

IN THE MATTER between **FORT MCPHERSON HOUSING ASSOCIATION**,
Applicant, and **LAURA NERYSOO**, Respondent;

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 **FORT MCPHERSON, NT**.

BETWEEN:

FORT MCPHERSON HOUSING ASSOCIATION

Applicant/Landlord

- and -

LAURA NERYSOO

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 45(4)(a) of the *Residential Tenancies Act*, the respondent shall comply with her obligation to report the complete household income by submitting the income tax returns of Alfred Itsi for 2010 and 2011 including form T2222.
2. Pursuant to section 41(4)(a) and 83(2) of the *Residential Tenancies Act*, the respondent shall pay the applicant rent arrears in the amount of four hundred twenty dollars (\$420.00) on or before September 30, 2013.

DATED at the City of Yellowknife, in the Northwest Territories this 11th day of
September, 2013.

Hal Logsdon
Rental Officer

IN THE MATTER between **FORT MCPHERSON HOUSING ASSOCIATION**,
Applicant, and **LAURA NERYSOO**, 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.

BETWEEN:

FORT MCPHERSON HOUSING ASSOCIATION

Applicant/Landlord

-and-

LAURA NERYSOO

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: August 8, 2013

Place of the Hearing: Fort McPherson, NT via teleconference

Appearances at Hearing: Shirley Wilson, representing the applicant
Laura Nerysoo, respondent
Alfred Itsi, witness for the respondent

Date of Decision: September 11, 2013

REASONS FOR DECISION

The applicant alleged that the respondent had breached the tenancy agreement by failing to report the full amount of the household income. The applicant sought an order terminating the tenancy agreement and evicting the respondent. The premises are subsidized public housing.

The applicant entered into a three month term tenancy agreement with the respondent and Alfred Itsi as joint tenants commencing on August 5, 2010. In September, 2010 the tenants asked that Mr. Itsi be removed from the tenancy agreement as he no longer lived in the premises. Ms Nerysoo filed a statutory declaration to that effect and Mr. Itsi's mother provided a letter to the Housing Association stating that Mr. Itsi had been residing in a trailer behind her house. The applicant executed another tenancy agreement in December, 2010 with Ms Nerysoo as sole tenant. Mr. Itsi's name was listed as an occupant on Schedule B.

The applicant sought and received authorization from Ms Nerysoo in January 2013 to obtain income information from Canada Revenue Agency. The income information received for both 2010 and 2011 indicates that Ms Nerysoo claimed common law marital status in both tax years. The applicant sent a notice to Ms Nerysoo on March 28, 2013 demanding that Ms Nerysoo add her common husband to the tenancy agreement and report his income. The applicant stated that no income information was received from Ms Nerysoo except her own income.

The applicant assessed the rent for March, April, May, June and July at the full unsubsidized rate

of \$1445. A copy of the tenant ledger was provided in evidence which indicated a balance of rent owing in the amount of \$7225. The last payment made was on April 9, 2013.

Both Ms Nerysoo and Mr. Itsi testified that Mr. Itsi did not live in the public housing unit. Mr. Itsi testified that he had constructed a dwelling on the highway and spent most of his time there. He stated that he built and continues to occupy the dwelling in part to assert his family rights to the area. He acknowledged that he visited Ms Nerysoo and his children who lived with her from time to time. Both Mr. Itsi and Ms Nerysoo testified that they consider themselves common law spouses even though they do not live together. Both stated that they would file new statutory declarations stating that Mr. Itsi did not reside in the public housing unit. Statutory declarations were filed with the applicant and provided to the rental officer after the hearing.

Article 5 of the tenancy agreement sets out in part who may occupy the rental premises.

5. Occupants

All people other than the Tenant who may occupy the premises shall be listed on Schedule B.

Schedule B lists Alfred Itsi and the couple's two daughters.

Article 6 of the tenancy agreement sets out the obligation to report the household income.

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

It is the submission of the applicant that the “common-law” election on Ms Nerysoo’s income tax returns is proof that Mr. Itsi resides in the public housing unit. The applicant also stated that they regularly observed Mr. Itsi coming and going from the unit.

The 2012 instructions provided to tax filers by Canada Revenue Agency reads in part,

Marital status

In the “Information about you” area, tick the box that applied to your status on December 31, 2012. Tick “Married” if you had a spouse, or “Living common-law” if you had a common-law partner. You still have a spouse or common-law partner if you were living apart for reasons other than a breakdown in your relationship.

I also note from my review Ms Nerysoo’s 2010 and 2011 tax information that she claimed the full amount of the Northern Resident’s deduction in 2010 but did not claim any Northern Resident’s Deduction in 2011. It is common practice for married or common-law couples to either claim the full amount for one spouse or the other or split the deduction depending on which method yields the most favourable tax outcome. It would be unlikely that Ms Nerysoo would decline the deduction in 2011 unless someone else claimed the full amount for that public housing unit.

Mr. Itsi and Ms Nerysoo do not feel that their relationship has broken down. Mr. Itsi has provided a reason why they choose to live apart. While I find their living relationship as described by them to be unusual, the election of “common-law” on their income tax does not, in itself, prove conclusively that Mr. Itsi was an occupant. However, the respondent’s tax

information suggests that she would only decline the Northern Resident's Deduction in 2011 if some other occupant claimed the entire amount.

Given that Mr. Itsi is listed on Schedule B of the tenancy agreement, the income information for the household has been requested by the landlord and there is some evidence of Mr. Itsi's occupancy, I do not think it is unreasonable to compel the respondent to provide both her income information and that of Mr. Itsi. The submission of Mr. Itsi's 2010 and 2011 income tax return, particularly Form T2222 should definitively establish Mr. Itsi's occupancy, or lack of it, during this period.

In most circumstances, I would be inclined to accept the statutory declarations as adequate evidence of Mr. Itsi's residence. However, the respondent's tax returns appear to contradict the declarations made by the respondent and Mr. Itsi. I must also consider the size of the community and the fact that, for better or worse, most everyone knows where everyone else lives. Therefore, on the evidence before me I am inclined to believe that Mr. Itsi is an occupant of the public housing unit and the respondent should be compelled to provide his tax returns for 2010 and 2011, particularly form T2222 which will clearly establish his residency.

Failure to report income in the public housing program is a serious breach. Rent based on income is a fundamental principle of the program and tenants who fail to disclose their household income are not paying their fair share of housing expenses.

Regarding assessments of the full unsubsidized rent and the resultant rent arrears, I find the application of the full unsubsidized rent to be unreasonable. With reference to *Inuvik Housing Authority vs. Koe* [1992] N.W.T.R. 9 and *Inuvik Housing Authority vs. Gary Harley* [1993] CanLII 2856 (NWTSC) the rent should have been assessed on the income information received, even through it appears that the information may have been incomplete. Assessing the rents from March, 2013 to present based on the respondents's income alone results in rent arrears of \$420 calculated as follows:

Balance as at March 6/13	\$215.33
March rent	70.00
Pmt Apr 9/13	(215.33)
April rent	70.00
May rent	70.00
June rent	70.00
July rent	70.00
August rent	<u>70.00</u>
Total	\$420.00

An order shall issue requiring the respondent to submit Mr. Itsi's 2010 and 2011 income tax information, including form T2222 to the applicant and to pay rent arrears of \$420 on or before September 30, 2013. In my opinion, the request for orders terminating the tenancy agreement and evicting the tenant are not reasonable at this time. However, should the respondent fail to satisfy this order the applicant may make another application seeking those remedies.

Hal Logsdon
Rental Officer