

IN THE MATTER between **NWT HOUSING CORPORATION**, Applicant, and
BETTY TAKAZO JR. AND JEAN MACKEINZO, 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 **DELINE, NT.**

BETWEEN:

NWT HOUSING CORPORATION

Applicant/Landlord

- and -

BETTY TAKAZO JR. AND JEAN MACKEINZO

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 eleven thousand six hundred thirteen dollars and twenty nine cents (\$11,613.29).

DATED at the City of Yellowknife, in the Northwest Territories this 2nd day of
December, 2011.

Hal Logsdon
Rental Officer

IN THE MATTER between **NWT HOUSING CORPORATION**, Applicant, and
BETTY TAKAZO JR. AND JEAN MACKEINZO, 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:

NWT HOUSING CORPORATION

Applicant/Landlord

-and-

BETTY TAKAZO JR. AND JEAN MACKEINZO

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: November 30, 2011

Place of the Hearing: Yellowknife, NT via teleconference

Appearances at Hearing: Philip Bailey, representing the applicant
Betty Takazo Jr. respondent
Jean Takazo, respondent

Date of Decision: November 30, 2011

REASONS FOR DECISION

The tenancy agreement between the parties was terminated on or about March 2, 2011. The applicant retained the security deposit (\$500) and interest (\$32.71) applying it against rent arrears of \$20,946 leaving a balance of rent owing in the amount of \$20,413.29. The applicant sought an order requiring the respondents to pay that amount. The premises are subsidized public housing.

The applicant provided a statement of the rent account showing the application of the security deposit and a balance of \$20,413.29. The full unsubsidized rent of \$1760 has been applied in August, September, October, November and December, 2009. The applicant stated that in each of those months they had received information pertaining to Ms Takazo's income but had not received any information regarding Mr. Mackeinzio's income. There was no income information for those months available at the hearing and the applicant was unable to state what the rent would have been if calculated on Ms Takazo's income alone.

I also note that this application was filed more than six months after the tenancy ended. However, the statement indicates that the respondents continued to make monthly payments until June, 2011. In my opinion, the applicant had reason to believe that the rent arrears would be paid without recourse to legal action and it is not unreasonable to extend the time limit for applications contained in section 68 of the *Residential Tenancies Act*.

The respondents did not dispute the allegations and stated that they would be able to pay the

arrears in monthly installments.

In my opinion, it was not reasonable to apply the full unsubsidized rent in August, September, October, November and December, 2009. I base this opinion on the decision *Inuvik Housing Authority vs. Koe* [1992] N.W.T.R. 9.

Referring to *Inuvik Housing Authority vs. Koe*, 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.

Unfortunately, there was no income information available to me at the hearing. Ignoring the rents for August, September, October, November and December, 2009 I find rent arrears of \$11,613.29 calculated as follows:

Balance as per statement	\$20,413.29
Less unsubsidized rents	<u>(8,800.00)</u>
Total	\$11,613.29

An order shall issue requiring the respondents to pay the applicant rent arrears in the amount of \$11,613.29. I leave it to the parties to agree on a payment schedule.

Hal Logsdon
Rental Officer