

IN THE MATTER between **NWT HOUSING CORPORATION**, Applicant, and
TRAVIS GUILD, 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 RESOLUTION, NT**.

BETWEEN:

NWT HOUSING CORPORATION

Applicant/Landlord

- and -

TRAVIS GUILD

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant rent arrears in the amount of thirty one thousand seven hundred ninety six dollars (\$31,796.00).
2. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondent shall pay the applicant repair costs in the amount of six thousand two hundred seventy eight dollars and seventy six cents (\$6278.76).

DATED at the City of Yellowknife, in the Northwest Territories this 3rd day of October,
2011.

Hal Logsdon
Rental Officer

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R-5 (the "Act");

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BETWEEN:

NWT HOUSING CORPORATION

Applicant/Landlord

-and-

TRAVIS GUILD

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: September 16, 2011

Place of the Hearing: Hay River, NT

Appearances at Hearing: Yvonne Burke, representing the applicant
Travis Guild, respondent

Date of Decision: October 3, 2011

REASONS FOR DECISION

The tenancy agreement between the parties was terminated on February 23, 2011 when the respondent vacated the premises. The applicant retained the security deposit and accrued interest but did not issue a statement of the security deposit in accordance with section 18 of the *Residential Tenancies Act*. The applicant alleged that the respondent had failed to pay the full amount of the rent during the term of the agreement and had damaged the premises. The applicant sought an order requiring the respondent to pay the alleged rent arrears and repair costs. The premises are subsidized public housing.

The applicant provided a statement of the rent account which indicated a balance of rent owing in the amount of \$32,180. The full unsubsidized monthly rent of \$778 has been applied in every month from January 2007 to February, 2011. The applicant stated that the unsubsidized rent had been applied in 2007 and 2009 because the respondent had not reported the household income to enable a rent to be calculated according the program's rent scale. Rent before January 2007 rent for 2008 and rent for 2010 were based on the reported household income of the respondent.

The applicant also provided an inspection report which itemized damages to the premises with estimated repair costs for each item. The total estimated repair costs were \$16,360. The applicant also provided numerous photographs of the premises. An inspection report outlining the condition of the premises at the commencement of the tenancy was provided. The applicant stated that the premises were new at the commencement of the tenancy agreement and that the

respondent was the first and only tenant. The applicant stated that none of the repairs had been completed as they were unsure of what they were going to do with the building.

The respondent disputed the rent arrears stating that after two years he should have either purchased the premises or moved out. He stated that the applicant failed to enforce that program provision causing the rent arrears to accumulate.

The respondent also stated that the Fort Resolution Housing Authority administered the rent collection and failed to advise him of the change in the monthly rent from \$243 in December, 2005 to \$275 for 2006 and to \$778 for 2007 and 2009. Tenant ledger cards, maintained by the Authority and provided in evidence by the applicant indicate that the rent was recorded as \$243/month from December 2005 to June 30, 2009. A letter from the applicant to the respondent dated December 8, 2005 acknowledged a rent assessment of \$243/month subject to any adjustment after the verification was received from Employment Insurance.

The respondent also disputed some of the repair costs. While he acknowledged that some damage had occurred, he stated that the broken window was caused by the shifting of the building and that one hole in the wall was created by the landlord in order to access water supply pipes in the bathroom. The respondent felt that the costs of carpet and wall panel replacement were excessive.

THE RENT

Article 6 of the written tenancy agreement obligates the tenant to report the household income to the landlord once a year, whenever the income of the tenant changes or at the request of the landlord. Provided the household income is reported, Article 7 obligates the landlord to assess a monthly rent in accordance with the rent scale for the program, otherwise the monthly rent set out in Schedule A applies.

The Schedule A rent of \$778 was charged in 2007 and 2009. The respondent did not dispute that the household income was not reported in 2007 and 2009 but points out that the Fort Resolution Housing Authority, an agent of the applicant who administered the rent collection, continued to record the rent assessments as \$243. Since their accounting system creates monthly receipts/statements, it would appear that the respondent received regular statements showing \$243 as his rent assessment.

The respondent met with Corporation staff on November 3, 2010 and was advised that the rent for 2007 and 2009 would be retroactively adjusted to \$778 because there had been no household income information provided. The alleged arrears increased dramatically as a result of the reassessment.

In my opinion, notice that the full unsubsidized rent will be assessed due to the failure of the tenant to provide any household income information is not required. The tenancy agreement sets out that provision. In my opinion, the retroactive adjustments to the rent in 2007 and 2009 did

not require notice to the tenant, although prudent property management would suggest that some notice to the respondent and some direction to the Housing Authority would have been preferable.

It is also quite reasonable, in my opinion, to retroactively reassess rent either up or down, based on amended income information provided by the tenant or obtained as a result of income verification. In this case however, it is necessary to provide notice to the tenant of the adjusted rent. How else would the tenant become aware of what rent to pay?

