

IN THE MATTER between **NWT Housing Corporation**, Applicant, and **Jeanette Lockhart**, 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, **Adelle Guigon**, Deputy Rental Officer, regarding a rental premises within **the community of Lutselk'e in the Northwest Territories**.

BETWEEN:

**NWT HOUSING CORPORATION**

Applicant/Landlord

- and -

**JEANETTE LOCKHART**

Respondent/Tenant

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(b) of the *Residential Tenancies Act*, the respondent must pay her rent on time in the future.
2. Pursuant to sections 45(4)(a) and 45(4)(b) of the *Residential Tenancies Act*, the respondent must:
  - (a) comply with her obligation under section 18 of her residential tenancy agreement by notifying the landlord in writing prior to the rental premises being left unoccupied for more than seven days, and she must not breach this obligation again; and

(b) provide verification of her income as required under section 6 of her residential tenancy agreement, and she must not breach this obligation again.

DATED at the City of Yellowknife in the Northwest Territories this 20th day of June 2014.

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Adelle Guigon  
Deputy Rental Officer

IN THE MATTER between **NWT Housing Corporation**, Applicant, and **Jeanette Lockhart**, Respondent.

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**JEANETTE LOCKHART**

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**REASONS FOR DECISION**

<b><u>Date of the Hearing:</u></b>	<b>June 18, 2014</b>
<b><u>Place of the Hearing:</u></b>	<b>Yellowknife, Northwest Territories, by teleconference</b>
<b><u>Appearances at Hearing:</u></b>	<b>Jessica Relucio, representing the applicant Jeanette Lockhart, respondent Joe Lockhart, witness for the respondent</b>
<b><u>Date of Decision:</u></b>	<b>June 18, 2014</b>

**REASONS FOR DECISION**

An application to a rental officer made by NWT Housing Corporation as the applicant/landlord against Jeanette Lockhart as the respondent/tenant was filed by the Rental Office April 23, 2014. The application was made regarding a subsidized public housing residential tenancy agreement for the rental premises know as Unit #198 in Lutselk'e, Northwest Territories. The applicant served a copy of the filed application on the respondent by registered mail signed for May 16, 2014.

The applicant alleged the tenant failed to reside in and maintain the rental premises in accordance with her tenancy agreement, had failed to give written notice to the landlord of her intention to leave the rental premises unoccupied, had effectively abandoned the rental premises, and had accumulated rental arrears.

A hearing was scheduled for June 19, 2014, which was rescheduled to June 18, 2014, by mutual consent of all parties. Ms. Jessica Relucio appeared representing the applicant. Ms. Jeanette Lockhart appeared as respondent with Mr. Joe Lockhart as a witness.

The parties agreed that Ms. Lockhart had been a tenant in subsidized public housing under the applicant's Homeownership Entry Level Program (HELP) since 2009; the applicant submitted into evidence the most recent HELP agreement and residential tenancy agreement, both dated June 20, 2011.

Ms. Relucio testified that several attempts to contact Ms. Lockhart were unsuccessful until March 2014 when the North Slave District Office Programs Advisor located Ms. Lockhart attending Thebacha College in Fort Smith. When contacted, Ms. Lockhart confirmed that she had been attending the college since September 2012 and that her father had been maintaining her rental premises and paying the utility bills while she was away.

The applicant believed Ms. Lockhart was permanently living in Fort Smith and interpreted this information to mean that, by failing to advise the landlord in writing of her intention to leave her rental premises unoccupied for greater than seven consecutive days in accordance with section 18 of her residential tenancy agreement, Ms. Lockhart had effectively abandoned the rental premises August 30, 2012. As a result, the applicant further deemed Ms. Lockhart no longer eligible for

HELP due to her breach of section 9(e) of the HELP agreement and assessed full economic rent of \$1,835 for the months of September 2012 to present. Ms. Lockhart had rental arrears prior to then of \$331; the last payment she made towards rent was received on April 27, 2012, of \$250, however Ms. Lockhart was not charged any rent for the months of April to August 2012. Ms. Relucio testified that she believed this was due to Ms. Lockhart's failure to provide income verification forms for 2011, 2012, and 2013. The claimed rental arrears after the application of full economic rent as of March 1, 2014, was \$35,196.

On March 11, 2014, the applicant sent a notice to Ms. Lockhart confirming the information they had received and their determination that she had abandoned the rental premises, was no longer eligible for HELP, and that the applicant would be applying for termination of the tenancy agreement. Ms. Relucio confirmed at hearing the applicant was seeking payment of rental arrears, termination of the tenancy agreement, and eviction.

