

IN THE MATTER between **N.W.T. COMMUNITY SERVICES CORPORATION**,
Applicant, and **MARY MCDONALD**, 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 **YELLOWKNIFE, NT**.

BETWEEN:

N.W.T. COMMUNITY SERVICES CORPORATION

Applicant/Landlord

- and -

MARY MCDONALD

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 41(4)(a) and 83(2) of the *Residential Tenancies Act*, the respondent shall pay the applicant rent arrears in the amount of two thousand thirty two dollars and fifty eight cents (\$2032.58). The rent arrears shall be paid in monthly installments of no less than one hundred dollars (\$100.00) payable on the first day of every month, along with the monthly rent, until the rent arrears are paid in full. The first payment shall be due on October 1, 2009.
2. Pursuant to section 41(4)(b) of the *Residential Tenancies Act*, the respondent shall pay future rent on time.

DATED at the City of Yellowknife, in the Northwest Territories this 22nd day of
September, 2009.

Hal Logsdon
Rental Officer

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N.W.T. COMMUNITY SERVICES CORPORATION

Applicant/Landlord

-and-

MARY MCDONALD

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: September 16, 2009

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Gail Leonardis, representing the applicant
Mary MacDonald, respondent
Vivienne McQueen, representing the respondent

Date of Decision: September 22, 2009

REASONS FOR DECISION

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay rent and sought an order requiring the respondent to pay the alleged rent arrears and to pay the monthly rent on time in the future. The premises are subsidized public housing.

The applicant provided a statement of the rent account which indicated a balance of rent owing in the amount of \$2522.58. The applicant stated that they would agree to an order requiring the respondent to pay the monthly rent on time plus an additional \$100/month until the rent arrears were paid in full.

The respondent did not dispute the allegations. She stated that she had recently broken her leg and found the monthly submission of income information required by the Income Assistance Program to be difficult and confusing. She stated that she believed she could pay the rent on time plus an additional \$100/month to clear the rent arrears.

The maximum rent of \$1120 has been applied for the month of July, 2009. The applicant stated that the respondent had failed to provide the required income information by June 30, 2009 in accordance with article 7(a) of the tenancy agreement.

- 7(a) At the commencement of this lease and by June 30th of every calendar year thereafter, the Tenant shall furnish the Landlord with a copy of the prior year's Income Tax Statement or Notice of Assessment together with such supporting material as the Landlord may require, showing details of his/her correct gross income together with the gross income of the other occupants and members of

his/her family who are living with him/her in the leased premises, and the names ages and relationships of such occupants and family members. The Tenant agrees that the Landlord may verify all such statements and supporting material. The Landlord will then advise the Tenant of any revision in the amount of his/her monthly rent arising from any change of income or family composition in accordance with the Landlord's current rent-to-income scale for the premises and this revision shall be effective July 1. In the event that the Tenant does not furnish the required information this agreement becomes null and void forthwith and the Tenant shall be obligated to pay the maximum rent as set forth from time to time by the Corporation.

The applicant stated that the income information required by the tenancy agreement was subsequently provided on July 22, 2009 and the rents from August, 2009 to present were set at \$630/month. The applicant stated that in accordance with their policies, the rent for July could not be retroactively adjusted and remained at \$1120.

The application of the full, unsubsidized rent in social housing has been reviewed in a number of cases before the Supreme Court of the Northwest Territories. In *Inuvik Housing Authority v. Koe* (1991), 85 D.L.R. (4th) 548, [1992], N.W.T.R 9 (S.C.), the tenants failed to fully disclose the household income. When the landlord discovered the non-disclosure, they applied the full unsubsidized rent. The rental officer declined relief for the full unsubsidized rent and ordered the tenants to pay the rent based on the accurate household income. In upholding the rental officer's decision, the Court stated that the application of the economic rent was "tantamount to enforcing a penalty" which is prohibited by section 13 of the *Residential Tenancies Act*.

In *Inuvik Housing Authority v. Gary Harley* [1994] NWTR 131], the *Koe* case was considered along with several previous cases regarding the application of the full unsubsidized rent heard by

the rental officer including *Inuvik Housing Authority v. Sharpe and Allain* (File 20-1146 filed on February 12, 1992). In his decision, Justice Richard makes the following observation in paragraph 21:

“It should be noted that in Koe the accurate income data was available to the landlord and the rental officer, certainly by the date of the hearing before the rental officer. The import of the decision appears to be that the landlord, charged with the provisions of subsidized public housing to persons of low income, should assess monthly rent on the basis of the tenant’s income data even if subsequently provided.”

And in paragraph 23:

“In Inuvik Housing Authority vs. Sharpe and Allain (Rental Officer decision, February 12, 1992), the landlord assessed full economic rent as a result of no income data. The rental officer had before him at the hearing income data subsequently provided and reassessed the rent for the particular month to an appropriate figure using the rent scale. This is consistent with Koe.”

In my opinion, the principle of retroactive reassessment in subsidized public housing has been clearly established by the Court and the rent for July, 2009 should have been reassessed to \$630 on the receipt of the income information required by the tenancy agreement. Making this adjustment I find the rent arrears to be \$2032.58 calculated as follows:

Balance as per statement	\$2522.58
Reverse July/09 rent	(1120.00)
Adjusted July/09 rent	<u>630.00</u>
Rent arrears	\$2032.58

I find the respondent in breach of her obligation to pay the full amount of the rent. An order shall issue requiring the respondent to pay the applicant rent arrears of \$2032.58. The rent arrears shall be paid in monthly installments of \$100 payable on the first day of every month, along with the rent until the rent arrears are paid in full. The first payment shall be due on October 1, 2009.

The respondent is also ordered to pay the monthly rent on time.

Should the respondent fail to make payments in accordance with this order or fail to pay the monthly rent on time, the applicant may file another application seeking the full payment of any remaining balance and termination of the tenancy agreement.

Hal Logsdon
Rental Officer