

IN THE MATTER between **FORT SMITH HOUSING AUTHORITY**, Applicant, and  
**JOHN STARR**, Respondent;

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter  
R-5 (the "Act") and amendments thereto;

AND IN THE MATTER of a Hearing before, **HAL LOGSDON**, Rental Officer,  
regarding the rental premises at **FORT SMITH, NT**.

BETWEEN:

**FORT SMITH HOUSING AUTHORITY**

Applicant/Landlord

- and -

**JOHN STARR**

Respondent/Tenant

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 18.1(b) of the *Residential Tenancies Act*, the applicant shall return a portion of the retained security deposit to the respondent in the amount of one hundred twenty seven dollars and eighty four cents (\$127.84).

DATED at the City of Yellowknife, in the Northwest Territories this 13th day of October,  
2010.

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Hal Logsdon  
Rental Officer

IN THE MATTER between **FORT SMITH HOUSING AUTHORITY**, Applicant, and  
**JOHN STARR**, 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.

BETWEEN:

**FORT SMITH HOUSING AUTHORITY**

Applicant/Landlord

-and-

**JOHN STARR**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:** September 28, 2010

**Place of the Hearing:** Fort Smith, NT via teleconference

**Appearances at Hearing:** Kevin Mageean, representing the applicant  
John Starr, respondent

**Date of Decision:** October 13, 2010

### **REASONS FOR DECISION**

The applicant stated that the respondent vacated the premises on November 9, 2009 but that they considered the tenancy agreement terminated on September 30, 2009 and only charged rent to that date. The applicant retained the security deposit (\$250) and interest (\$6.73) applying it against repair costs (\$128.89) and rent arrears (\$2696), leaving a balance owing to the landlord of \$2568.16. A statement of account was provided in evidence. The applicant sought an order requiring the respondent to pay that amount. The premises are subsidized public housing.

The applicant stated that the rent had not been paid for June, July, August and September, 2009 and that the full unsubsidized rent of \$666 had been applied by the subsidy agent for each of those months, presumably because the respondent had failed to provide the required report of the household income as required by the tenancy agreement. The applicant also stated that charges had been applied for cleaning of the oven (\$61.87) and for the replacement of a set of blinds which had been damaged (\$67.02).

The respondent acknowledged that he had not reported his income. He stated that he was 62 years old and spent his summers working out of town at a fire tower. He stated that he was told at the commencement of the tenancy that as a senior, he would not be charged any rent. He also stated that his wife normally lived in High Level, Alberta but spent the summers with him at the fire tower.

The respondent disputed the charges for the oven cleaning and replacement of the blinds. He stated that the oven was cleaned prior to leaving the premises and that the blinds "fell apart" in the early days of the tenancy. The applicant stated that the check out inspection report noted both items, noted that he had done the inspection and, in his opinion, the oven was not cleaned to a reasonable standard.

The applicant provided two documents from the subsidy agent. An *Assessment History Report* indicated that the rent had been assessed to May, 2009 and that a full subsidy had been applied, resulting in a monthly rent of \$0. The report also indicates that the household income is to be assessed quarterly. A second report indicates that the respondent reported the household income every month. The last month reported was May, 2009. If the household income was reported to the subsidy agent in May, 2009 the rent should have been assessed on that amount, in accordance with the rent scale, for June, July and August, yet it was assessed at the full unsubsidized rate.

When I inquired about the matter, I was informed by the subsidy agent that the full unsubsidized rent had been applied because the tenancy agreement, which was made for a term ending April 30, 2009, had not been renewed. The subsidy agent confirmed that a renewal had subsequently been received but they had not been able to contact the tenant to determine his income for that period. In my opinion, there was no requirement to contact the tenant to adjust the rent for June, July and August, 2009 since the income was reported in May, 2009 and the assessments were to be done quarterly. Clearly the rent should have been assessed at \$0 for those months.

Although the evidence establishes that the respondent did not report the household income for the month of August, 2009 it is clear that Mr. Starr was the sole occupant and that he was a senior citizen. Those facts alone enable me to determine that the rent, according to the rent scale should be \$0. Therefore, in my opinion, the application of the full unsubsidized rent for September, 2009 is not reasonable. It is quite reasonable to require periodic reporting of income from sole occupant seniors to determine if they are still eligible to occupy public housing. However, a breach of this obligation should not result in the application of the full unsubsidized rent. To do so is, in my opinion, tantamount to a penalty. In my opinion, this is consistent with *Inuvik Housing Authority vs. Koe et. al.*, (1991), 85 D.L.R. (4th) 548 and *Inuvik Housing Authority vs. Sharpe and Allain* (Rental Officer file #20-1146, February 12, 1992).

I find no rent arrears. In the matter of the costs for the blind replacement and the oven cleaning, I find these costs to be reasonable. While the oven may have been cleaned, it was not to a reasonable standard according to the applicant who had direct knowledge of it's condition at the end of the tenancy. I do not accept that the blinds "fell apart" due to normal wear and tear. The inspection report indicates that two of the slats were missing.

Deducting the repair costs from the security deposit, I find an amount owing to the respondent of \$127.84 calculated as follows:

Security deposit	\$250.00
Interest	6.73
Repair costs	<u>(128.89)</u>
Amount due respondent	\$127.84

An order shall issue requiring the applicant to return a portion of the retained security deposit to the respondent in the amount of \$127.84.

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Hal Logsdon  
Rental Officer