Ms. Lockhart confirmed she did not in fact give the applicant written notice of her intention to leave the rental premises unoccupied while she attended college, but she did retain responsibility for the rental premises by arranging for her father, Mr. Joe Lockhart, to maintain the rental premises in her absence and to pay the utility bills associated with the rental premises to ensure no damage occurred. Mr. Lockhart confirmed in his testimony that during the periods Ms. Lockhart was attending college he paid the utility bills for her premises and attend at the premises every couple of days to ensure there were no issues arising. Mr. Lockhart confirmed he was not residing at Ms. Lockhart's premises as he had his own residence.

Ms. Lockhart testified that she had been attending college in Fort Smith between September 2012 and April 2014, and would return to Lutselk'e during the breaks between semesters. Her primary residence remained at all times as Unit #198 in Lutselk'e, all her mail continued to be addressed to her Lutselk'e address, her identification continued to reflect her Lutselk'e residence, and she completed any forms or applications with her Lutselk'e address. She disputed the assertion of the applicant that she had abandoned the rental premises.

Ms. Lockhart indicated that prior to April 2012 she had received regular monthly statements from the applicant advising her of her monthly rent and any arrears she may have still had. When she ceased receiving the statements she admittedly erroneously presumed she did not have any rent due, hence the last payment made in April 2012.

*Tenancy agreement*

The Homeownership Entry Level Program (HELP) is designed by the Northwest Territories Housing Corporation to assist approved applicants with the opportunity to assume the responsibilities of homeownership prior to purchasing a home. The HELP agreement submitted into evidence was signed by both parties June 20, 2011, and requires the parties to enter into a residential tenancy agreement. The residential tenancy agreement entered into evidence was signed by both parties June 20, 2011. The parties did not dispute that there was a valid tenancy agreement in place and I am satisfied that is the case.

*Abandonment*

Section 1(3)(b) of the *Residential Tenancies Act* (the Act) states that a tenant has abandoned a rental premises where the tenancy has not been terminated in accordance with this Act and the tenant does not ordinarily live in the rental premises, has not expressed an intention to resume living in the rental premises, and the rent the tenant has paid is no longer sufficient to meet the tenant's obligation to pay rent.

Ms. Lockhart testified that she does ordinarily live in the rental premises, she keeps most of her personal property in the rental premises while she is attending college, and she has expressed an intention to continue living and working in Lutselk'e. According to the lease balance statement, until the applicant started applying full economic rent they were not charging Ms. Lockhart any rent, so there were no rent payments for Ms. Lockhart to make at the time the applicant deemed she had abandoned the rental premises. I am not satisfied Ms. Lockhart abandoned the rental premises on August 30, 2012, as alleged by the applicant. I find the parties remain bound by the residential tenancy agreement they entered into June 20, 2011.

*Rental arrears and verification of income*

The lease balance statement and statement of account entered into evidence by the applicant is the landlord's accounting of subsidized rent charged and payments received between April 29, 2009, and March 1, 2014. I am satisfied these documents accurately reflect payments received against the account.

Section 4(b) of the HELP agreement and section 6 of the residential tenancy agreement both stipulate the tenant's obligation to provide verification of income annually, when household income changes, and when requested by the landlord. The requirement of these documents is to enable the landlord to calculate any rent subsidy for which the tenant might be eligible. In this instance it was agreed by both parties that the required income verification has not been provided as yet for the 2011, 2012, and 2013 years. On this basis, I find Ms. Lockhart has failed to comply with her obligation to provide annual verification of her household income. An order for Ms. Lockhart to provide all outstanding income verification forms to the landlord and not to breach her obligation to provide income verification forms again is reasonable under the circumstances.

According to the correspondence from the landlord to the tenant dated January 29, 2014, a re-assessment of Ms. Lockhart's rent subsidy was made and she was notified by that correspondence that her monthly rent as of April 1, 2014, would be \$300 per month for the next four years; this notice and what the re-assessment was based on was not discussed at hearing. The statement of account and the lease balance statement in fact reflect that Ms. Lockhart was charged zero rent for the months of January to August 2012 (not just April to August 2012 as mentioned above) and then the full economic rent for September 2012 onwards. Ms. Relucio testified the full economic rent was applied for September 2012 onwards due to the landlord's determination that Ms. Lockhart had abandoned the rental premises August 30, 2012, and therefore was no longer eligible for subsidized rent. Ms. Relucio deduced the application of zero rent for January to August 2012 was applied as a result of not having any verification of income from Ms. Lockhart, but neither of us could rationalize why this would be so when the normal practice of the landlord in this situation would be to either continue charging the previous year's subsidized rent or charge the full economic rent until it could be re-assessed based on verified household income. Having determined that Ms. Lockhart had not abandoned the rental premises and having legitimate questions regarding the calculation of subsidized rent, I did not consider rental arrears at hearing and requested instead that the landlord re-calculate the subsidized rent based on income verification from Ms. Lockhart to determine the actual rental arrears, and that either the parties could attempt to negotiate a payment plan to resolve the resulting properly assessed arrears or the landlord could submit a new application to a rental officer to consider the rental arrears.

