

IN THE MATTER between **RAE-EDZO HOUSING AUTHORITY**, Applicant, and
HILDA FOOTBALL AND KEVIN RABESCA, 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 **BEHCHOKO, NT**.

BETWEEN:

RAE-EDZO HOUSING AUTHORITY

Applicant/Landlord

- and -

HILDA FOOTBALL AND KEVIN RABESCA

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent Hilda Football shall pay the applicant rent arrears in the amount of twenty one thousand seven hundred forty seven dollars (\$21,747.00).
2. Pursuant to section 41(4)(c) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Unit 652B, Behchoko, NT, shall be terminated on September 18, 2009 and the respondents shall vacate the premises on that date.

DATED at the City of Yellowknife, in the Northwest Territories this 19th day of August,
2009.

Hal Logsdon
Rental Officer

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-and-

HILDA FOOTBALL AND KEVIN RABESCA

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: **July 31, 2009**

Place of the Hearing: **Behchoko, NT**

Appearances at Hearing: **Robert Richardson, representing the applicant**
 Rose Dryneck, representing the applicant
 Mary Zoe-Chocolate, witness for the applicant
 Hilda Football, respondent

Date of Decision: **August 19, 2009**

REASONS FOR DECISION

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 terminating the tenancy agreement. The premises are subsidized public housing.

The parties entered into a monthly tenancy agreement for the premises 652B which commenced on April 1, 2005, another monthly tenancy agreement for the same premises which commenced on April 1, 2006 and another monthly tenancy agreement for the same premises commencing on April 1, 2007.

In a letter dated June 2, 2008 to the landlord, Kevin Rabesca stated that he had not been living with the respondent Hilda Football since February, 2008 and requested that his name be taken off the tenancy agreement. The respondent Hilda Football swore a statutory declaration on June 12, 2008 that Kevin Rabesca no longer lived in the rental premises. There is no evidence that the monthly tenancy agreement was terminated in accordance with the *Residential Tenancies Act* either by the respondents' notice, by mutual agreement or by order.

On July 17, 2009 the applicant and Hilda Football, as sole tenant, executed two tenancy agreements for 652B. The first was made for a term commencing on April 1, 2008 and ending on March 31, 2009. The second was made for a term commencing on April 1, 2009 and ending on July 31, 2009. In my opinion, both of these tenancy agreements are void. Firstly, there can not be

two tenancy agreements for the same or overlapping terms for the same rental premises. There was already a monthly tenancy agreement in place for 652B with the respondents as joint tenants. In order to enter into a tenancy agreement with another party for the premises, the monthly tenancy agreement must be terminated. Secondly, one can not enter into a tenancy agreement for a term which has already expired as in the case with the April, 2008 to March, 2009 tenancy agreement.

Mr. Rabesca's letter of June 2008 can not operate to simply take his name off the tenancy agreement nor does it serve as a notice to terminate. The existing tenancy agreement must be terminated in accordance with Act and a new tenancy agreement executed.

For the above noted reasons, in my opinion, the monthly tenancy agreement between the applicant and respondents which commenced in April, 2007 is still in effect. However, the evidence suggests that the respondent Kevin Rabesca no longer lives in the rental premises. I can not consider the Notice of Attendance to Mr. Rabesca to be properly served on him as it was mailed to the rental premises and signed for by Ms Football. Therefore, any order for rent arrears must be against Ms Football as a joint tenant.

The tenant ledger, provided in evidence by the applicant, indicates a balance of rent owing in the amount of \$37,909. In September, 2008 Ms Football signed an agreement, promising to pay the monthly rent plus an additional \$100 until the rent arrears were paid. The ledger indicates that no payments of any kind have been made since August, 2007.

The respondent did not dispute the allegations and offered only that she had other bills to pay as a reason for the arrears.

The full unsubsidized rent has been charged for the months of April/06 to September/06, November/06 to December/06, July/08 and March/09 to July/09. The applicant's witness testified that the respondents had provided income information but some was considered incomplete. She stated that most of the information required had been submitted but the tenants had to come to her office to review a few details. In my opinion, the application of the full unsubsidized rent is not reasonable as it appears that the respondents have substantially met their obligation to provide the household income information required by the tenancy agreement. I am unable to determine the appropriate rent for the months where the full unsubsidized rent was improperly charged as there was no information provided to enable me to determine those amounts.

I find the respondent, Hilda Football in breach of her obligation to pay rent and find rent arrears in the amount of \$21,747 calculated as follows:

Balance as per ledger	\$37,909
less rent charged Apr/06 to September/06 @ \$1157/month	(6,942)
less rent charge Nov/06 to Dec/06 @ \$1157/month	(2,314)
less rent charged - July/08 @ \$1161/month	(1,161)
less rent charged March/09 to July/09 @ \$1149/month	<u>(5,745)</u>
Total	\$21,747

In my opinion, there are sufficient grounds to terminate the tenancy agreement. The respondents have made no effort to pay any rent whatsoever for almost two years and Ms Football has totally ignored her promise to pay the monthly rent and \$100 toward the arrears, made in September,

2008.

An order shall issue requiring the respondent, Hilda Football, to pay rent arrears of \$21,747 and terminating the tenancy agreement on September 18, 2009.

Hal Logsdon
Rental Officer