

IN THE MATTER between **YELLOWKNIFE HOUSING AUTHORITY**, Applicant,
and **TERRI FROMENT AND RICK FROMENT**, 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 **YELLOWKNIFE, NT**.

BETWEEN:

YELLOWKNIFE HOUSING AUTHORITY

Applicant/Landlord

- and -

TERRI FROMENT AND RICK FROMENT

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 45(4)(a) of the *Residential Tenancies Act*, the respondents shall comply with their obligation to report the household income in accordance with Article 6 of the written tenancy agreement between the parties.
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 2007 Sissons Court, Yellowknife, NT shall be terminated on August 15, 2007 and the respondents shall vacate the premises on that date, unless the respondents accurately report the full household income in accordance with Article 6 of the tenancy agreement for the months of May,

2006 to and including July, 2007.

DATED at the City of Yellowknife, in the Northwest Territories this 1st day of August,
2007.

Hal Logsdon
Rental Officer

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and **TERRI FROMENT AND RICK FROMENT**, Respondents.

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BETWEEN:

YELLOWKNIFE HOUSING AUTHORITY

Applicant/Landlord

-and-

TERRI FROMENT AND RICK FROMENT

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: July 31, 2007

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Julie Forget, representing the applicant

Date of Decision: July 31, 2007

REASONS FOR DECISION

The respondents were served with a Notice of Attendance served by registered mail and confirmed delivered. The respondents failed to appear at the hearing and the hearing was held in their absence.

The applicant alleged that the respondents had breached the tenancy agreement by failing to pay rent and by failing to report the household income in accordance with the tenancy agreement. 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 applicant provided a statement of the rent in evidence which indicated a balance of rent owing in the amount of \$9831.20. The statement indicates that the full unsubsidized rent has been applied for the months of May, June, July, August, September, October, November and December, 2006 and January, February, March, April, May, June and July, 2007. The applicant stated that the rent subsidy had been withheld by the Income Security Officer because they had reason to believe that the respondents had not reported all of the household income or, in the case of June and July, 2007, failed to report any income on which to calculate the rent. The applicant provided numerous copies of pay slips in evidence which had been submitted to the Income Security Officer by the respondents.

Article 6 of the tenancy agreement between the parties sets out the tenant's obligation to report

the household income.

Tenant's Income

The Tenant promises to provide a subsidy agent appointed by the Landlord with an accurate report of the Tenant's income, the income of any occupant of the Premises, the size of the Tenant's family, and the number of occupants residing on the Premises, whenever, and as often as, the subsidy agent requests such a report.

Article 7 of the tenancy agreement sets out how the rent and rent subsidy are calculated.

Rent Calculation

The Tenant promises to pay to 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. The rent subsidy will be calculated according to the GNWT Public Housing Rental Subsidy Program. 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.

Rent is defined in section 1 of the *Residential Tenancies Act*.

"rent" includes the amount of any consideration paid or required to be paid by a tenant to a landlord or his or her agent for the right to occupy rental premises and for any services and facilities, privilege, accommodation or thing that the landlord provides for the tenant in respect of his or her occupancy of the rental premises, whether or not a separate charge is made for the services and facilities, privilege, accommodation or thing.

It follows therefore that the rent for a tenant of subsidized public housing who is not in breach of the tenancy agreement, is the rent set out in Schedule "A" less the rent subsidy. It is the amount of consideration required to be paid by the tenant to the landlord.

It also follows that the rent for a tenant who is in breach of the tenancy agreement is the rent set out in Schedule "A". However, section 13 the *Residential Tenancies Act* serves to limit the

application of the rent set out in Schedule "A".

- 13. No tenancy agreement shall contain any provision to the effect that a breach of the tenant's obligation under the tenancy agreement or this Act results in the whole or any part of the remaining rent becoming due and payable or results in a specific sum becoming due and payable, and a provision of this kind is of no effect.**

In *Inuvik Housing Authority v Gary Harley* (*Inuvik Housing Authority v Gary Harley*

[1994] NWTR 131), the Hon. Justice J.E. Richard reviewed a number of Court and Rental

Officer decisions in light of the precedents set in *Inuvik Housing Authority v. Koe* (*Inuvik*

Housing Authority vs. Koe [1992] N.W.T.R. 9). Justice Richard writes,

In *Inuvik Housing Authority vs. Stewart and Kendi* (Rental Officer decision, January 11, 1993) the landlord alleged that the tenant had provided inaccurate income data and accordingly assessed full economic rent. Although the rental officer granted termination of the tenancy as the ultimate remedy, he re-assessed the rents for the relevant months at a lower figure based on the income data that was provided (even though allegedly inaccurate).

Justice Richard concludes that the Rental Officer's decision in *Stewart and Kendi* was consistent with the Court's decision in *Koe*.

In my opinion, it is not reasonable to apply the full unsubsidized rent for the months the respondents provided some income information. However, I am unable to re-assess the rents based on the available income information as I do not have access to the GNWT Public Housing Rental Subsidy Program methodology for calculating the rent subsidy.

I find the respondents in breach of their obligation to report the household income in accordance with the tenancy agreement. In my opinion, this is a serious breach of the tenancy agreement as

the concept of rent geared to income is a cornerstone principle of the public housing program and accurate income reporting is essential to the fair administration of the program and the effective allocation of government housing assistance. In my opinion there are sufficient grounds to terminate the tenancy agreement unless the respondents promptly comply with their obligation to accurately report the full amount of household income in accordance with Article 6 of the tenancy agreement.

An order shall issue requiring the respondents to comply with their obligation to report the household income in accordance with Article 6 of the written tenancy agreement and terminating the tenancy agreement between the parties on August 15, 2007 unless the respondents accurately report the full household income for the months of May, 2006 to and including July, 2007.

Hal Logsdon
Rental Officer