

IN THE MATTER between **NWT HOUSING CORPORATION**, Applicant, and
HOWARD BLONDIN AND SUSAN MCNEELY, 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 **NORMAN WELLS, NT**.

BETWEEN:

NWT HOUSING CORPORATION

Applicant/Landlord

- and -

HOWARD BLONDIN AND SUSAN MCNEELY

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 forty seven thousand one hundred ninety one dollars and seventy one cents (\$47,191.71).
2. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondents shall pay the applicant repairs costs in the amount of two thousand four hundred sixty five dollars (\$2465.00).

DATED at the City of Yellowknife, in the Northwest Territories this 23rd day of
February, 2012.

Hal Logsdon
Rental Officer

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R-5 (the "Act");

AND IN THE MATTER of a Hearing before **Hal Logsdon**, Rental Officer.

BETWEEN:

NWT HOUSING CORPORATION

Applicant/Landlord

-and-

HOWARD BLONDIN AND SUSAN MCNEELY

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: February 14, 2012

Place of the Hearing: Yellowknife, NT via teleconference

Appearances at Hearing: Philip Bailey, representing the applicant
Alanhea Vogt, representing the applicant
Erin Delaney, representing the applicant
Paul Tan, representing the respondent
Howard Blondin, respondent
Susan McNeely, respondent

Date of Decision: February 23, 2012

REASONS FOR DECISION

The tenancy agreement between the parties was terminated on August 31, 2011. The applicant retained the security deposit (\$500) and accrued interest (\$46.19) applying it to rent arrears of \$47,737.90 resulting in a balance of rent owing to the applicant of \$47,191.71. The applicant provided a statement of the rent account in evidence. The applicant sought an order for the alleged rent arrears plus relief for repair costs of \$4555. The premises are subsidized public housing.

THE RENT ISSUE

The respondent's representative questioned if the rent was properly assessed, specifically noting that Mr. Blondin received numerous benefits which might not be assessable in determining the monthly rent. The respondents also submitted that they were rushed into signing the tenancy agreement and did not fully understand their obligations as tenants, including their obligation to report the household income. The respondents stated that they provided their income information whenever it was requested by the landlord but were never told of their increased rent until 2010 when the rent was retroactively re-assessed resulting in a large sum of arrears.

The applicant acknowledged that when the tenancy commenced in June, 2007 the rent was assessed on income information verified by Mr. Blondin's employer and set at \$477/month. The statement provided in evidence by the applicant indicates that this sum was paid regularly in two payments/month.

Article 6 of the tenancy agreement between the parties obligates the tenant to report income.

6. Tenant's Income

The Tenant promises to provide verification of income annually, when the household income changes and/or when requested by the Corporation or its agent, and in accordance with the Homeownership Entry Level Program Agreement.

The respondents were obligated to report the household income at the one year anniversary of the commencement of the tenancy agreement; June 2008. There is no evidence to indicate that they did so nor is there any evidence to indicate that the applicant requested the verification. In December, 2008 the respondents were sent a notice regarding the renewal of the tenancy agreement but the notice made no mention of the requirement to provide income information. Similarly, there is no evidence that the respondents reported their household income in 2009 or that the applicant demanded the information.

It was not until March, 2010 that the respondents provided income information for 2008 and 2009. At that time the 2008 rent was retroactively adjusted to \$1528 and the 2009 rent was retroactively adjusted to \$1582 which is the maximum rent for the premises.

In my opinion, the failure of the applicant to remind the respondents that they were in breach of their obligation to report income does not relieve the respondents of that obligation. The respondents' obligation to report the household income is clearly set out in the tenancy agreement. Although a prudent property manager would have undoubtedly called attention to their failure to report income in a more timely manner, it is not, in my opinion, their legal obligation to do so. I find no convincing evidence that the respondents were under duress to sign

the agreement.

I have reviewed the program guidelines pertaining to assessable income and non-assessable income and the income information provided by the respondents. It appears that all of the income used for the determination of the rent is considered to be assessable. In my opinion, the rent has been assessed in accordance with the program guidelines. I do note that no income information was provided for 2010 or 2011. The applicant has continued to assess the maximum rent of \$1582 for this period. In my opinion, the application of the maximum rent in the absence of any income information is reasonable.

I find the respondents in breach of their obligation to pay the lawful rent and find the rent arrears to be \$47,191.71.

THE REPAIR COSTS

A check-in inspection report was completed at the commencement of the tenancy agreement and signed by both parties. A check-out inspection report was completed at the end of the tenancy agreement. The reports notes that the “tenant was present at the start of the check-out but left.”

The applicant initially estimated the repair costs they considered to be necessary due to tenant damage and invoiced the respondents for \$4,135 on September 7, 2011. There is no evidence to suggest the invoice was paid. Since that date the applicant has awarded a contract for work on the unit, including the repairs of the alleged tenant damage. The contractor was required to itemize

labour and material costs specifically for the repairs of the alleged tenant damage. The total of the those costs is \$4555. The applicant sought relief in that amount.

Of the thirteen repair items claimed by the applicant, only four were disputed by the respondents. The respondents disputed the repairs to the storm door, stating that the door was damaged at the commencement of the tenancy agreement. The inspection reports indicate that the door was in good condition at the commencement of the tenancy agreement and damaged at the end of the agreement. I find the repair costs of \$55 to be justified and reasonable.

The respondents disputed the cost to strip the tile floor wax and apply new sealer and wax, stating that this was normal wear and tear. Tenants are required to leave premises in a state of ordinary cleanliness. The check-out report indicates that the floors were not clean but there is no evidence to suggest that restoring them to a clean condition would require the stripping of old floor wax or the application of sealer and new wax. In my opinion, there is insufficient evidence to support the applicant's claim for \$550. I shall allow only \$25 for cleaning.

The respondents disputed the replacement cost of the refrigerator and range, stating that both appliances were working normally. The check-out report indicates only that the range and the refrigerator were not clean. The applicant claimed that both appliances were so dirty that they had to be discarded. For the appliances to be beyond cleaning would suggest an extraordinary degree of neglect. In my opinion, there is not sufficient evidence to conclude that the appliances could not be restored to a reasonable state of cleanliness. The applicant's request for relief of \$1340 is

denied.

The respondents disputed the charges for adjusting and cleaning the cabinet doors and drawers, stating that this was normal wear and tear. The check out report indicates only that the cabinets were not clean. The report does not indicate any damage. I agree that the adjustments constitute normal wear and tear. Of the \$250 claimed by the applicant, I shall allow only \$25 for the cleaning,

I find the remainder of the repair costs to be reasonable and find the respondents liable for repairs totalling \$2465 calculated as follows:

Applicant's claim for repairs	\$4555
less appliance replacements	(1340)
less floor wax stripping/sealing	(525)
less cabinet adjustments	<u>(225)</u>
Total	\$2465

An order shall issue requiring the respondents to pay the applicant rent arrears of \$47,191.71 and repair costs of \$2465.

Hal Logsdon
Rental Officer