

IN THE MATTER between **RAE-EDZO HOUSING AUTHORITY**, Applicant, and **FRANK MARTIN**, 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 **BEHCHOKO, NT.**

BETWEEN:

RAE-EDZO HOUSING AUTHORITY

Applicant/Landlord

- and -

FRANK MARTIN

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. The previous order (file #10-8744, filed on December 16, 2005) was not satisfied, thereby terminating the tenancy agreement between the Rae-Edzo Housing Authority and Frank Martin for the premises known as Unit 293, Behchoko, N.T. on January 31, 2006. Pursuant to section 67(4) of the *Residential Tenancies Act*, the respondent shall pay the applicant compensation for use and occupancy of the rental premises in the amount of thirty five thousand seven hundred ninety one dollars and twenty six cents (\$35,791.26) and continue to pay the applicant compensation at a rate of forty eight dollars and sixty

six cents (\$48.66) for each day the respondent remains in possession of the premises after March 5, 2008.

DATED at the City of Yellowknife, in the Northwest Territories this 5th day of March, 2008.

Hal Logsdon
Rental Officer

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Applicant/Landlord

-and-

FRANK MARTIN

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REASONS FOR DECISION

Date of the Hearing: February 21, 2008

Place of the Hearing: Behchoko, NT

Appearances at Hearing: John St. Louis, representing the applicant
Mike Keohane, representing the applicant
Rose Dryneck, representing the applicant
Frank Martin, respondent
Rose Lamouelle, representing the respondent

Date of Decision: March 5, 2008

REASONS FOR DECISION

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay rent and sought an order requiring the respondent to pay the alleged rent arrears and terminating the tenancy agreement between the parties. The premises are subsidized public housing.

The applicant provided a copy of the tenant ledger in evidence which indicated a balance of rent owing in the amount of \$79,146. The full unsubsidized rent has been charged for every month since October, 2004 and the ledger indicates that only one payment of \$500 has been made since July, 1999. No payments whatsoever have been made since December, 2001.

There are two tenancy agreements for these premises, known as Unit 293. Both commenced on April 1, 1995 and ran from month-to-month. The first was executed on March 10, 1995 and names Moise Martin and Madeline Martin as joint tenants. Charlie Martin and Frank Martin are listed on Schedule "B" as occupants. The second agreement was executed on March 31, 1995 and names Charlie Martin and Frank Martin as joint tenants. Moise Martin and Madeline Martin are listed on Schedule "B" as occupants. The applicant explained that they were instructed to put all persons 19 years of age or older on the tenancy agreement. Since there was only space on the agreement for two names, they made two agreements to run concurrently. Since the agreements were made, both Moise Martin and Madeline Martin have passed away.

A previous order (file #10-8744, filed on December 16, 2005) was made following an application

by the landlord against Madeline Martin. At that hearing the applicant produced only the tenancy agreement between the landlord and Moise and Madeline Martin and testified that Madeline was now the sole tenant as Moise Martin had passed away and Frank and Charlie Martin were only occupants. The rental officer ordered the termination of the tenancy agreement on January 31, 2006 unless the household income was reported in accordance with the tenancy agreement. There is no evidence to suggest that any income was reported. The full unsubsidized rent continued to be applied.

The respondent stated that his mother passed away on September 1, 2007 and since that time he did not know what was going on with the house and did not think he was responsible for the rent. He stated that the landlord had not spoken to him about paying rent. The respondent later acknowledged that after his mother passed away he knew he was responsible for rent but he never had a full time job. He didn't consider himself responsible for the rent while his mother was alive. The respondent stated that he didn't know anything about the rent subsidy program or his obligation to report his income.

Although unusual in form, I think it is reasonable to consider the two tenancy agreements as one with Frank Martin and Charlie Martin as the surviving joint tenants. However, as the previous order terminated this tenancy agreement on January 31, 2006 unless the household income was reported and there is no evidence to suggest that any income information was reported to the landlord, the tenancy agreement was terminated on that date.

