

IN THE MATTER between **NWT HOUSING CORPORATION**, Applicant, and
AGATHA LABOUCAN, 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 **LUTSELK'E, NT**

BETWEEN:

NWT HOUSING CORPORATION

Applicant/Landlord

- and -

AGATHA LABOUCAN

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 29th day of August,
2011.

Hal Logsdon
Rental Officer

IN THE MATTER between **NWT HOUSING CORPORATION**, Applicant, and
AGATHA LABOUCAN, 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:

NWT HOUSING CORPORATION

Applicant/Landlord

-and-

AGATHA LABOUCAN

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: **July 12, 2011**

Place of the Hearing: **Yellowknife, NT via teleconference**

Appearances at Hearing: **Mike Keohane, representing the applicant**
 Agatha Laboucan, respondent

Date of Decision: **August 29, 2011**

REASONS FOR DECISION

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay rent and sought an order requiring the respondent to pay the alleged rent arrears.

The tenancy agreement between the parties was terminated on June 17, 2011 when the respondent vacated the premises. The applicant's agent, the Lutselk'e Housing Authority, holds a security deposit of \$1056. There is no evidence that a statement of deductions has been issued in accordance with section 18(7) of the *Residential Tenancies Act*.

The applicant provided a statement of the rent account which indicated a balance of rent owing in the amount of \$20,592. The applicant also provided an email from Stacy Moser, Senior Finance Officer for the applicant, to Jennifer Larson, the auditor for the Lutselk'e Housing Authority. In the email, Ms Moser sets out her findings regarding the respondent's rent account noting that it appears to have a credit balance of \$3696. Ms Moser also states in the email that she believes that two credit entries (\$9350.66 and \$2112) were rent reversals and should not have been made.

The respondent disputed the allegations stating that the premises were provided to her as a benefit of employment and that she was required to pay only for utilities during the term. She testified that the Lutselk'e Housing Authority Board of Directors had approved this housing arrangement. The respondent stated that the premises had been granted to the Lutselk'e Housing Authority for use as staff housing and that it had been previously provided to another employee

rent-free.

The applicant provided a tenancy agreement for the premises made on July 6, 2009 for a one year term commencing on August 1, 2009 between the NWT Housing Corporation and the respondent. The tenancy agreement was signed by the respondent and the manager of the Lutselk'e Housing Authority for the NWT Housing Corporation. The tenancy agreement sets out a monthly rent for the premises of \$1056 and obligates the tenant to pay for all utilities during the term.

The applicant also provided a copy of the employment agreement between the Lutselk'e Housing Authority and the respondent. The agreement does not set out any housing benefits except a housing allowance of \$5400/annum. The agreement is signed by the respondent and the manager of the Lutselk'e Housing Authority.

In a letter dated April 21, 2011 from Andy Tereposky, District Director for the applicant to Brian Green, Chairperson of the Lutselk'e Housing Authority, Mr. Tereposky writes, "You have advised that the Lutselk'e Housing Authority Board did not act to change the terms of the original Employment Agreement or the Residential Tenancy Agreement."

However it does not appear that Mr. Green was in agreement with that statement. Jennifer Larson, the auditor for the Lutselk'e Housing Authority writes in an email dated June 8, 2010 to Mr. Green,

Just wanted to confirm the status of a couple of things

1. Rent paid by Agatha - I understand she found documentation that the house should be staff housing provided free of charge? If that is right than I propose that we reverse the rent that she had paid and that has been set up as receivable. It looks like \$9350.66 was recorded as rent revenue and \$3696 is still in accounts receivable so the difference of \$3,969 that she actually paid should be refunded to her. Let me know if you agree.

Brian Green responded, "I confirm the first one on Agatha's rent."

The respondent stated that rent she had paid had been refunded to her by the Lutselk'e Housing Authority but did not recall the amount of the payment.

The first element to be determined is whether the Lutselk'e Housing Authority acted to amend the tenancy agreement. In my opinion, both Mr. Green's letter and the fact that a rent refund cheque was authorized and issued indicates that they did.

The applicant contends that the Housing Authority had no authority to amend a tenancy agreement which clearly was not made with them. On the face of it, the tenancy agreement is between the applicant and the respondent only with no mention of any role played by the Lutselk'e Housing Authority. However, it is obvious that the Authority acted as agent for the landlord, executing the tenancy agreement, collecting rent and administering the security deposit for this property. The applicant did not provide a management agreement or other similar document setting out the Authority's role in the management of the property but other Local Housing Organizations who act as agents for the Corporation are limited to the administration of the property, and are not authorized to make decisions relating to the terms of the tenancy agreement. In my opinion, the Authority did not have the authority to change a substantial

obligation of the tenancy agreement.

The second element to be determined is the quantum of rent owed by the respondent. The evidence provided by the applicant is inconsistent and I am unable to determine with any degree of confidence what amount, if any, is owed. The statement prepared by the Finance Division does not account for all of the payments recorded on the Authority records as summarized by the Stacy Moser email. Even the amounts contained in the auditor's email do not make any sense to me. Obviously, if an applicant seeks an order for payment, they must provide clear and convincing evidence as to the amount owed and how it accrued. In my opinion, the applicant has failed to provide this evidence and consequently, I must dismiss the application.

Hal Logsdon
Rental Officer