

IN THE MATTER between **Fort Resolution Housing Authority**, Applicant, and **Jocelyn Rose Akinneah**, 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 Fort Resolution in the Northwest Territories**.

BETWEEN:

FORT RESOLUTION HOUSING AUTHORITY

Applicant/Landlord

- and -

JOCELYN ROSE AKINNEAH

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 \$9,778.42 (nine thousand seven hundred seventy-eight dollars forty-two cents).
2. Pursuant to section 41(4)(c) of the *Residential Tenancies Act*, the tenancy agreement between the parties regarding the rental premises known as Plan 5582, Lot 19-61, #0007, in Fort Resolution, Northwest Territories, will terminate October 31, 2014, and the respondent must vacate the rental premises on or before that date.

DATED at the City of Yellowknife in the Northwest Territories this 30th day of October 2014.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Fort Resolution Housing Authority**, Applicant, and
Jocelyn Rose Akinneah, 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:

FORT RESOLUTION HOUSING AUTHORITY

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-and-

JOCELYN ROSE AKINNEAH

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: **October 30, 2014**

Place of the Hearing: **Fort Resolution, Northwest Territories, by teleconference**

Appearances at Hearing: **Darrin Holmes, representing the applicant**

Date of Decision: **October 30, 2014**

REASONS FOR DECISION

An application to a rental officer made by Fort Resolution Housing Authority as the applicant/landlord against Jocelyn Rose Akinneah as the respondent/tenant was filed by the Rental Office August 20, 2014. The application was made regarding a subsidized public housing residential tenancy agreement for the rental premises known as Plan 5582, Lot 19-61, #0007, in Fort Resolution, Northwest Territories. The applicant sent a copy of the filed application to the respondent by registered mail on September 2, 2014, which was unclaimed and returned to sender. The applicant's representative Darrin Holmes personally spoke with a representative from the local Canada Post office and confirmed the respondent had refused to sign for the registered mail. Mr. Holmes personally spoke with the respondent by telephone on or about October 23, 2014, and advised the respondent of the filing of the application; the respondent at that time told Mr. Holmes she had moved to British Columbia and refused to provide her forwarding address. The application package was deemed served on the respondent pursuant to section 71(5) of the *Residential Tenancies Act* (the Act).

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

A hearing was scheduled for October 30, 2014, in Fort Resolution. Mr. Darrin Holmes appeared representing the applicant. Ms. Jocelyn Rose Akinneah was sent a notice of attendance by registered mail sent September 24, 2014, to the address provided on file. At the same inquiry as identified above regarding service of the application package, Mr. Holmes communicated directly with the local Canada Post staff and learned Ms. Akinneah was notified registered mail was waiting to be picked up and that she refused to sign for it. In his previously mentioned telephone conversation with Ms. Akinneah on October 23, 2014, Mr. Holmes learned that she was no longer residing in the rental premises and that she had moved to British Columbia. When requested, she refused to provide her forwarding address. Mr. Holmes advised her of the scheduled hearing. I am satisfied Ms. Akinneah knew of the application filed against her and knew of the scheduled hearing at which she could have attended. The hearing proceeded in her absence pursuant to section 80(2) of the Act.

Mr. Holmes testified that Ms. Akinneah has been a tenant in subsidized public housing since December 2008. In May 2012 she began accumulating rental arrears and by rental officer order #10-13461 dated July 2, 2013, Ms. Akinneah was required to pay rental arrears in the amount of \$815. Enforcement proceedings were recently initiated on that order and the remaining arrears of \$715 have been included in the current rent account balance. Ms. Akinneah's overall rental arrears have not been resolved to date; the last actual payment was received in February 2014. Mr. Holmes further testified that Ms. Akinneah was last in the office to report her household income in April, from which the rent for the months up to and including April were assessed a rent subsidy. No household income has been reported since the April visit, therefore the applicant has applied the maximum monthly rent of \$1,545 for the months of May to October inclusive. The total current rental arrears claimed to date are \$10,493.42.

Mr. Holmes testified that during his telephone conversation with Ms. Akinneah on or about October 23, 2014, he advised her of her outstanding rental arrears, reminded her of her obligation to report household income, and informed her of his application to the rental officer requesting an order for payment of rental arrears, termination of the tenancy agreement, and eviction. She in turn advised him that she had moved to British Columbia, had left her key for the rental premises with a friend, had left personal belongings in the rental premises to be sold, and did not wish to give up the rental premises yet as she intended to stay there when she returns in December to appear for court. Mr. Holmes reminded her the rental premises is not a storage unit and could not be left unoccupied for an extended period.

At hearing, Mr. Holmes confirmed there is a requirement under the tenancy agreement for the tenant to notify the landlord in writing prior to leaving the rental premises unoccupied for a period greater than 24 hours between October 1st and April 30th. Ms. Akinneah did not comply with this obligation.

