES HOUSING CORPORATION OR FT. LIARD SOCIAL HOUSING PROGRAM

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 25(3)(b) of the *Residential Tenancies Act* the respondent shall not alter the locks to the premises while the applicant is in possession again.

DATED at the City of Yellowknife, in the Northwest Territories this 14th day of May, 2009.

Hal Logsdon
Rental Officer

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REASONS FOR DECISION

Date of the Hearing:	**April 7, 2009**
Place of the Hearing:	**Yellowknife, NT via teleconference**
Appearances at Hearing:	**Darren Pickup, representing the NWT Housing Corporation** **Ioan Astle, representing the NWT Housing Corporation** **John McKee, representing the Fort Liard Social Housing Program (by phone)** **Brenda Bereault, representing the Fort Liard Social Housing Program** **Jack D.R.O. Yeadon, applicant**
Date of Decision:	**May 14, 2009**

REASONS FOR DECISION

This application was filed on April 8, 2008. The applicant alleged that the respondent had breached sections 25 and 33 of the *Residential Tenancies Act*. The applicant alleged that he had been forced to sign a new tenancy agreement in order to take occupancy of his newly renovated unit and asked that his original tenancy agreement be considered as the sole valid tenancy agreement. The applicable sections of the Act are as follows:

> **25.(1) No landlord or tenant shall, during occupancy of the rental premises by the tenant, alter or cause to be altered the locking system on any door giving entry to the rental premises except by mutual consent.**
>
> **33.(1) In this section, "vital service" includes heat, fuel, electricity, gas, hot and cold water and any other public utility.**
>
> **(2) No landlord shall, until the date the tenant vacates or abandons the rental premises,**
>
> **(a) withhold or cause to be withheld the reasonable supply of a vital service that the landlord is obligated to supply under the tenancy agreement; or**
>
> **(b) deliberately interfere with the supply of a vital service, whether or not the landlord is obligated to supply that service under the tenancy agreement.**

The applicant and Barbara Bertrand entered into a tenancy agreement with the Kotaneelee Housing Association on September 3, 2002 for premises known as unit 812, Lot 145, LTO 910 Caragana Circle in Fort Liard, NT (the Kotaneelee tenancy agreement). The premises fell into disrepair and in December 2003, the landlord moved the applicant and his family to premises located in the Senior's facility in order to undertake repairs to unit 812. Unfortunately, the repairs took an inordinate amount of time, but were finally completed in 2007 and the applicant was

asked to move back into unit 812. He refused to do so, claiming that the premises were not in a good state of repair.

The Kotaneelee Housing Association and the NWT Housing Corporation (who assumed the administration of the program from Canada Mortgage and Housing Corporation) filed an application seeking an order terminating the applicant's tenancy agreement unless he resumed occupancy of unit 812 and requiring Mr. Yeadon to remove a shed he had constructed on the property. The applicant filed a cross-application alleging that the landlord had failed to maintain both the Senior's facility and unit 812 and had damaged his personal property. An order was issued requiring the landlord to make repairs on both units and requiring Mr. Yeadon to remove a shed he had constructed on the Senior's site. The order was appealed by Mr. Yeadon and the order was varied by awarding Mr. Yeadon compensation of $2500 for loss of some of his personal possessions.

The applicant alleged that when he requested a key to unit 812 to move back into the premises he was told that he had to sign a new tenancy agreement. He signed the new agreement in order to take possession of the premises but did so unwillingly.

On reviewing this application filed by Mr. Yeadon, I concluded that neither the original tenancy agreement nor the new one were entirely beneficial to either party. The original tenancy agreement obligated the tenant to pay for electricity and charged Mr. Yeadon rent based on 25% of the household income. The new tenancy agreement exempted Mr. Yeadon from any rent

charges regardless of household income and provided a subsidy for electricity. Although the new tenancy agreement was more favourable to Mr. Yeadon financially, it did not entirely comply with the public housing guidelines in place throughout the NWT. I concluded that mediating a workable tenancy agreement and working out how the outstanding electrical bills should be paid would be in the best interest of both parties.

The parties agreed to mediation and following a mediation session on August 26, 2008 a draft mediated agreement and tenancy agreement was prepared based on the verbal acceptance of the terms by both parties. Following some concerns raised by Mr. Yeadon concerning the wording of the utilities provision and a change of the occupants of the premises the tenancy agreement was redrafted and sent to the NWT Housing Corporation for execution on November 8, 2008. Following the execution of the document by the landlord, I planned to send it to Mr. Yeadon for execution.

On November 28, 2008 the NWT Housing Corporation's legal counsel advised me that the Corporation was not willing to sign the documents while there was an indication that Mr. Yeadon was not in accord with the mediated agreement or tenancy agreement. Apparently, Mr. Yeadon had been in contact with the Premier's office regarding this matter.

