

IN THE MATTER between **4984 NWT LTD.**, Applicant, and **FLORENCE VANELTSI ALSO KNOWN AS FLORENCE RADDI**, 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:

4984 NWT LTD.

Applicant/Landlord

- and -

FLORENCE VANELTSI ALSO KNOWN AS FLORENCE RADDI

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(b) of the *Residential Tenancies Act*, the respondent shall pay future rent on time.

DATED at the City of Yellowknife, in the Northwest Territories this 2nd day of July, 2009.

Hal Logsdon
Rental Officer

IN THE MATTER between **4984 NWT LTD.**, Applicant, and **FLORENCE VANELTSI ALSO KNOWN AS FLORENCE RADDI**, Respondent.

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BETWEEN:

4984 NWT LTD.

Applicant/Landlord

-and-

FLORENCE VANELTSI ALSO KNOWN AS FLORENCE RADDI

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	June 30, 2009
<u>Place of the Hearing:</u>	Inuvik, NT via teleconference
<u>Appearances at Hearing:</u>	Barb Kiely, representing the applicant David Tyler, witness for the applicant Florence Vaneltsi, respondent
<u>Date of Decision:</u>	June 30, 2009

REASONS FOR DECISION

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay the rent on the days it was due and by disturbing other tenants in the residential complex. The applicant sought an order terminating the tenancy agreement between the parties.

The applicant stated that the rent was paid by the Government of the Northwest Territories in two payments but often neither payment was made on time. The tenancy agreement, made in writing, obligates the tenant to pay the monthly rent in advance. The applicant gave several examples of dates the rent was received.

The applicant alleged that there was a fight in the respondent's apartment on April 25, 2009 and the RCMP attended the premises. The applicant also alleged that hockey gear had been thrown off the respondent's balcony into the parking lot and that persons known to the respondent were often swearing and causing noise outside the building. Neither the applicant or the applicant's witness had direct knowledge of the alleged April 25th incidents.

Prior to the hearing, the rental officer contacted the Manager of Income Security Programs who confirmed that the Government of the Northwest Territories had been paying the monthly rent in two payments. The first payment, representing 50% of the monthly rent is paid on behalf of the respondent. As she is disabled, the respondent is not required to make a monthly application for assistance. The second payment, representing the remaining 50% of the rent is paid on behalf of

the respondent's son, who lives with the respondent. The respondent's son is obligated to make application for the assistance each month and report his income. The manager provided dates that the cheques were issued and cashed for the December, 2008 rent and the February, 2009 rent as examples. These dates do not agree with those provided by the applicant but they do indicate that the full rent was not paid in advance for those months. The manager stated that the respondent's payment should be issued by the due date but that her son's payment could be delayed if her son did not make application or report his income in a timely manner. This information was provided to the parties at the hearing.

The respondent stated that her son regularly made application for the rent assistance and provided the necessary income information in advance of the due date for the rent. She provided a letter, dated May 15, 2009 from the Regional Manager for Income Security to the landlord. I presume the letter was intended to address the landlord's concern that rent payments had not been received in a timely manner. Essentially the letter explains that normally payments are mailed during the first week of the month and the tardiness of the payments are beyond the applicant's control. The manager summarises by writing, "Ultimately, this means that any rental payments that our office may issue, is (sic) primarily mailed during the first week of each month, which is beyond the applicant's control." The manager also explains that the April, 2009 payment was late because it was sent to the wrong address.

The landlord was unsympathetic, and in my opinion, rightfully so. A tenancy agreement is a contract between a landlord and a tenant and one of the obligations set out in this tenancy

agreement, and most others, is that the rent be paid on or before the first of the month. Regardless of whether the rent is paid directly by the tenant or paid on their behalf through assistance, the tenant is in breach of the tenancy agreement if the rent is not paid on time. The failure of an agency providing the tenant with rent assistance to issue the cheque on time does not change that fact but it should be considered when determining a remedy.

The Regional Manager's May 15, 2009 letter appears to suggest that the administration of the assistance program is such that the landlord should not expect to get the rent cheque on time. If this is the case, the program is placing their clients in breach of the tenancy agreement and jeopardizing their tenure. Although I find it difficult to consider termination of a tenancy agreement based on a few late payments, it is not reasonable to expect a landlord to continually tolerate persistent late payment of rent whether it is paid directly by the tenant or by a program of assistance.

The respondent stated that there was no disturbance in her apartment on April 25, 2009. The respondent stated that she does not let anyone in the building who is likely to cause a disturbance but her visitors do occasionally have to shout to her to let them in because the buzzer system in the building does not work. The applicant acknowledged that the buzzer system was broken.

The respondent stated that her son's girlfriend, who had an argument with her son, dumped his hockey equipment out of her truck in the parking lot. She stated that the hockey equipment was not thrown off the balcony and she did not permit her son's girlfriend to enter the building.

Section 43 of the *Residential Tenancies Act* obligates a tenant to not disturb other tenants and holds the tenant responsible for disturbance caused by persons who are permitted in the building by the tenant.

43.(1) A tenant shall not disturb the landlord's or other tenants' possession or enjoyment of the rental premises or residential complex.

(2) A disturbance caused by a person permitted by a tenant to enter the residential complex or the rental premises of the tenant shall be deemed to be a disturbance caused by the tenant.

There is no direct evidence that Ms. Vaneltsi or anyone she permitted in the building caused any disturbance. A tenant can not be held responsible for a disturbance caused by someone they did not permit in the building simply because they know them. If the occasional visitor must make their presence known by calling out to the tenant because the intercom system is inoperative, I don't consider that to be disturbance. Perhaps the landlord should repair or replace the system. It is their obligation to do so pursuant to section 30 of the Act.

Although I recognize that the respondent may have no control over the late rent payment, I nevertheless must find her in breach of her obligation to pay the rent on the days it is due. The respondent is advised to ensure that her son make every effort to apply for assistance and report his income in advance of the due date for the rent. I would also advise her to inform the Regional Manager of the Income Security Program of the possible serious consequences of continued late rent payment and urge her to make the necessary changes to the administration of the program to ensure the rent is received by the landlord on time. A order shall issue requiring the respondent to pay future rent on time.

Hal Logsdon
Rental Officer