

IN THE MATTER between **Tuktoyaktuk Housing Association**, Applicant, and **Fred Jacobson**, 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 hamlet of Tuktoyaktuk in the Northwest Territories**.

BETWEEN:

Tuktoyaktuk Housing Association

Applicant/Landlord

- and -

FRED JACOBSON

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent must pay to the applicant rental arrears in the amount of \$2,004.00 (two thousand four dollars).
2. Pursuant to sections 41(4)(c) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the rental premises known as Unit #166 in Tuktoyaktuk, Northwest Territories, will terminate November 30, 2014, and the respondent must vacate the rental premises on or before that date, unless the rental arrears of \$2,004 and the assessed rent for October and November 2014 are paid in full on or before November 30, 2014.

DATED at the City of Yellowknife in the Northwest Territories this 19th day of September 2014.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Tuktoyaktuk Housing Association**, Applicant, and **Fred Jacobson**, 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 **Adelle Guigon**, Deputy Rental Officer.

BETWEEN:

TUKTOYAKTUK HOUSING ASSOCIATION

Applicant/Landlord

-and-

FRED JACOBSON

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: September 17, 2014

Place of the Hearing: Tuktoyaktuk, Northwest Territories, by teleconference

Appearances at Hearing: Lucille Pokiak, representing the applicant

Date of Decision: September 17, 2014

REASONS FOR DECISION

An application to a rental officer made by Tuktoyaktuk Housing Association as the applicant/landlord against Fred Jacobson as the respondent/tenant was filed by the Rental Office May 8, 2014. The application was made regarding a subsidized public housing residential tenancy agreement for the rental premises known as Unit #166 in Tuktoyaktuk, Northwest Territories. The applicant personally served a copy of the filed application on the respondent May 21, 2014.

The applicant alleged the respondent had accumulated rental arrears and requested an order for payment of the rental arrears and termination of the tenancy agreement. Evidence submitted is listed in Appendix A attached to this order.

A hearing was originally scheduled for July 14, 2014, by teleconference. Ms. Lucille Pokiak appeared representing the applicant. Mr. Fred Jacobson was served a notice of attendance by registered mail sent June 24, 2014, and deemed served July 1, 2014, pursuant to section 71(5) of the *Residential Tenancies Act* (the Act). Mr. Jacobson did not appear at hearing, nor did anyone appear on his behalf. Ms. Pokiak advised she was aware that Mr. Jacobson had left the community for work the end of June 2014 and may not in fact have received the notice of attendance. She indicated Mr. Jacobson was expected to return to the community some time in August. With Ms. Pokiak's agreement, the hearing was adjourned *sine die* to be rescheduled in September.

The hearing was re-scheduled to September 17, 2014, by teleconference. Ms. Lucille Pokiak appeared representing the applicant. Mr. Fred Jacobson was again served a notice of attendance by registered mail sent August 25, 2014, and deemed served September 1, 2014, pursuant to section 71(5) of the Act. Mr. Jacobson did not appear at hearing, nor did anyone appear on his behalf. Ms. Pokiak was aware that Mr. Jacobson did return to the community in early August for a few days, but then left again for work; she believes he has not as yet returned to the community. However, Mr. Jacobson was aware of the application being made and has not attempted to contact the Rental Office to facilitate his schedule into the conduct of this hearing. The hearing proceeded in Mr. Jacobson's absence pursuant to section 80(2) of the Act.

Ms. Pokiak testified that Mr. Jacobson has been a tenant in subsidized public housing since June 1991. In June 2013 he began accumulating rental arrears. He has made irregular payments of substantial amounts since June 2013, however, his rental arrears as of September 17, 2014, have accumulated to \$3,200, according to the tenant ledger cards submitted into evidence. Ms. Pokiak indicated she fully expects Mr. Jacobson will pay off his arrears when he returns from work, but requested an order including a conditional termination order for November 30, 2014, should he fail to pay his rental arrears.

Ms. Pokiak clarified the application of maximum economic rent for the months of June 2013 and January, February, and April 2014 were assessed based on Mr. Jacobson's reported household income exceeding the maximum threshold for a subsidy. The maximum economic rent applied for August and September 2014 were assessed due to Mr. Jacobson not yet reporting his income for those months; Ms. Pokiak conceded Mr. Jacobson would not be able to report his income for August and September until he returned to the community from his work, however, as his subsidized rent fluctuates dramatically based on his varied monthly income, estimating a value for subsidized rent for August and September would not be practical. Based on Mr. Jacobson's work history as reflected in the tenant ledger cards, it would not be unreasonable to expect his income for August and September to exceed the maximum threshold for subsidy at any rate.

When queried regarding an apparent increase to maximum economic rent applied on the tenant ledger cards, Ms. Pokiak confirmed the only notice of rent increase would have been a general form letter sent to all tenants in 2012 regarding a change in how the NWT Housing Corporation would be determining the maximum economic rent going forward and advising tenants the maximum economic rent amounts would vary between a minimum and maximum range. This notice was not provided into evidence and from its description would not constitute specific notice to Mr. Jacobson of a rent increase in accordance with the Act and his tenancy agreement.

Tenancy agreement

The residential tenancy agreement entered into evidence by the applicant is between the parties for subsidized public housing for the rental premises known as Unit #166 in Tuktoyaktuk, Northwest Territories. Both parties have signed the agreement. The agreement is dated June 14, 1991; section 4 of the agreement specifies the tenancy will start April 1, 2012, and end January 1, 2013; Schedule A specifies the maximum monthly rent is \$1,146 as of April 1, 2012, but is

initialled only by the landlord on January 1, 2013; the footer of the agreement indicates it was printed on April 22, 2014. Presumably it could be deemed that Mr. Jacobson could not have signed the agreement prior to the date it was printed. Whenever Mr. Jacobson actually signed this tenancy agreement, it appears he did agree to its terms effective April 1, 2012, when the fixed term is specified to have commenced. I have also heard testimony from Ms. Pokiak that Mr. Jacobson has been a tenant with the applicant continuously since June 14, 1991. I am satisfied that a tenancy agreement is in place between the parties.

