

IN THE MATTER between **SACHS HARBOUR HOUSING ASSOCIATION**,
Applicant, and **SALLY ESAU AND RYAN LUCAS**, 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 **SACHS HARBOUR, NT**.

BETWEEN:

SACHS HARBOUR HOUSING ASSOCIATION

Applicant/Landlord

- and -

SALLY ESAU AND RYAN LUCAS

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondents shall pay the applicant rent arrears in the amount of three thousand three hundred seventy nine dollars and eighty eight cents (\$3379.88).
2. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent Sally Esau shall pay the applicant rent arrears in the amount of six hundred seventy three dollars (\$673.00).
3. Pursuant to section 41(4)(b) of the *Residential Tenancies Act*, the respondent Sally Esau shall pay future rent on time.

DATED at the City of Yellowknife, in the Northwest Territories this 14th day of May,
2008.

Hal Logsdon
Rental Officer

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-and-

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REASONS FOR DECISION

<u>Date of the Hearing:</u>	May 8, 2008
<u>Place of the Hearing:</u>	Sachs Harbour, NT via teleconference
<u>Appearances at Hearing:</u>	Betty Haogak, representing the applicant Teresa Ritter, representing the applicant Sally Esau, respondent Ryan Lucas, respondent
<u>Date of Decision:</u>	May 14, 2008

REASONS FOR DECISION

This application deals with multiple tenancy agreements between the applicant and the respondents. Four tenancy agreements were provided in evidence:

- A. An undated tenancy agreement between the applicant and Sally Esau as sole tenant for unit 23. There is no commencement date on the agreement. It was a monthly agreement. Schedule “A” to the agreement is dated December 2, 1999.
- B. A tenancy agreement between the applicant and Sally Esau as sole tenant which commenced on February 1, 2006 and ran from month to month for unit 23. Ryan Lucas is named on Schedule B as an occupant.
- C. A tenancy agreement between the applicant and Sally Esau and Ryan Lucas as joint tenants which commenced on April 1, 2007 and ran from month to month for unit 22.
- D. A tenancy agreement between the applicant and Sally Esau as sole tenant which commenced on October 16, 2007 and ran from month to month for unit 22.

The applicant alleged that the full amount of the rent had not been paid during the terms of any of the tenancy agreements and sought an order requiring Ms Esau to pay rent arrears that accrued while she was the sole tenant and splitting the rent arrears between the respondents that accrued when the respondents were joint tenants. The applicant also alleged that the premises were damaged during the earlier tenancy agreements while Ms Esau was the sole tenant and sought an order requiring her to pay repair costs.

Section 68(1) of the *Residential Tenancies Act* requires an application to a rental officer to be made in a timely manner.

68.(1) An application by a landlord or a tenant to a rental officer must be made within six months after the breach of an obligation under this Act or the tenancy agreement or the situation referred to in the application arose.

In my opinion, it is reasonable to consider rent that came due over six months ago as long as it accrued under a tenancy agreement that is still in effect. The non-payment of arrears continues to be a breach because it remains a current obligation of the tenant to pay the arrears. Once the tenancy agreement is terminated, the time limitation of section 68(1) comes into effect, because there is no longer a continuing breach of the tenancy agreement. The tenancy agreement is no longer in effect.

In subsidized public housing, a transfer to other premises, does not necessarily constitute the termination of one tenancy agreement and the commencement of another. All of the tenancy agreements in question obligate the tenant to accept a transfer if the premises are no longer suitable. Unless the parties wish to enter into a new tenancy agreement with

new terms and conditions or there are different parties to the agreement, an amendment to Schedule A of the tenancy agreement is all that is required to effect a transfer.

When a new tenancy agreement is executed where the parties to the agreement are different, the old tenancy agreement is replaced by another. By implication the old tenancy agreement is terminated. You can not have two tenancy agreements for the same rental premises.

Referring back to the four tenancy agreements provided in evidence I find the following:

1. Tenancy agreements “A” and “B” are identical in form and made between the same parties. It is unclear why the parties entered into tenancy agreement “B”.

They can reasonably be considered as one.
2. Tenancy agreement “C” replaced tenancy agreements “A” and “B” on April 1, 2007. Therefore tenancy agreements “A” and “B” were terminated on April 1, 2007. The application was made on April 8, 2008, a year after the termination of

tenancy agreements “A” and “B”. This is in excess of the time limitation imposed by section 68(1).

3. Tenancy agreement “D” replaced tenancy agreement “C” on October 16, 2007.

Therefore tenancy agreement “C” was terminated on October 16, 2007. The application was made within the time limitation imposed by section 68(1).

A rental officer may extend the time limitation imposed by section 68(1) if it would not be unfair to do so. The rent accounts have not been segregated making it difficult to determine from the evidence how payments were applied. There also appears to be a gap between March, 2006 and April, 2007 in the rent records provided by the applicant. All of the alleged repair costs were incurred between three and seven years ago and the documentation of some of the repairs is not clear as to whether the repairs were made necessary due to the tenant’s negligence or were normal maintenance tasks. It has not been the practice of this tribunal to extend the time limitation unless there is a valid reason why an application could not be made within the time limit or there was a reasonable expectation that

the matter would be resolved without recourse to legal action. I find no evidence that either of these conditions existed. For these reasons, I shall not extend the time limitation and shall only consider the amounts which accrued during tenancy agreements “C” and “D”.

Assuming that payments made during the term of each tenancy agreement were applied to rent which accrued during that term only, I find the amounts owing to be as follows:

Tenancy agreement “C” (April 1, 2007 to October 16/07 - respondents as joint tenants)

Total rent assessed	\$4474.00
Payments made	<u>(1094.12)</u>
Balance owing	\$3379.88

Tenancy agreement “D” (After October 16, 2007 - Sally Esau as sole tenant)

Total rent assessed	\$673.00
Payments made	<u>(0)</u>
Balance owing	\$673.00

It should be noted that the respondent Sally Esau objected to paying all of the rent which accrued under tenancy agreements “A” and “B” because Mr. Lucas lived in the premises and had assessable income. Mr. Lucas also disputed several of the alleged repair costs stating that they were not made necessary due to their negligence but constituted regular maintenance of the premises by the landlord. I need not consider their objections as I have not considered either the repair costs or the rent arrears during the earlier sole tenancy of Ms Esau.

The applicant sought an order splitting the rent arrears which accrued during tenancy agreement “C” between the respondents. The respondents were jointly and severally responsible for the

payment of the rent during the term of this agreement. The order shall name them both as liable for the arrears. The applicant may enforce the order against either or both of the respondents as they please.

An order shall issue requiring the respondents to pay rent arrears in the amount of \$3379.88 and requiring the respondent Sally Esau to pay rent arrears in the amount of \$673. The order shall also require Sally Esau to pay future rent on time.

Hal Logsdon
Rental Officer
