

IN THE MATTER between **TULITA HOUSING ASSOCIATION**, Applicant, and
JONAS MACCAULEY AND NEIL MACCAULEY, 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 **TULITA, NT.**

BETWEEN:

TULITA HOUSING ASSOCIATION

Applicant/Landlord

- and -

JONAS MACCAULEY AND NEIL MACCAULEY

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 fifty thousand eight hundred fifty six dollars (\$50,856.00).
2. Pursuant to section 67(4) of the *Residential Tenancies Act*, the respondents shall pay the applicant compensation for overholding in the amount of eight thousand three hundred seventy four dollars (\$8374.00).

DATED at the City of Yellowknife, in the Northwest Territories this 22nd day of January,
2010.

Hal Logsdon
Rental Officer

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BETWEEN:

TULITA HOUSING ASSOCIATION

Applicant/Landlord

-and-

JONAS MACCAULEY AND NEIL MACCAULEY

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: January 14, 2010

Place of the Hearing: Tulita, NT

Appearances at Hearing: Helen Squirrel, representing the applicant
Rosa Etchinelle, witness for the applicant
Jonas MacCauley, respondent
Neil MacCauley, respondent

Date of Decision: January 22, 2010

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 between the parties. The premises are subsidized public housing.

The applicant provided a copy of the tenant ledger in evidence which indicated a balance owing in the amount of \$60,468. The full unsubsidized rent of \$2403 has been applied in October, November and December, 2009 and in January, 2010. The applicant stated that the full unsubsidized rent was applied because the tenancy agreement between the parties, which was made for a term, expired on September 30, 2009 and they did not intend to renew it.

The respondents disputed the amount of the rent arrears arguing that Jonas MacCauley worked out of town for a number of months each year and his income should not be included in the household income when he is not there.

Article 6 of the tenancy agreement obligates a tenant to report the incomes of the tenant and all occupants of the household. Jonas MacCauley is named as a tenant on the written tenancy agreement. Therefore his income must be reported.

The *Public Housing Rental Subsidy Program* policy does not exempt Jonas MacCauley's source of income. As well, the policy addresses income earned while living in a remote workplace.

A [household member's] official residence is the home where they reside when they are not at a place of work. It is a place where their personal belongings are generally stored, and where they report their address to be on most official documents. A person who consistently returns to the housing unit after short or long-term employment (camp cooks, hunting guides, mine employees, etc.) is considered a member of the household.

This is not inconsistent, in my opinion, with the provisions of the tenancy agreement.

I find rent arrears of \$50,856 to September 30, 2009 calculated as follows:

Balance as per ledger	\$60,468
Less October/09 rent	(2403)
Less November/09 rent	(2403)
Less December/09 rent	(2403)
Less January/10 rent	<u>(2403)</u>
Rent arrears to September 30, 2009	\$50,856

Subsidized public housing is exempt from the automatic renewal provisions for term agreements contained in section 49 of the *Residential Tenancies Act*. Therefore if a landlord and tenant enter into a tenancy agreement for a specific term, there is no requirement for the landlord to renew the agreement or enter into another term agreement. I find no evidence that another tenancy agreement has been formed between the parties. Therefore the tenancy agreement between the parties has expired and the tenant is overholding.

Section 67 entitles a landlord to compensation for the occupation and use of the rental premises after a tenancy agreement has been terminated.

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.

The compensation is based on the full unsubsidized rent on a per diem basis. Since the respondents have continued to occupy the premises since the tenancy agreement expired on September 30, 2009, I find compensation owing to the landlord for use and occupation of the premises in the amount of \$8374 calculated as follows:

$$(\$2403 \times 12)/365 = \$79.00/\text{day} \times 106 \text{ days} = \$8374$$

There is no requirement to terminate this tenancy agreement by order. It was terminated on September 30, 2009 when the tenancy agreement expired. The evidence suggests this is not simply an administrative oversight. If the respondents fail to move out of the premises, the applicant may seek an order from the Supreme Court to evict the respondents pursuant to section 63 of the Act. They may also seek additional compensation for the continued use and occupation of the rental premises based on the number of days the respondents remain in possession of the premises after January 14, 2010.

An order shall issue requiring the respondents to pay the applicant rent arrears of \$50,856 and compensation for overholding in the amount of \$8374.

Hal Logsdon
Rental Officer