

IN THE MATTER between **BEHCHOKO KO GHA K'AODEE**, Applicant, and **RITA LAFFERTY AND SAM CHOCOLATE**, Respondents;

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act") and amendments thereto;

AND IN THE MATTER of a Hearing before, **HAL LOGSDON**, Rental Officer, regarding the rental premises at **BEHCHOKO, NT**.

BETWEEN:

**BEHCHOKO KO GHA K'AODEE**

Applicant/Landlord

- and -

**RITA LAFFERTY AND SAM CHOCOLATE**

Respondents/Tenants

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 45(4)(e) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Unit 622, Behchoko, NT shall be terminated on April 26, 2013 and the respondents shall vacate the premises on that date, unless the accurate and complete household income for 2009, 2010, 2011, 2012 and January, February and March, 2013 is reported to the applicant in accordance with Article 6 of the tenancy agreement.

DATED at the City of Yellowknife, in the Northwest Territories this 2nd day of April, 2013.

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Hal Logsdon  
Rental Officer

IN THE MATTER between **BEHCHOKO KO GHA K'AODEE**, Applicant, and **RITA LAFFERTY AND SAM CHOCOLATE**, 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.

BETWEEN:

**BEHCHOKO KO GHA K'AODEE**

Applicant/Landlord

-and-

**RITA LAFFERTY AND SAM CHOCOLATE**

Respondents/Tenants

**REASONS FOR DECISION**

**Date of the Hearing:** March 26, 2013

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

**Appearances at Hearing:** Mike Keohane, representing the applicant  
Rita Lafferty, respondent  
Sam Chocolate, respondent  
Rose Lamouelle, representing the respondents

**Date of Decision:** March 26, 2013

### **REASONS FOR DECISION**

The applicant alleged that the respondents had breached the tenancy agreement by failing to pay rent. The applicant sought an order requiring the respondents to pay the alleged rent arrears and terminating the tenancy agreement and evicting the respondents.

There have been eleven tenancy agreements executed between the applicant and these two respondents. Initially a monthly tenancy agreement between the applicant and Rita Lafferty as sole tenant was executed in April 1991. That tenancy agreement was superceded in February 1995 by a monthly tenancy agreement between the applicant and Rita Lafferty and Sam Chocolate as joint tenants. New monthly tenancy agreements were executed in April 2000, 2005 and 2006 followed by three term agreements in August 2007, March 2008 and June, 2008. These joint tenancy agreements were superceded by a term agreement between the applicant and Rita Lafferty as sole tenant on July 1, 2008 which expired on March 31, 2009. The sole tenancy agreement was superceded on April 1, 2009 when the applicant entered into a term tenancy agreement with Rita Lafferty and Sam Chocolate as joint tenants. Another term agreement followed which expired on March 31, 2010. The applicant has treated all of these tenancy agreements as one joint agreement, carrying over arrears from one account to the next.

Although the applicant continued to demand rent and household income information from the respondents after the expiry of the last term agreement in March, 2010, they took no action to evict the respondents until this application was made on March 5, 2013.

The applicant provided copies of the rent records in evidence which indicated a balance of rent owing in the amount of \$56,592.24. This represents the cumulative rent arrears of all the tenancy agreements. The full unsubsidized rent has frequently been applied in 2009, 2010, 2011 and 2012. The applicant stated that some income information has been provided but it is incomplete. There was no income information available at the hearing to enable me to determine what sources of income had not been reported or the extent to which income information was missing or incomplete.

Some rent is being paid including payments garnished from Sam Chocolate's income from a previous order (file #10-8777, filed on February 3, 2006). The applicant did not know to what extent that order had been satisfied.

Sam Chocolate stated that he had not occupied the rental premises since 2008. The applicant provided a statutory declaration sworn by Mr. Chocolate stating that he had not occupied the premises since June 29, 2008. Another statutory declaration sworn by Mr. Chocolate stated that he had not lived with Ms Lafferty since September 23, 2009. Mr. Chocolate questioned why he should be held responsible for rent after he moved out. It's not clear why the applicant did not execute a tenancy agreement with Ms. Lafferty as sole tenant or why Mr. Chocolate signed the joint tenancy agreements if he no longer lived in the premises. A note to file by the applicant dated November 13, 2008 appears to suggest that Rita Lafferty wanted the tenancy agreement in her name only. The applicant acknowledged at the hearing that Mr. Chocolate had not occupied the premises for some time.

Section 68 of the *Residential Tenancies Act* sets out a time limitation for the making of an application.

**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.**

The superceded tenancy agreements executed prior to April 1, 2009 exceed this time limitation. In my opinion, it is not reasonable to extend this limitation. There is no reason why the applicant could not have taken action prior to March 2013. Given the several tenancy agreements that have been established and the passage of time, there is no way that payments can be attributed to the appropriate account. Therefore, I shall only consider the rent arrears which have accrued since April 1, 2009.

Prior to September 1, 2010 term tenancy agreements between tenants and landlords of subsidized public housing were not automatically renewed. Although the last term agreement between the parties was made for a term that expired on March 31, 2010 the applicant took no action to evict the tenants. In fact, the applicant notified the respondents on July 30, 2010 that they must renew the expired tenancy agreement and on at least five occasions afterwards asked the respondents to submit income information in order to calculate a subsidized rent. There is no evidence to conclude that the applicant considered the tenancy agreement terminated. Clearly, if the applicant had considered the tenancy agreement terminated in accordance with the Act some notice would have been served or an application for eviction would have been made before now. In my opinion, an implied agreement exists.

The testimony of the applicant indicates that some income information has been provided by the parties. Following the decisions of the NWT Supreme Court particularly in *Inuvik Housing Authority v Harley* [*Inuvik Housing Authority v Harley*, CV04815, December 3, 1993], the application of the full unsubsidized rent is not reasonable if some income information has been provided by the tenant. I am unable to determine the quantum of rent owing in this matter as I have do not have the income information provided to the applicant by the respondents.

I find the respondents in breach of their obligation to report the household income in accordance with Article 6 of the tenancy agreement.

**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. All reporting by the Tenant must be in the form prescribed by the subsidy agent.

In my opinion, there are sufficient grounds to terminate the tenancy agreement unless the respondents comply with this provision on or before April 26, 2013.

In my opinion, sufficient compliance would consist of the submission of income information for the following months for all household members:

June, 2009 - December, 2009

January, 2010 - September, 2010

February, 2011 - December, 2011

January 2012 - December, 2012

January, 2013 - Present

Alternatively, the respondents may submit CRA Notices of Assessment for all household members for 2009 - 2012 and income statements for January, 2013 to present plus all maintenance enforcement payments received.

The applicant is granted leave to submit another application requesting payment of rent arrears and/or eviction after April 26, 2013.

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Hal Logsdon  
Rental Officer