

IN THE MATTER between **YELLOWKNIFE HOUSING AUTHORITY**, Applicant,
and **AARON LOVELACE**, 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 **YELLOWKNIFE, NT**.

BETWEEN:

YELLOWKNIFE HOUSING AUTHORITY

Applicant/Landlord

- and -

AARON LOVELACE

Respondent/Tenant

EVICITION ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 63(4)(a) of the *Residential Tenancies Act*, the respondent shall be evicted from the premises known as 782 Bigelow Crescent, Yellowknife, NT on September 30, 2011.

DATED at the City of Yellowknife, in the Northwest Territories this 13th day of
September, 2011.

Hal Logsdon
Rental Officer

IN THE MATTER between **YELLOWKNIFE HOUSING AUTHORITY**, Applicant,
and **AARON LOVELACE**, 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:

YELLOWKNIFE HOUSING AUTHORITY

Applicant/Landlord

-and-

AARON LOVELACE

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: September 7, 2011

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Ella Newhook, representing the applicant
Aaron Lovelace, respondent

Date of Decision: September 13, 2011

REASONS FOR DECISION

The premises are subsidized public housing. The tenancy agreement between the parties was made for a term ending July 31, 2011 and automatically renewed as a monthly tenancy commencing August 1, 2011. The applicant gave written notice on July 25, 2011 to terminate the tenancy agreement on August 31, 2011. The reasons were given as:

1. Repeated failure to pay the full amount of the rent and not reporting income which is a requirement of your lease. Your total rent amount owing is \$4092.
2. Failure to notify us of changes to the occupants that are listed on Schedule B of your lease agreement.

The respondent remains in possession of the rental premises and the applicant seeks an order evicting the respondent.

Section 51(5) of the *Residential Tenancies Act* permits a landlord of subsidized public housing to terminate a monthly tenancy agreement by notice.

51.(5) Where a tenancy agreement for subsidized public housing is renewed as a monthly tenancy under subsection 49(1), a landlord may terminate the tenancy on the last day of a period of the tenancy, by giving the tenant a notice of termination not later than 30 days before that day.

Section 55(3) sets out the required elements of the notice.

55.(3) A notice of termination from a landlord to a tenant must
(a) be in writing;
(b) be signed by the landlord or an agent of the landlord;
(c) identify the rental premises to which the notice applies;
(d) state the date on which the tenancy is to terminate; and
(e) state the reason for the termination of the tenancy.

Section 63(4) of the Act sets out the criteria for the issuance of an eviction order by a rental officer.

- 63.(4) A rental officer who terminates a tenancy or determines that a tenancy has been terminated in accordance with this Act, and who determines that an eviction is justified, may make an order**
- (a) evicting the tenant on the date specified for the termination of the tenancy in the agreement, notice or order, or on the earliest reasonable date after the date of termination of the tenancy; and**
 - (b) requiring the tenant to compensate the landlord for the use and occupation of the rental premises, calculated for each day the tenant remains in occupation following the termination of the tenancy.**

The landlord was entitled to give a written notice to terminate the tenancy agreement and the notice is in accordance with the Act. I find that this tenancy agreement has been terminated in accordance with the Act.

The applicant testified that the first income reporting documents for 2011 were received on July 25, 2011 and stated that the respondent had been advised that income reporting was to be done monthly. The applicant testified that statements of the rent account were sent to every tenant each month indicating the balance owing. The applicant stated that a notice was sent to the respondent on July 5, 2011 outlining rent arrears of \$4507 and indicating that no income information had been received for the months January-July, 2011. A copy of the notice was provided in evidence.

The applicant stated that the monthly rent was assessed at \$32 in January and February based on the respondent's claim that he was unemployed with no income. The full unsubsidized rent has

been assessed for March, April, May, June and July. A statement of the rent account was provided in evidence showing a balance owing of \$4507 as at July 1, 2011.

The respondent submitted that he complied with all of the requirements for reporting the household income and occupants that were set out in the tenancy agreement and argued that the eviction was not justified. He stated that he had submitted statements of his income on a quarterly basis as instructed by the applicant. The respondent stated that he assumed that his rent was up to date since he previously had a significant credit balance and had not received any notices stating he was in arrears. The respondent stated that he had not received any notices concerning any failure to report income. He acknowledged that his statements of income did not consider any expenses but stated that he could not afford an accountant to prepare statements and was willing to have his rent set on gross revenue of his business as he had few expenses. The respondent stated that his son and daughter were in his custody and were still occupants although they were living at another location temporarily.

Article 6 of the tenancy agreement between the parties sets out the tenant's obligation to provide information to the landlord regarding household income and occupants.

6. Tenant's Income

The Tenant promises to provide a subsidy agent appointed by the Landlord with an accurate report of the Tenant's income, the income of any occupant of the Premises, the size of the Tenant's family, and the number of occupants residing on the Premises, whenever, and as often as, the subsidy agent requests such a report.

This is not the first dispute that has arisen between the parties regarding income reporting. The respondent was previously ordered to comply with his obligation to provide income information in the future after he failed to provide income statements in 2010 (file #10-11881, filed on February 8, 2011). He did finally comply with that obligation in January, 2011 by filing monthly statements of revenue and expenses for his business. Clearly he understood both the format required and the frequency of reporting at that time. Given the significant fluctuations of net income, I find it difficult to accept that he was later advised by the landlord to only report on a quarterly basis in 2011. On the balance of probabilities, I find that the respondent was obligated to file income reports on a monthly basis in a similar format to the 2010 reports he submitted previously. Therefore I find the respondent breach of Article 6 of the tenancy agreement.

Although the income reports filed for January-July, 2011 are incomplete in that they do not reflect the net income of the respondent, they should nevertheless be used to assess the monthly rent for those months. Since no income report has been received for August, applying the full unsubsidized rent is reasonable. Recalculating the rents from January to August, 2011 based on the reported income, I find a balance of \$2833, calculated as follows:

January rent	\$240
February rent	192
March rent	192
April rent	256
May rent	320
June rent	205
July rent	32
August rent	<u>1396</u>
Total	\$2833

I find total rent arrears in the amount of \$1277, calculated as follows:

Balance as at December 31, 2010	(\$899)
Elec. Credit	(119)
Elec. Credit	(123)
Elec. Credit	(145)
Elec. Credit	(139)
Elec. Credit	(131)
Rent, Jan-August, 2011	<u>2833</u>
Total	\$1277

Therefore I find the respondent in breach of his obligation to pay rent.

The respondent's failure to notify the landlord that one or more of his children did not occupy the premises in any given month is not a significant breach, particularly when the absence is temporary and the children have no income. Nevertheless the number of occupants residing in the premises should be reported for each reporting period.

In my opinion, the word "justified" in section 63(4) means, at a minimum, that there must be an identified breach of the tenancy agreement or Act and that termination of the tenancy agreement be an available remedy for that breach. In this case there has been, in my opinion, a breach of Article 6 of the tenancy agreement and a remedy is available pursuant to section 45(4)(e) of the Act. One could perhaps also consider that a breach was so minor that termination of the tenancy agreement was an unreasonable remedy, making the eviction of the tenant unjustified.

The accurate reporting of the household income is a fundamental obligation of the public housing tenant. It ensures that the recipient of public funds is in need of that assistance and that the level of

assistance is geared to that need. A breach of this obligation is not, in my opinion, minor or insignificant. The payment of rent is also a fundamental obligation of the tenant. Consequently I can not find that the eviction of the respondent is unjustified and an eviction order shall issue to be effective on September 30, 2011.

Hal Logsdon
Rental Officer