

IN THE MATTER between **YELLOWKNIFE HOUSING AUTHORITY**, Applicant,  
and **LAURA ADAMS**, 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 -

**LAURA ADAMS**

Respondent/Tenant

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to sections 84(3) and 41(4)(a) of the *Residential Tenancies Act*, the previous order (file #10-12502, filed on November 29, 2011) is rescinded and the respondent is ordered to pay the applicant rent arrears in the amount of three thousand three hundred seven dollars and sixty two cents (\$3307.62).
2. Pursuant to section 41(4)(c) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Apartment 302, 5114 53rd Street, Yellowknife, NT shall be terminated on May 10, 2012 and the respondent shall vacate the premises on that date, unless at least two thousand four hundred fifty seven dollars and forty six cents (\$2457.46) is paid to the applicant.

DATED at the City of Yellowknife, in the Northwest Territories this 12th day of April,  
2012.

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Hal Logsdon  
Rental Officer

IN THE MATTER between **YELLOWKNIFE HOUSING AUTHORITY**, Applicant,  
and **LAURA ADAMS**, 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-

**LAURA ADAMS**

Respondent/Tenant

**REASONS FOR DECISION**

<b><u>Date of the Hearing:</u></b>	<b>April 5, 2012</b>
<b><u>Place of the Hearing:</u></b>	<b>Yellowknife, NT via teleconference</b>
<b><u>Appearances at Hearing:</u></b>	<b>Ella Newhook, representing the applicant Laura Adams, respondent</b>
<b><u>Date of Decision:</u></b>	<b>April 12, 2012</b>

**REASONS FOR DECISION**

The applicant served a notice of termination on the respondent on February 14, 2012 to be effective on March 31, 2012 for non-payment of rent, failure to comply with a previous order and failure to report the household income. The respondent remains in possession of the premises.

The applicant sought an order evicting the respondent and requiring her to pay the balance of the rent owing plus compensation for use and occupation of the premises after March 31, 2012. The premises are subsidized public housing.

The applicant provided the termination notice and a statement of account in evidence. The statement indicated a balance owing of \$6224.62. The balance includes the full unsubsidized rent of \$1145 which was applied in December, 2011 and February, March and April, 2012. The applicant stated that the respondent had failed to provide any income information on which to calculate a subsidized rent for December, 2011 and March, 2012. The applicant stated that the respondent had produced only partial income information for the February, 2012 rent assessment. The applicant submitted that since the tenancy agreement was terminated on March 31, 2012 the respondent was not entitled to an April, 2012 subsidy as an overholding tenant.

The applicant stated that the parties had agreed in writing in November, 2011 that the rent arrears at that time would be paid in monthly installments of \$50 along with the full amount of the monthly rent until the rent arrears were paid in full. An order (file #10-12502, filed on November 29, 2011) required the respondent to pay the rent arrears in accordance with that agreement.

The respondent stated that she had been experiencing difficulties getting statements of income and deductions from her employer in a timely manner. She provided copies of statements for income received in November, 2011 and January and February, 2012 in evidence as well as a paid invoice for electricity. The respondent works at a remote mine site and is employed by a contractor located in Toronto, Ontario. She is paid semi-monthly ten days after the close of the pay period (on the 10th and 25th of every month). According to her employer, her pay is directly deposited to her bank account and the statements are mailed to the mine site.

The respondent did not dispute the amount owing. She stated that she had been trying to get her financial affairs in order and asked for another chance to pay the rent arrears in installments.

The month-to-month tenancy agreement between the parties commenced on August 19, 2010. It was not preceded by a term agreement between the parties. Section 49 of the *Residential Tenancies Act* sets out the provisions for automatic renewal of term tenancy agreements. Section 51(5) sets out provisions for a public housing landlord to terminate a month-to-month tenancy agreement by notice.

**49. (1) Where a tenancy agreement ends on a specific date, the landlord and tenant are deemed to renew the tenancy agreement on that date as a monthly tenancy with the same rights and obligations as existed under the former tenancy agreement, subject to any rent increase that complies with section 47.**

**(2) Subsection (1) does not apply**

- (a) where the landlord and tenant have entered into a new tenancy agreement;**
- (b) where the tenancy has been terminated in accordance with this Act;**
- or**

- (c) **to rental premises provided by an employer to an employee as a benefit of employment.**

**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.**

Although perhaps not intended to operate in the way it is written, section 51(5) only permits a notice of termination when a term agreement is renewed pursuant to section 49(1). This tenancy agreement was not renewed in this manner. Therefore, I find the notice of termination issued by the applicant not effective. This tenancy agreement has not been terminated in accordance with the Act.

In my opinion, it is unreasonable to apply the full unsubsidized rent amount for the months of February, March and April, 2012. The respondent did produce some income information to enable a rent based on income to be calculated for February, 2012. The applicant should have used that information even though it was considered incomplete. In my opinion a subsidy of \$627 should have been applied to the February, 2012 rent.

Tenants whose income fluctuates from month to month are required to report the household income every month and the rent is calculated based on the total gross income received in that month. The tenancy agreement obligates the tenant to pay the monthly rent in advance on the first day of the month. This process of rent assessment makes it impossible to calculate a rent based on income when the rent is due as the income has yet to be earned or paid. In my opinion, the application of the full unsubsidized rent for March and April is unreasonable. At the date of the

hearing, the respondent had not yet been paid for March, nor would she receive any statement regarding her earnings and deductions until after her pay date, April 10, 2012. A similar situation exists with the April rent assessment. There is not sufficient information to determine the rents for these months.

Ignoring the March and April 2012 rents, I find the rent arrears to be \$3307.62 calculated as follows:

Balance as per statement as at February 29/12	\$4240.62
Un-applied February/12 subsidy	(627.00)
November/11 subsidy	(227.00)
Electrical credit	<u>(79.00)</u>
Total	\$3307.62

I find the respondent in breach of the previous order to pay the monthly rent plus an additional \$50/month until the rent arrears are paid in full. However, given the method of rent assessment used by the applicant, it is clear that compliance with the payment agreement and order is made somewhat difficult. The respondent is expected to pay a monthly rent which cannot be calculated until well after it's due date. In order to comply with the agreement and order, the respondent must accurately estimate what she is likely to earn in that month, accurately estimate a rent that will be applied and pay that rent plus an additional \$50.

Notwithstanding the inherent difficulties created by the assessment process in use, the respondent has made no progress in reducing the rent arrears since the order was made. Ignoring the March and April, 2012 rents, the arrears have increased from \$1100.16 in November, 2011 to the

current balance of \$3307.62. Had she complied with her agreement to pay the arrears and the order the arrears would now be reduced to \$850.16

$$\$1100.16 - (\$50 \times 5) = \$850.16$$

In my opinion, the tenancy agreement should continue if the respondent now pays the rent arrears and the monthly rents she previously agreed to and was ordered to pay, namely \$2457.46.

$$\$3307.62 - \$850.16 = \$2457.46$$

The previous order shall be rescinded and the respondent ordered to pay rent arrears of \$3307.62.

The tenancy agreement shall be terminated on May 10, 2012 unless at least \$2457.46 is paid in full. An eviction order to be effective on May 11, 2012 shall be issued separately.

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Hal Logsdon  
Rental Officer