

IN THE MATTER between **NORTHWEST TERRITORIES HOUSING CORPORATION**, Applicant, and **THERESA KAKFWI AND WAYNE KAKFWI**, 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, regarding the rental premises at **COLVILLE LAKE, NT**.

BETWEEN:

**NORTHWEST TERRITORIES HOUSING CORPORATION**

Applicant/Landlord

- and -

**THERESA KAKFWI AND WAYNE KAKFWI**

Respondents/Tenants

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent Theresa Kakfwi shall pay the applicant rent arrears in the amount of two hundred eleven dollars and fifty cents (\$211.50).
2. Pursuant to section 41(4)(b) of the *Residential Tenancies Act*, the respondent Theresa Kakfwi shall pay future rent on time.

DATED at the City of Yellowknife, in the Northwest Territories this 10th day of July, 2007.

Hal Logsdon  
Rental Officer

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**NORTHWEST TERRITORIES HOUSING CORPORATION**

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-and-

**THERESA KAKFWI AND WAYNE KAKFWI**

Respondents/Tenants

**AMENDED REASONS FOR DECISION**

<b><u>Date of the Hearing:</u></b>	<b>June 28, 2007</b>
<b><u>Place of the Hearing:</u></b>	<b>Yellowknife, NT via teleconference</b>
<b><u>Appearances at Hearing:</u></b>	<b>Peter Hicks, representing the applicant Theresa Kakfwi, respondent Wayne Kakfwi, respondent</b>
<b><u>Date of Decision:</u></b>	<b>July 10, 2007</b>

**AMENDED REASONS FOR DECISION**

The application was filed against Theresa Kochon and Wayne Kakfwi . The respondents noted that they were married and Theresa now went by the name Theresa Kakfwi. The style of cause of the order will reflect the change of name.

The applicant alleged that the respondents had breached their obligation to pay rent and sought an order requiring the respondents to pay alleged rent arrears of \$6933.

The applicant claims that the premises are owned by the NWT Housing Corporation. This is not disputed by the respondents but just how the respondents came into possession of the premises is somewhat unclear. The applicant's representative had no direct evidence regarding the matter.

The respondents stated that the house was built by the NWT Housing Corporation who permitted the Band to select an occupant. The respondents stated that Theresa moved into the premises in 2002 but no rent was determined or demanded by the Band or the NWT Housing Corporation and no rent was paid.

The applicant claims that in January 2006, the respondents were approved for the Supported Lease Program and monthly rent of \$294 was demanded, to commence in February, 2006. The applicant claims that the monthly rent was revised to \$423/month effective in April, 2006. The applicant provided copies of notices regarding the approval of the assistance and notice of the rent assessed. The applicant stated that these notices were sent by regular mail.

The applicant also provided two tenancy agreements in evidence. Both agreements were made between the applicant and Theresa Kochon as sole tenant but neither were signed by applicant or respondents. Both agreements were made for a two year term to commence February 1, 2006 however one appears to have been drafted on August 1, 2004 and the other on April 26, 2005. The applicant stated that the tenancy agreements were sent to the respondents by regular mail but were never executed or returned.

The respondents testified that they did not receive any of the notices demanding rent or the draft tenancy agreements. The respondents recalled providing income information to the applicant but stated that they understood it was for the purpose of determining their eligibility to purchase a larger house and not for rent determination for their current premises. The respondents testified that they had never discussed rent for their current premises with any representative of the applicant or received any notice or document demanding or setting out rent to be paid.

“Tenant”, “landlord”, and “tenancy agreement” are defined in the *Residential Tenancies Act* as follows:

**"tenant" means a person who pays rent in return for the right to occupy rental premises and his or her heirs, assigns and personal representatives.**

**"landlord" includes the owner, or other person permitting occupancy of rental premises, and his or her heirs, assigns, personal representatives and successors in title and a person, other than a tenant occupying rental premises, who is entitled to possession of a residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent.**

**"tenancy agreement" means an agreement between a landlord and a tenant for the right to occupy rental premises, whether written, oral or implied, including renewals of such an agreement.**

The respondents have never paid rent and prior to January, 2006 it appears no one, including the applicant or the Band ever determined a rent to be paid or demanded rent. Therefore there was no tenancy agreement between the parties and no rental premises and a rental officer has no jurisdiction.

While the applicant claims to have commenced demanding rent in January, 2006, the respondents deny receiving any notification. Section 71 of the *Residential Tenancies Act* sets out ways documents may be served on landlords and tenants.

- 71.(1) Subject to subsection (3), any notice, process or document to be served by or on a landlord, a tenant or the rental officer may be served by personal delivery or by registered mail to the landlord at the address given in the tenancy agreement or mailed to the tenant at the address of the rental premises and to the rental officer at the address of the office of the rental officer.**
- (2) A notice, process or document sent by registered mail shall be deemed to have been served on the 7th day after the date of mailing.**
- (3) Where a notice cannot be served personally on a tenant or a landlord who is absent or evading service, the notice may be served on the tenant or the landlord by serving it on any adult who apparently resides with the tenant or landlord.**

The notices setting out and demanding rent can not be deemed served or confirmed delivered. Therefore the tenancy agreement was not formed in February, 2006 as there is no evidence that the notices were received by the respondents.

The Application to a Rental Officer, including the notices, was served on the respondents by registered mail on June 15, 2007 and confirmed delivered. At this point in time the respondents became aware that the landlord was demanding the payment of rent in the amount of \$423/month. In my opinion, a tenancy agreement was formed on June 15, 2007 and the applicant is entitled to receive rent from that date forward. Therefore the amount of rent due is 50% of the June, 2007 rent or \$211.50.

Finally there is the question of whether this is a joint tenancy agreement or a tenancy agreement between the applicant and Theresa Kakfwi (nee Kochon) as sole tenant. Both draft tenancy agreements name Theresa Kochon as sole tenant. It appears that was the intention of the applicant. Of course the parties may agree to put a future agreement in writing and have Mr. and Ms Kakfwi as joint tenants if they wish. However, in my opinion, the tenancy agreement is currently between the applicant and Ms Kakfwi as sole tenant. Therefore the order shall be against Ms Kakfwi as sole tenant.

I find the respondent Theresa Kakfwi in breach of her obligation to pay rent and find the rent arrears to be \$211.50. An order shall issue requiring Theresa Kakfwi to pay the applicant that amount. The order shall also require Ms Kakfwi to pay rent in the future and to pay it on time.

Hal Logsdon  
Rental Officer

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