The adjustment of rent from \$243 in December, 2005 to \$275 for the remainder of 2006 should have been accompanied by a notice to the respondent since the adjustment was based on income verification. Although the respondent was advised that the verification could alter the amount of rent, there is no evidence that the increased rent amount was ever communicated to the respondent. As a result, the respondent continued to pay \$243. In my opinion, the rent for 2006 should be \$243. The difference is \$32/month for 12 months or \$384.

The tenancy agreement between the parties was made for a term ending on December 1, 2005.

The program agreement states that the tenant is not obligated to purchase the property and may continue to rent so long as the tenant is eligible for the program. Clearly the respondent continued in possession after December 1, 2005 and the applicant continued to charge and collect rent in accordance with the program guidelines. The respondent's position that the applicant did not enforce the program guidelines to purchase or vacate has no validity.

In my opinion, the rent arrears are \$31,796 calculated as follows:

Arrears as per ledger	\$32,180
less 2006 adjustment	<u>(384)</u>
Rent arrears	\$31,796

THE REPAIR COSTS

The respondent vacated the premises seven months ago. The inspection report was completed three months after the tenant gave up possession. The premises have not been repaired or re-rented. The repair estimates were done by the applicant without reference to third party estimates or quotations. The nature and severity of the damages is primarily documented by the photographic evidence which is incomplete.

When repairs have not been completed, it must be determined that the estimates are reasonable. The evidence must indicate clearly the nature and severity of the damage. The following repair costs are denied due to the failure of the evidence to clearly indicate the nature and severity of the damage.

Bathroom Fan

There is nothing on the inspection report to support the estimate. There is no photograph of the fan to indicate how it was damaged or the extent of the damage.

Bath and Tub Repair

The inspection report provides no details of damage and the photographs do not show

any apparent damage.

Rear porch door and storm

One photograph indicates significant damage to the door but another shows only minor denting. It can not be determined if the photographs represent the same or different doors. There is no apparent damage to the storm on any photographs.

Patch and paint

All of the photographs indicate damage to pre-finished wall panels. None of the photographs indicate any wall damage which could be patched. A photograph of some minor ceiling damage does not justify the cost claimed.

Siding and skirting

The photographs do not indicate any significant siding damage. One panel of the metal skirting appears to be bent but does not require replacement. Item could be easily straightened and re-installed at little or no cost.

Fuel oil

The applicant stated that the respondent had not filled up the fuel tank but provided no evidence of fuel provided or the cost except the inspection report.

Wall panel replacement

The wall panels in the unit are pre-finished panels which can not be reasonably repaired if damaged. There are 5 photos showing holes in a panel. The inspection report shows estimates of \$100 for the main entry, \$300 for the kitchen and \$300 for the living room. Without any additional information, I assume that the cost of supply and installation of a full panel is \$100. I accept that one of the areas of damage was caused by the applicant when repairing water supply pipes, leaving 4 damaged panels @ \$100/panel. The applicant claims \$700. I can not find evidence to support the difference of \$300.

Broken window

I accept the respondent's testimony that the window was not broken by negligence but was due to the shifting of the premises.

The total repair costs denied are as follows:

Bathroom fan	\$300
Bath and tub repair	60
Rear door and storm	1000
Patch and paint	2500
Siding and skirting	400
Fuel oil	1100
Wall panels	300
Broken window	<u>150</u>
Total denied	\$5810

The following repair costs have been reduced. In my opinion, the evidence does not support the amounts claimed.

Fixture - entry

No documentation of costs was provided with the applicant's estimate of replacement cost. In my opinion, an equivalent fixture could be obtained and installed for \$50.

Fixture kitchen

No documentation of costs was provided with the applicant's estimate of replacement cost. In my opinion, an equivalent fixture could be obtained and installed for \$200.

Carpet replacement

No documentation of costs was provided with the applicant's estimate of replacement cost. In my opinion, the replacement of the carpet should not exceed \$3000.

Smoke detectors

No documentation of costs was provided with the applicant's estimate of replacement cost. The evidence suggests only one smoke detector was damaged. In my opinion, an equivalent smoke detector could be obtained and installed for \$100.

The follow reductions have been made to the applicant's claim for repairs

Fixture-entry	\$50
Fixture-kitchen	200
Carpet replacement	3000
Smoke detectors	<u>200</u>
Total	\$3450

Applying the retained security deposit and interest to reasonable repair costs I find an amount owing the applicant in the amount of \$6278.76 calculated as follows:

Repairs as per estimate	\$16,360.00
Less costs denied	(5810.00)
Less reductions	(3450.00)
Less security deposit	(689.00)
Less interest	<u>(132.24)</u>
Repair costs	\$6278.76

An order shall issue requiring the respondent to pay the applicant rent arrears in the amount of \$31,796 and repair costs in the amount of \$6278.76.

Hal Logsdon
Rental Officer