On December 3, 2008 I wrote Mr. Yeadon a letter explaining the Corporation's reluctance to sign the documents without some assurance that he was in agreement with the form and content of the tenancy agreement and mediated agreement. I asked him to advise me if he was in agreement,

and if so, I would ask the Corporation to reconsider their position. I received no response from Mr. Yeadon.

On February 13, 2009 I again wrote Mr. Yeadon and advised him that since I had not had any response from him and it seemed apparent that neither party intended to sign the mediated agreement or tenancy agreement, I was obliged to set the matter for hearing pursuant to section 77 of the *Residential Tenancies Act*.

The matter was heard on April 7, 2009 at which time the matter of the electrical bills was reviewed. The Ft. Liard Social Housing Program representatives provided a list of payments they had made in accordance with the current subsidy program and the remaining tenant's share of the bill. The evidence suggests that the Social Housing Program has been paying their share of the electrical bills as has Mr. Yeadon and that the problem is a billing problem created by the NWT Power Corporation and not one attributable to a breach by either the landlord or tenant. Mr. Yeadon advised that he might now find the mediated agreement acceptable and asked that he have some time to review it for possible execution. The hearing was adjourned to provide Mr. Yeadon an opportunity to look at the documents again.

A letter from Mr. Yeadon was received on April 27, 2009 objecting to numerous issues including,

1. That the reference to the "Residential Tenancies Act S.N.W.T. 1987 (1), c28 raised a "fundamental problem to the recent oral hearing".

2. That the definition of "subsidized public housing" contained in the Act was not consistent with the draft tenancy agreement.

3. That the landlord had breached section 25 of the Act.

4. That he was coerced into signing the new tenancy agreement

5. That the rental officer was willing to "impose hardship and penalty upon the tenant" as evidenced by the decision of the Court to vary the previous order.

Mr. Yeadon does not indicate in the letter whether he is willing to sign the mediated agreement and new tenancy agreement or not. It is not clear how the issues outlined by Mr. Yeadon bear on his willingness or unwillingness to settle the matter by agreement.

This matter has continued for more than a year. To a large degree, I believe the applicant's continued reluctance to bring this matter to a conclusion has little to do with any unresolved issues and much to do with his desire to continue to annoy the respondent. I have reviewed the issues in detail with the parties on two occasions. The applicant appears to accept the settlement, then rejects it. In my opinion, there is nothing to be gained by continuing with the hearing. I have heard everything there is to be considered several times. Therefore, addressing the matters raised in Mr. Yeadon's application I find the following:

1. I find that the respondent breached section 25 of the *Residential Tenancies Act* when they refused to provide a key to the applicant after the repairs to unit 812 were completed. The tenant was entitled to possession when the repairs were completed and withholding the key, in my opinion, constitutes a breach. There are no grounds for compensation as the loss of some of the applicants personal possessions has already

been dealt with in the Supreme Court and compensation ordered. Nor is there any requirement to order the respondent to give access to the premises to the applicant. He is in possession. An order shall issue therefore, for the respondent to not breach that obligation again.

2. In the matter of vital services, specifically electricity, the tenancy agreement between the applicant and Kotaneelee Housing Association, which it appears the applicant wishes to rely on, sets out the responsibility for payment of electricity in article 5.

> **5. The Tenant is responsible for all electrical bills for the premises.**

The applicant argued that he was not charged for electricity previously and therefore should never be charged. However the Kotaneelee tenancy agreement sets out the following provision in article 28:

> **28. Any condoning by the landlord of any breach by the Tenant of any term or promise herein shall not operate as a waiver of the Landlord's right in respect of any subsequent breach.**

Because a landlord may not have enforced a provision of the tenancy agreement does not serve to nullify or alter that provision. It would appear that the respondent has been charging electricity in accordance with the "new" tenancy agreement. Therefore, in my opinion, regardless of the tenancy agreement the applicant wishes to rely on, there is no breach of section 33 of the *Residential Tenancies Act*.

The applicant asks that I rule on the validity of the Kotaneelee tenancy agreement and strike down the tenancy agreement he was coerced into signing. I have not had to determine what

tenancy agreement is in effect to determine the issues raised in the applicant's application. The Act does not authorize a rental officer to determine if a tenancy agreement is valid or not except in the context of determining if there is a breach of the Act. Therefore I am unable to make such an order.

However, in my opinion, the retention of the Kotaneelee tenancy agreement is not in the best interest of the applicant nor does it accurately reflect the public housing program policy of the NWT Housing Corporation. Both parties would benefit from the tenancy agreement which was mediated. I can not force Mr. Yeadon or the landlord to accept the mediated tenancy agreement and there appears little to be gained by continuing the process.

An order shall issue requiring the respondent to not breach the obligation set out in section 25 of the *Residential Tenancies Act.*

Hal Logsdon
Rental Officer