

IN THE MATTER between **YELLOWKNIVES DENE FIRST NATION HOUSING DIVISION**, Applicant, and **JOHNNY MARTIN AND VIOLET MARTIN**, 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 **NDILO, NT**.

BETWEEN:

YELLOWKNIVES DENE FIRST NATION HOUSING DIVISION

Applicant/Landlord

- and -

JOHNNY MARTIN AND VIOLET MARTIN

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 thirty six thousand nine hundred eighty nine dollars and twenty three cents (\$36,989.23).
2. Pursuant to section 41(4)(b) of the *Residential Tenancies Act*, the respondents shall pay future rent on time.

DATED at the City of Yellowknife, in the Northwest Territories this 17th day of October, 2008.

Hal Logsdon
Rental Officer

IN THE MATTER between **YELLOWKNIVES DENE FIRST NATIONS HOUSING DIVISION**, Applicant, and **JOHNNY MARTIN AND VIOLET MARTIN**, 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.

BETWEEN:

YELLOWKNIVES DENE FIRST NATION HOUSING DIVISION

Applicant/Landlord

-and-

JOHNNY MARTIN AND VIOLET MARTIN

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	September 2, 2008, continued on September 23 and October 14, 2008
<u>Place of the Hearing:</u>	Yellowknife, NT
<u>Appearances at Hearing:</u>	Stephan Folkers, representing the applicant Violet Martin, respondent (September 2 and 23 only) Arlene Hache, representing the respondents (September 2 and 23 only)
<u>Date of Decision:</u>	October 17, 2008

REASONS FOR DECISION

This matter was originally set for hearing on September 2, 2008. The respondents sought and were granted an adjournment to September 23, 2008 because the application had not been served on them. The matter was again adjourned to October 14, 2008 to provide an opportunity for the respondents to meet with the subsidy agent. Both parties were advised of the date, time and place of the October 14th hearing when the matter was adjourned on September 23rd. Neither the respondents or the respondents' representative appeared at the October 14th hearing and the matter was heard in their absence.

The applicant alleged that the respondents had breached the tenancy agreement by failing to pay rent and sought an order requiring the respondents to pay the alleged rent arrears and to pay future rent on time. The premises are subsidized public housing.

The applicant provided a copy of the tenant ledger which indicated a balance of rent owing as at September 22, 2008 in the amount of \$39,589.23. The October, 2008 rent, which had been assessed at \$1705 and was due on the first of the month, had not been posted to the ledger.

The full unsubsidized rent has been charged for a number of months but, except for the months of May and June, 2008, is calculated on the household income of the respondents. The evidence provided by the applicant, obtained from the subsidy agent, suggests that the full unsubsidized rent was charged in May and June, 2008 because the income information provided by the

respondents was allegedly incomplete. Based on the income information provided, the rent for May, 2008 would be calculated at \$898 and the rent for June, 2008 would be calculated at \$32.

Article 6 of the tenancy agreement obligates the tenant to provide household income information.

6. 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.

The practice of assessing the full unsubsidized rent when household income information is available but allegedly incomplete or inaccurate is not consistent with decisions of the NWT Supreme Court. In *Inuvik Housing Authority and Gary Harley*, [1994] NWTR 131, The Hon. Justice J.R. Richard wrote,

“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 reassessed the rents for the relevant months at a lower figure based on the income data that was provided (even though allegedly inaccurate).”

Justice Richard continues in line 29 of the decision,

“The rental officer's decisions in Sharpe and Allain, Tingmiak, Stewart and Kendi and Day appear to be consistent with the decision of this Court in Koe.”

The application of the full unsubsidized rent for May and June, 2008 is not reasonable as the evidence indicates that some income information was provided for the months of April and May, 2008 to enable a calculation to be made for May and June, 2008. In my opinion, there is little evidence that supports the allegation that the income information reported is incomplete or inaccurate.

I also note that the subsidy agent assessed the rent for September, 2006 at \$32 while the ledger entry for that month's rent assessment is \$1857.

Correcting the September, 2006 ledger entry and adjusting the rents for May and June, 2008 to amounts based on the reported income, I find rent arrears in the amount of \$36,989.23 calculated as follows:

Balance as per ledger	\$39,589.23
Plus October/08 rent	1705.00
September/06 rent reversed	(1857.00)
September rent corrected	32.00
May/08 rent reversed	(1705.00)
May rent corrected	898.00
June/08 reversed	(1705.00)
June rent corrected	<u>32.00</u>
Balance	\$36,989.23

An order shall issue requiring the respondents to pay the applicant rent arrears in the amount of \$36,989.23 and to pay future rent on time.

Hal Logsdon
Rental Officer