Rental arrears and notice of rent increase

The tenant ledger cards entered into evidence by the applicant reflect the landlord's accounting of monthly assessed rent and payments made against Mr. Jacobson's account between April 1, 2013, and September 12, 2014. Ms. Pokiak confirmed there are no additional entries between September 12, 2014, and the date of this hearing. I am satisfied the tenant ledger cards accurately reflect payments made towards Mr. Jacobson's rent account.

Schedule A of the tenancy agreement specifies the maximum monthly rent as \$1,146 as of April 1, 2012. Referring to the tenant ledger cards only since June 4, 2013 – when the rental arrears claimed began accumulating – there are six months for which rent was applied at a rate of \$1,445: June 2013, January, February, April, August, and September 2014.

Three rent calculation forms were submitted into evidence representing rent assessments based on reported household income for the months of February, March, and April 2014. These forms reflect the amount of reported income and the maximum monthly rent for the rental premises, and must be signed by the tenant acknowledging the contents of the document. The February form is dated February 19, 2014, and signed by the applicant's representative, but it is not signed by the tenant. The March and April forms are both dated April 7, 2014, and are both signed by the applicant's representative and the tenant.

Section 7 of the tenancy agreement specifies the landlord will give the tenant at least one month's written notice of any increase to the maximum monthly rent. Section 71(1) of the Act and section 4(2) of the *Residential Tenancies Regulations* (the regulations) specify the method of service of any notices must be by either personal service, registered mail, fax, or e-mail.

Ms. Pokiak confirmed no formal written notice was given to Mr. Jacobson advising him of the increase to his maximum monthly rent. However, in considering that the rent calculation forms are legal documents the tenant is required to sign certifying their contents are accurate, and that those forms clearly identify the maximum monthly rent, I am satisfied they can be considered notice to the tenant of increases to the maximum monthly rent personally served on the date the tenant signs them.

In this case, the only rent calculation forms I have as evidence are for February, March, and April 2014. The February form was not actually signed by the tenant; I cannot consider it effective notice of the rent increase. The March and April forms were signed by the tenant April 7, 2014; this is the date I consider the tenant notified in writing of the increase to his maximum monthly rent from \$1,146 to \$1,445. As the landlord is required to give the tenant a minimum of one month's notice per section 7 of the tenancy agreement, and the monthly periods of the tenancy are from the first to last day of a given month, the maximum monthly rent increase is effective on June 1, 2014.

It is clear in the rent calculation forms that Mr. Jacobson's income for February and April exceeded the total household income threshold for assessing rent subsidies, substantiating the application of the maximum monthly rent for those two months. Ms. Pokiak testified that the same was true for the months of June 2013 and January 2014. I also heard Ms. Pokiak's testimony that the maximum rent was applied for August and September 2014 as the applicant has not yet received Mr. Jacobson's income information for those months.

Having established that the maximum monthly rent for Mr. Jacobson's tenancy prior to June 1, 2014, remains at \$1,146, the monthly assessed rents for June 2013 and January, February, and April must be amended from that reflected on the tenant ledger cards. Doing so results in a deduction of \$1,196 from the claimed rental arrears, calculated as follows:

\$1,445 less \$1,146 equals a difference of:	\$299.00
\$299 times four months equals:	\$1,196.00
Rental arrears claimed of \$3,200 less \$1,196 equals:	\$2,004.00
Total Adjusted Rental Arrears:	\$2,004.00

I find Mr. Jacobson has accumulated rental arrears in the amount of \$2,004 as of September 17, 2014.

Termination of the tenancy agreement

Ms. Pokiak and I are in agreement, when considering Mr. Jacobson's pattern of behaviour during the tenancy, that a termination order is justified conditional on whether or not the rental arrears and rent are paid by a specified date. The tenant ledger cards reflect irregular payments against Mr. Jacobson's rent account, with the last three payments received May 22, June 20, and August 5, 2014; the last payment brought Mr. Jacobson's rental arrears down to \$310 before the maximum rents were applied for August and September. It seems realistic that Mr. Jacobson will likely be able to pay his rental arrears in full upon his return to the community and that a conditional termination order may act as motivation to pay his full rent on a monthly basis.

An order will issue requiring Mr. Fred Jacobson to pay rental arrears in the amount of \$2,004, and terminating his tenancy agreement on November 30, 2014, unless the rental arrears and rent for October and November are paid in full by November 30, 2014.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Residential tenancy agreement fixed term lease dated June 14, 1991
- Exhibit 2: Rent calculation forms for February to April 2014
- Exhibit 3: Tenant ledger cards for rent from April 1, 2013, to April 7, 2014
- Exhibit 4: Applicant's outstanding rental arrears & tenant damage arrears correspondence to respondent dated March 18, 2014
- Exhibit 5: Applicant's outstanding rental & tenant damage arrears - 30 days correspondence to respondent dated January 15, 2014
- Exhibit 6: Applicant's outstanding rental arrears & tenant damage arrears correspondence to respondent dated November 18, 2013
- Exhibit 7: Applicant's payment over & above regular rent assessed correspondence to respondent dated October 22, 2013
- Exhibit 8: Tenant ledger card for rent from April 1 to July 2, 2014
- Exhibit 9: Tenant ledger card for rent from April 1 to September 12, 2014