Mr. Holmes summarized the applicant's position as Ms. Akinneah is in breach of her tenancy agreement by failing to pay the full amount of rent when it is due, failing to report her monthly household income, and failing to notify the landlord in writing prior to leaving the rental premises unoccupied. He reiterated the applicant's request for an order for payment of rental arrears, termination of the tenancy agreement, and eviction.

Tenancy agreement

The residential tenancy agreement entered into evidence was for subsidized public housing made between the parties, renewing the existing tenancy agreement on a month-to-month basis starting October 1, 2013. The tenant ledger cards entered into evidence indicated the tenancy started December 15, 2008. I am satisfied a valid tenancy agreement has been in place between the parties since December 2008 in accordance with the Act.

Rental arrears and obligation to report household income

The tenant ledger cards and lease balance statements entered into evidence represent the landlord's accounting of monthly assessed rent and payments received against the respondent's rent account. I am satisfied these statements accurately reflect payments received from the respondent to date.

Previous rental officer order #10-13461 dated July 2, 2013, ordered the payment of rental arrears accumulated as of June 26, 2013, in the amount of \$815. The applicant initiated enforcement of that order and those arrears have been reduced to \$715; that amount has been included in the current assessed rental arrears. As rental officer order #10-13461 remains enforceable, the order issued today will reflect the currently accounted rental arrears less \$715.

The applicant did initially include in the rental arrears a charge of \$10 for sending a notice under section 54 of the Act by registered mail, however, I did not permit this charge as it seems to me an unfair recovery of costs for a required method of service of any notice under the Act.

Section 6 of the tenancy agreement specifies the obligation of the tenant to report total household income whenever and as often as requested by the landlord, and must be reported in the prescribed form. The respondent was aware from commencement of the tenancy that her total household income was expected to be reported monthly. The applicant testified the prescribed form required the respondent's signature confirming the information provided was accurate and true; without the respondent's signature the applicant is not authorized to apply whatever subsidy the respondent might be eligible for to their rent account. Even though the applicant has income information from the respondent for the months of April, May, and June, the respondent has not attended the office to sign the prescribed form. Household income has not been reported for the months of July, August, and September. I find the respondent has failed to comply with her

obligation to report household income in accordance with the tenancy agreement. The application of the maximum monthly rent for the months of May through October is appropriate under the circumstances. I find the respondent currently has accumulated rental arrears in the amount of \$10,493.42. Mr. Holmes has assured me on the record that should Ms. Akinneah submit and sign the prescribed household income forms for the months of April through September 2014 her rents for May through October 2014 would be appropriately re-assessed, her rental arrears balance re-calculated, and enforcement of the order to pay would only be pursued to the re-calculated arrears amount.

Termination of the tenancy agreement and eviction

On July 4, 2014, the applicant sent a notice of termination of the tenancy agreement to the respondent in accordance with section 54(1)(g) of the Act for failure to pay the full amount of rent when it is due, terminating the tenancy August 5, 2014. The notice was sent by registered mail in accordance with section 71(1) of the Act and a copy of the registered mail receipt was included in the application package. The notice was deemed served July 11, 2014, pursuant to section 71(5) of the Act. When the respondent did not vacate the rental premises in accordance with the notice, the applicant initiated the application to a rental officer in accordance with section 54(4) of the Act. The applicant has successfully established the respondent has failed to comply with their obligation to pay rent when it is due, substantiating the justification for termination of the tenancy agreement.

Termination of the tenancy agreement is further justified by the respondent's failure to comply with their obligation to report household income and by the respondent's failure to comply with their obligation to notify the landlord in writing of their intention to leave the rental premises unoccupied for greater than 24 hours. The applicant submitted as well that the housing authority's policies specify anyone who already has a residence is not eligible for public housing in the Northwest Territories. The respondent's admission to Mr. Holmes that she had in fact moved to British Columbia, regardless of her refusal to provide a forwarding address, confirms she has a new residence, that she is not currently occupying the rental premises, and effectively does not intend to continue residing in the rental premises. This being the case, while a termination order is justified, an eviction order is unnecessary as the respondent has already vacated the rental premises.

An order will issue requiring the respondent to pay rental arrears in the amount of \$9,778.42 (total rental arrears of \$10,493.42 less previously ordered \$715) and terminating the tenancy agreement on October 31, 2014.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

Exhibit 1: Lease balance statement dated August 7, 2014

Exhibit 2: Applicant's outstanding rental arrears correspondence to respondent dated April 11, 2014

Exhibit 3: Applicant's outstanding rental arrears - 30 days correspondence to respondent dated May 8, 2014

Exhibit 4: Applicant's outstanding rental arrears - 45 days correspondence to respondent dated June 3, 2014

Exhibit 5: Applicant's notice of termination - Residential Tenancy Act s. 54(1) correspondence to respondent sent by registered mail dated July 4, 2014

Exhibit 6: Residential tenancy agreement indeterminate lease dated March 11, 2014