

IN THE MATTER between **TEPEE HOUSING ASSOCIATION**, Applicant, and
FORREST KENDI, 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 **INUVIK, NT**.

BETWEEN:

TEPEE HOUSING ASSOCIATION

Applicant/Landlord

- and -

FORREST KENDI

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. 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 Apartment 207, 195 Mackenzie Road, Inuvik, NT shall be terminated on May 31, 2009 and the respondent shall vacate the premises on that date, unless the respondent complies with his obligation to report changes to the household income in accordance with article 6 of the tenancy agreement.

DATED at the City of Yellowknife, in the Northwest Territories this 28th day of April,
2009.

Hal Logsdon
Rental Officer

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BETWEEN:

TEPEE HOUSING ASSOCIATION

Applicant/Landlord

-and-

FORREST KENDI

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: April 20, 2009

Place of the Hearing: Inuvik, NT

Appearances at Hearing: Wayne Smith, representing the applicant
Jeannie Pascal, representing the applicant
Forrest Kendi, respondent

Date of Decision: April 28, 2009

REASONS FOR DECISION

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay rent and by failing to report the household income in accordance with the tenancy agreement between the parties. The applicant alleged that the amount of rent owing was \$9050.26 and provided a spreadsheet in evidence indicating that balance as outstanding.

The premises are subsidized public housing. Rent of \$1100 has been assessed in every month from November, 2008 to present. The applicant stated that no household income information had been provided by the respondent on which to calculate a subsidized rent and that the \$1100/month represented the full unsubsidized rent for the premises.

The spreadsheet does not indicate any rent assessments prior to October, 2008 but shows a balance owing of \$2450.26 as at October 31, 2008. The applicant stated that they did not have records to indicate how that balance was determined, only a notation in a receipt book showing that balance after a payment of \$100 was made on October 27, 2008.

The applicant provided a tenancy agreement in evidence but it was not completed or signed by either party. The applicant stated that the written and executed tenancy agreement between the parties was in the same form as the blank agreement provided in evidence. The respondent, after reviewing the evidence, stated that he believed the written tenancy agreement was the same as the one provided in evidence.

The respondent disputed the amount of rent alleged owing stating that he was under the impression that he would pay a rent based on his income to a maximum of \$800/month. He also questioned why his income as a senior citizen was not exempted. The respondent acknowledged that he had not provided any household income information to the landlord since September, 2008.

The tenancy agreement entered in evidence contains the following provisions pertaining to income reporting and rent calculation:

6. Tenant's Income

The tenant promises to provide the Landlord with an accurate report of the Tenant's income and the income of all the residents of the premises and shall notify the Landlord of any changes in any resident's income, in the size of the Tenant's family or number of residents of the premises.

7. 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 shall pay a subsidized rent calculated by the Landlord. The landlord shall calculate the subsidized rent the Tenant shall pay according to the Northwest Territories Housing Corporation's Rent Scale. 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 respondent's testimony establishes that he did not report any income information after September, 2008. He acknowledged that his income has changed during that period. Therefore the respondent is in breach of his obligation pursuant to Article 6 of the tenancy agreement. The application of the full unsubsidized rent is reasonable in cases where the tenant fails to provide

any income information but the amount of the full unsubsidized rent is not clear as Schedule "A" is blank. Although I recognize that the applicant believes it is \$1100, the respondent believes it is \$800. As there is no Schedule "A" amount or notice of rent increase to rely on, I can not determine what the full economic rent should be.

Although the applicant stated that they charged rent differently from the Housing Authorities, their tenancy agreement refers to the same rent scale as was used by the Housing Authorities and now used by the Department of Education, Culture and Employment to determine rent in public housing. In that rent scale, the income of household members 60 years of age or older is not considered in the calculation of rent. The Public Housing Rental Subsidy Policy sets this out as follows:

Seniors: Seniors 60 years or older are fully subsidized, they do not pay any rent. All income, including pensions, is non-assessable. Seniors must complete the documentation required for PHRS.[Public Housing Rental Subsidy] Other HM [Household members] (15 to 59 years old) residing with the senior may change the household PHRS. When a senior HM turns 60 years of age at any time during the assessment period, all of the senior's gross income becomes non-assessable. Rent is \$0 for the senior. Other HM (15 to 59 years old) residing with the senior may change the PHRS. No reconciliation is done for prior periods.

In accordance with the tenancy agreement, the respondent's income should be exempt from assessment. I am not satisfied from the evidence that this has been the case for rents that were assessed prior to October 31, 2008. Since there do not appear to be any records available regarding these assessments, I can not determine if the rent prior to October 31, 2008 was assessed in accordance with the tenancy agreement.

In summary, I am unable to determine the rent owing, if any, from the evidence provided. I am, however able to determine that the respondent has breached the tenancy agreement by failing to provide the income information set out in Article 6 of the tenancy agreement. Even if the respondent's income is not considered in the determination of rent, it is not unreasonable to require the income reporting set out in the tenancy agreement to ensure the respondent continues to be eligible for continued occupancy in subsidized public housing. This is an essential requirement given the scarcity of social housing and a tenant's failure to provide this information is, in my opinion, a serious breach of the tenancy agreement. In my opinion, this tenancy agreement should be terminated and the respondent ordered to vacate unless he promptly reports the changes to the household income that have occurred since he last reported the household income in September, 2008.

An order shall issue terminating the tenancy agreement on May 31, 2009 unless the respondent reports the household income information in accordance with Article 6 of the tenancy agreement.

Hal Logsdon
Rental Officer