

IN THE MATTER between **YELLOWKNIFE HOUSING AUTHORITY**, Applicant,
and **VIOLET WALTERS**, 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,
regarding the rental premises at **YELLOWKNIFE, NT**.

BETWEEN:

YELLOWKNIFE HOUSING AUTHORITY

Applicant/Landlord

- and -

VIOLET WALTERS

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 household income in accordance with the tenancy agreement.
2. Pursuant to sections 45(4)(e) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as 751 Bigelow Crescent, Yellowknife, NT shall be terminated on November 15, 2006 and the respondent shall vacate the premises on that date, unless the household income is reported in accordance with the tenancy agreement.

DATED at the City of Yellowknife, in the Northwest Territories this 17th day of October,
2006.

Hal Logsdon
Rental Officer

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BETWEEN:

YELLOWKNIFE HOUSING AUTHORITY

Applicant/Landlord

-and-

VIOLET WALTERS

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: **October 12, 2006**

Place of the Hearing: **Yellowknife, NT**

Appearances at Hearing: **Julie Forget, representing the applicant**

Date of Decision: **October 17, 2006**

REASONS FOR DECISION

The respondent was served with a Notice of Attendance sent by registered mail to the rental premises. The applicant testified that the respondent was still in possession of the premises. The respondent failed to appear at the hearing and the hearing was held in her absence.

The applicant alleged that the respondent had breached the tenancy agreement by failing to report the household income in accordance with the tenancy agreement and failing to pay rent. The applicant sought an order requiring the respondent to pay the alleged rent arrears and terminating the tenancy agreement. The premises are subsidized public housing.

The parties entered into a new tenancy agreement commencing on April 1, 2006 which reflected a change in the way income was reported and the determination of rent. Articles 6 and 7 of the tenancy agreement are as follows:

6. **Tenant's Income**

The Tenant promises to provide the Landlord or his subsidy agent an accurate report of the Tenant's income, the income of any resident, the size of the Tenant's family, or number of residents of the premises.

7. **Rent Calculation**

The tenant promises to pay the Landlord the rent, in Canadian Dollars each month, shown in Schedule "A".

As long as the Tenant is not in breach of any of the terms or promises of this Agreement, the Tenant will be eligible for a rent subsidy calculated by the GNWT. The GNWT shall calculate the subsidized rent the Tenant shall pay. The Tenant agrees that no notice of rent increase is required so long as the rent assessed in any month does not exceed the amount shown in Schedule "A". The Landlord agrees to provide notice of any increase to the amount shown in Schedule "A" at least one month in advance.

The applicant noted that when the GNWT began assessing rent in April, 2006 they based that months rent on the household income earned in February, 2006. She noted also that the practice was changed in October, 2006, when that month's rent was based on September, 2006 income.

The applicant provided a statement of the rent account in evidence which indicated a balance of rent owing in the amount of \$7411. The full unsubsidized rent has been charged for the months of April, May, June, July, August, September and October, 2006.

The applicant provided a written declaration from Norma Jeremick'ca, Manager for Income Security, stating that the respondent "has not completed an application to be able to do an assessment for the month of April, May, June, July, August September and October, 2006."

E-mail correspondence between the applicant and Wanda Powder, an Income Security Officer, states that the respondent provided some pay stubs to her for income earned in April, May, June, July and August, 2006. She notes that no income stubs were submitted for February or March, 2006 income. She states that she "can't complete assessment until we receive all pay stubs." At the request of the applicant, Ms. Jeremik'ca provided the Rental Officer with copies of the income stubs which were submitted by the respondent. The income stubs clearly indicate that the respondent is paid semi-monthly. In her determination of what cheque stubs are missing Ms. Powder has assumed that the respondent is paid bi-weekly and mistakenly interpreted the date of the cheque as the last day of the pay period.

The application of the full unsubsidized rent where the tenant has reported inaccurate or incomplete income information is the enforcement of a penalty and prohibited pursuant to section 13 of the *Residential Tenancies Act*. This interpretation has been put forward in numerous cases before the NWT Supreme Court and the Rental Officer including *Inuvik Housing Authority v Koe et al* (1991), 85 D.L.R. (4th) 548, *Inuvik Housing Authority v Stewart and Kendi*, File 20-1631 and *Inuvik Housing Authority v Harley* CV 04815, December 3, 1993.

The evidence suggests that some income information was provided to the subsidy agent by the respondent in every month where the unsubsidized rent was charged except October, 2006. There is no evidence to suggest that any income stubs were provided to the Income Security Officer for income earned in February, 2006 or September, 2006. This information would have been used to set the April, 2006 and October, 2006 rents. However, the applicant used February, 2006 income information to set the February, 2006 rent at \$564. Presumably, the applicant thought the obligation imposed by the tenancy agreement was fulfilled by the respondent. I do not see how it can now be considered a breach of that obligation. The following table indicates what income was reported from April 1, 2006 to present.

Month	Reference Month	Income Reported
April, 2006	February, 2006	February, 2006 report deemed adequate by applicant
May, 2006	March, 2006	March, 2006 report deemed adequate by applicant March 16-30 pay period reported
June, 2006	April, 2006	April 16-30 pay period reported
July, 2006	May, 2006	May 1-15 pay period reported

August, 2006	June, 2006	June 1-15 pay period reported
September, 2006	July, 2006	July 1-15 pay period reported
		July 16- 31 pay period reported
October, 2006	September, 2006	No income reported

I am unable to determine what rent should have been calculated for the months of April through September, 2006 as the tenancy agreement does not specify how such a calculation should be made. However, the unsubsidized rent, in my opinion, should only have been applied in the month of October, 2006 as it is the only month in which the respondent failed to provide *any* income information.

I find the respondent in breach of her obligation to report the full household income. In my opinion, this is a serious breach of the tenancy agreement and represents sufficient grounds for termination of the agreement unless the household income is promptly reported. An order shall issue requiring the respondent to comply with her obligation to report income in accordance with the tenancy agreement and terminating the tenancy agreement on November 15, 2006 unless this order is satisfied. As I can not determine the amount of rent owing, there will be no order for rent arrears. The applicant may determine the rent based on the income information provided and apply for relief through a future application.

Hal Logsdon
Rental Officer