Ms. Lockhart testified that she had been making payments towards her rent every time she received a statement from the landlord, which was monthly until April 2012. As Ms. Relucio pointed out, however, Ms. Lockhart was aware of the amount of her last assessed monthly rent of \$121 and it remains her responsibility to pay her rent on time every month whether she is provided a monthly statement or not. Ms. Lockhart would not have been required to pay an amount other than \$121 per month until she received notification from the landlord that her rent had been re-assessed and to what amount. Until January 2014, Ms. Lockhart was not notified of any changes to her assessed rent. On this basis, I find Ms. Lockhart has repeatedly failed to pay her rent on time and an order that she pay future rent on time is reasonable.

*Termination of the tenancy agreement and eviction*

The applicant's request for termination of the tenancy agreement and eviction is based on their determination that Ms. Lockhart is no longer eligible for subsidized public housing under HELP due to allegedly abandoning the rental premises. Their determination that Ms. Lockhart is no longer eligible for subsidized public housing under HELP is based on Ms. Lockhart's breach of section 9 of the HELP agreement and section 18 of the residential tenancy agreement.

Section 9 of the HELP agreement specifies that the tenant agrees (a) to reside in and maintain the property as their principal residence, (c) to pay all utilities, and (e) to comply with the terms of the residential tenancy agreement.

Section 18 of the residential tenancy agreement specifies that the tenant promises not to leave the premises unoccupied for longer than seven days without prior written notice to the landlord.

Ms. Relucio confirmed that the intent of section 18 of the residential tenancy agreement was to ensure the rental premises was maintained and kept from damage during a tenant's extended absence.

Although Ms. Lockhart admittedly breached section 18 of the residential tenancy agreement by failing to advise the landlord in writing that she was going to be attending college in Fort Smith and would be away from the rental premises for an extended period of time, she did maintain her responsibility for the rental premises and complied with the intent of the section by making arrangements with her father to care for the rental premises in her absence.



Ms. Lockhart complied with section 9(a) of the HELP agreement by continuing to reside in the rental premises between semesters and maintaining the property as her principal residence by keeping the utilities in her name, keeping the residence as her legal address, and arranging for her father to care for the residence in her absence. She also complied with section 9(c) by ensuring her utilities bills were paid through her father.

By breaching section 18 of the residential tenancy agreement Ms. Lockhart has breached section 9(e) of the HELP agreement. However, the breach of section 18 was mitigated by Ms. Lockhart's positive actions to ensure the rental premises was cared for in her absence; her failure to provide written notice to the landlord of her extended absence had no negative impacts on the tenancy, the rental premises, or the landlord. Ms. Relucio was unable to quantify for me how this relatively minor breach eliminated Ms. Lockhart's eligibility to remain in the Homeownership Entry Level Program.

I am not satisfied termination of the tenancy agreement and eviction are justified at this time. An order will issue requiring Ms. Lockhart to pay her rent on time in the future, to provide income verification reports to the applicant for the 2011, 2012, and 2013 years, not to breach her obligation to provide income verification reports again, to notify the applicant in writing of any extended absences from the rental premises, and not to breach her obligation to advise the applicant in writing of any extended absences again.

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Adelle Guigon  
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Statement of account dated April 9, 2014, for rent from April 29, 2009, to March 1, 2012
- Exhibit 2: Lease balance statement for rent from April 1, 2012, to March 1, 2014
- Exhibit 3: HELP assessment results dated April 9, 2014, for January 1, 2011
- Exhibit 4: HELP assessment results dated June 7, 2011, for January 1, 2010
- Exhibit 5: Applicant's notice of early termination of tenancy (abandonment of premises) correspondence to respondent dated March 11, 2014
- Exhibit 6: Applicant's Homeownership Entry Level Program (HELP) correspondence to respondent dated January 29, 2014
- Exhibit 7: Homeownership Entry Level Program (HELP Program) agreement signed June 20, 2011
- Exhibit 8: Residential lease agreement signed June 20, 2011