

IN THE MATTER between **YELLOWKNIFE HOUSING AUTHORITY**, Applicant,
and **RICHARD ROBERTS AND BELLADONNA PAYNE**, Respondents;

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 -

RICHARD ROBERTS AND BELLADONNA PAYNE

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 one thousand eight hundred thirty seven dollars and sixty cents (\$1837.60).
2. Pursuant to sections 41(4)(c), 45(4)(e) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as 1039 Williams Avenue, Yellowknife, NT shall be terminated on November 30, 2011 and the respondents shall vacate the premises on that date unless the rent arrears are paid in full and the respondents provide the applicant with an accurate report of the household income for the months of September and October, 2011 in accordance with the tenancy agreement.

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3. Pursuant to section 41(4)(b) of the *Residential Tenancies Act*, the respondents shall pay future rent on time.

DATED at the City of Yellowknife, in the Northwest Territories this 10th day of November, 2011.

Hal Logsdon
Rental Officer

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and **RICHARD ROBERTS AND BELLADONNA PAYNE**, 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.

BETWEEN:

YELLOWKNIFE HOUSING AUTHORITY

Applicant/Landlord

-and-

RICHARD ROBERTS AND BELLADONNA PAYNE

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: November 4, 2011

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Ella Newhook, representing the applicant

Date of Decision: November 4, 2011

REASONS FOR DECISION

The respondents were served with Notices of Attendance sent by registered mail and confirmed delivered. The respondents failed to appear at the hearing and the hearing was held in their absence.

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 unless the rent arrears are paid in full. 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 \$4925.60 but the applicant sought the balance as at October 31, 2011 which was \$3529.60. The full unsubsidized rent had been applied in the months of September and October, 2011. The applicant stated that the full unsubsidized rent had been applied in those months because incomplete income information had been provided by the respondents. The applicant stated that the respondents had provided only one pay stub for each month when there were two pay periods in both September and October. The applicant stated that had the rent been assessed on only the income information provided, the rent for September would be \$312 and the rent for October would be \$788.

Referring to *Inuvik Housing Authority vs. Koe* [1992] N.W.T.R. 9, Justice J.E. Richard outlined the following in *Inuvik Housing Authority vs. Harley*, 1993 CanLII 2856 (NWTSC):

In *Koe* the breach was failure to provide accurate income data. The tenants had provided income data for nine months but did not fully disclose all income for that period. When the landlord discovered the non-disclosure, it re-assessed the monthly rent for each of the nine months, retroactively, at the full economic rate, as a result of the tenant's breach. The landlord then applied to the rental officer for an order requiring the tenant to pay these re-assessed sums. The rental officer declined, ordering instead payment of rent which should have been paid under the rent scale had the income been accurately disclosed, plus a late payment penalty. In upholding the rental officer's decision this Court, on November 19, 1991, stated that in the circumstances of that case, to charge full economic rent instead of rent based on actual income, because of the tenant's breach in providing false information, "would be tantamount to enforcing a penalty". The Court pointed out that s.13 of the Act prohibits penalties of that nature.

It should be noted that in *Koe* the accurate income data was available to the landlord and to the rental officer, certainly by the date of the hearing before the rental officer. The import of the decision appears to be that the landlord, charged with the provision of subsidized public housing to persons of low income, should assess monthly rent on the basis of the tenant's income data even if subsequently provided.

In *Inuvik Housing Authority vs. Stewart and Kendi* (Rental Officer decision, January 11, 1993) the landlord alleged that the tenant had provided inaccurate income data and accordingly assessed full economic rent. Although the rental officer granted termination of the tenancy as the ultimate remedy, he re-assessed the rents for the relevant months at a lower figure based on the income data that was provided (even though allegedly inaccurate).

In paragraph 29 of the *Harley* decision, Justice Richard notes that the *Stewart and Kendi* decision was consistent with the Court's decision in *Koe*:

The rental officer's decisions in *Sharpe and Allain*, *Tingmiak*, *Stewart and Kendi* and *Day* appear to be consistent with the decision of this Court in *Koe*.

I find the application of the full unsubsidized rent for the months of September and October, 2011 to be unreasonable and find rent arrears of \$1837.60 calculated as follows:

Balance as at August 31/11 as per statement	\$2277.60
September rent assessed on reported income	312.00
October rent assessed on reported income	788.00
Less payments and credits applied	<u>(1540.00)</u>
Total	\$1837.60

In my opinion there are sufficient grounds to terminate the tenancy agreement unless the rent arrears are promptly paid and the respondents provide the applicant with an accurate report of their income in accordance with the tenancy agreement. If the tenancy agreement continues, the respondents are also ordered to pay future rent on time.

Hal Logsdon
Rental Officer