Did the landlord reinstate the tenancy agreement on or after February 1, 2006 or has the respondent been an overholding tenant since that date? Section 67 sets out provisions concerning overholding tenants.

- 67.(1) A landlord is entitled to compensation for a former tenant's use and occupation of the rental premises after the tenancy has been terminated.**
- (2) The acceptance by a landlord of arrears of rent or compensation for use or occupation of the rental premises, after notice of termination of tenancy has been given, does not operate as a waiver of the notice or as reinstatement of the tenancy or as the creation of a new tenancy unless the parties so agree.**
- (3) The burden of proof that a notice of termination has been waived or the tenancy has been reinstated or a new tenancy created is on the person so claiming.**
- (4) Where, on application of a landlord, a rental officer determines that a landlord is entitled to compensation for the use and occupation of the rental premises after the tenancy has been terminated, the rental officer may order a former tenant to pay the landlord the compensation specified in the order.**

Neither party is claiming this tenancy agreement was reinstated. No rent was offered or accepted.

In December, 2006 and April, 2007 the applicant wrote the respondent requesting that he come to the office and sign a new tenancy agreement. There is no evidence that the respondent did so.

Although there was apparently an offer to enter into a new tenancy agreement made by the landlord, the respondent failed to accept it. In notices to the respondent sent after January 31, 2006, the landlord often warns the respondent that his tenancy agreement may be terminated unless he pays rent but I find no evidence of any tenancy agreement, written, oral or implied. In my opinion, the tenancy agreement between the parties was terminated by order on January 31, 2006 and has not be reinstated. I find that the applicant has been an overholding tenant since that

date.

It is difficult to conclude that the respondent had no knowledge of his obligation to pay rent. He signed the tenancy agreement. While it is true that most of the landlord's notices prior to May, 2006 were addressed to Madeline Martin, some were addressed to all the tenants. After May, 2006 eleven notices were sent to the respondent, most demanding rent. Two of the notices requested the respondent to meet with the Board of Directors, which he declined to do. The respondent acknowledged in testimony that he assumed he would be responsible for rent after his mother's death yet he made no effort to pay or, if he had questions, to inquire about his obligations.

The rent for the premises ceased to accrue on January 31, 2006 when the tenancy agreement was terminated by order. The application was filed on December 10, 2007, twenty three months after the tenancy agreement ended. Section 68(1) imposes a time limit on applications.

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.

Although a rental officer may extend the time limit, in this matter I do not think it is fair to do so.

The respondent can not be reasonably be expected to respond to matters of rent this old, particularly when he was not considered to be the "primary tenant" by the landlord and most notices and other information concerning the rent were not directed to him. Therefore I shall not grant leave to extend the time limit and shall not consider the rent arrears which accrued prior to February 1, 2006.

In my opinion, the applicant is entitled to compensation for overholding at the unsubsidized rate.

In my opinion, the applicant has taken minimal but sufficient measures to mitigate loss through the notices sent to the respondent. I find reasonable compensation to be \$35,791.26 calculated as follows:

Compensation February and March, 2006 @ \$1863/month	\$3726.00
Compensation April/06 to March/07 @ \$1411/month	16,932.00
Compensation April/07 to March 5, 2008 @ \$48.66/day	<u>15,133.26</u>
Total compensation owing applicant	\$35,791.26

The applicant sought an order terminating the tenancy agreement. One has already been issued, albeit a conditional order. In my opinion, another order is not really needed but for clarity, I shall confirm that the conditional order issued on December 16, 2005 was not satisfied and the tenancy agreement was therefore terminated on January 31, 2006. The order shall require the respondent to pay the applicant compensation for use and occupation of the premises in the amount of \$35,791.26 and continue paying compensation for each day the respondent remains in possession after March 5, 2008 at a rate of \$48.66/day. If the respondent fails to vacate the premises, the applicant may seek an order for eviction from the Supreme Court.

Hal Logsdon
Rental Officer