

IN THE MATTER between **IAN HENDERSON**, Landlord, and **JUEANNA MACLEOD AND GARY ADAMS AND MATT BOWIE AND JEAN BOWIE**,  
Tenants;

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:

**IAN HENDERSON**

Landlord

- and -

**JUEANNA MACLEOD AND GARY ADAMS AND MATT BOWIE AND JEAN BOWIE**

Tenants

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the tenants shall pay the landlord rent arrears in the amount of two hundred twenty three dollars and twelve cents (\$223.12).

DATED at the City of Yellowknife, in the Northwest Territories this 26th day of April,  
2012.

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Hal Logsdon  
Rental Officer

IN THE MATTER between **IAN HENDERSON**, Landlord, and **JUEANNA MACLEOD AND GARY ADAMS AND MATT BOWIE AND JEAN BOWIE**,  
Tenants.

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:

**IAN HENDERSON**

Landlord

-and-

**JUEANNA MACLEOD AND GARY ADAMS AND MATT BOWIE AND JEAN BOWIE**

Tenants

**REASONS FOR DECISION**

**Date of the Hearing:** April 11, 2011

**Place of the Hearing:** Yellowknife, NT

**Appearances at Hearing:** Ian Henderson, landlord  
Jean Bowie, tenant  
Gary Adams, tenant  
Jueanna MacLeod, tenant

**Date of Decision:** April 26, 2011

### **REASONS FOR DECISION**

Both of these applications relate to the same tenancy agreement and the same rental premises.

Both matters were heard at a common hearing.

In September, 2011, the landlord made arrangements with a contractor to level a mobile home and permitted the contractor's employees and their partners (Jueanna MacLeod et al) to live in the premises rent free during the construction period. However, the work was not done and in October, 2011 the landlord agreed to rent the premises to the four occupants if they would pay his costs. The parties agree that the premises were rented to the four tenants as joint tenants to the same tenancy agreement. The parties also agreed that the actual costs or components of the costs that were to be paid to the landlord were not initially set out or agreed upon. The tenancy agreement was not made in writing.

The landlord provided monthly statements to the tenants of his monthly costs which contained the following components:

- Interest on \$200,000 @ 5%
- Property taxes
- Property insurance
- Electricity
- Fuel
- Water/sewage/garbage

The landlord provided a summary of the monthly statements and payments made by the tenants in evidence. The statements indicate that the costs billed to the tenants varied each month

ranging from \$1334.03 to \$2,130.23. The total amount that has been charged is \$11,892.65. The statements indicate that the tenants have paid \$4280, leaving a balance owing of \$7612.65. The landlord sought relief in that amount and termination of the tenancy agreement and eviction.

Although the tenants acknowledged that they agreed to pay the landlord's costs, they stated that they understood that the costs included only the utilities. The tenants alleged that the landlord had failed to maintain the premises and sought an unspecified amount of compensation.

I inspected the premises on April 13, 2012. The premises are in state of uncompleted reconstruction. The floors are extremely uneven. Most walls and ceilings are devoid of finish, showing exposed studs, unprotected combustible foam insulation, exposed roof trusses and unprotected wiring. The electrical service panel is not secured to the wall. The service conduit is not attached to the panel, leaving the panel suspended from the service leads. I suspect the premises would be considered dangerous by both the fire and electrical authorities. The landlord stated that the tenants knew of the condition of the premises when they agreed to rent it.

Section 9 of the *Residential Tenancies Act* permits a tenancy agreement to be written, oral or implied. In my opinion there was a tenancy agreement formed between the parties in October, 2011. Although the terms of the agreement, particularly the rent, were perhaps vague and unclear, it was an oral tenancy agreement.

The definition of rent contained in the *Residential Tenancies Act*, includes any amount paid by a

tenant to a landlord for the right to occupy rental premises.

**"rent" includes the amount of any consideration paid or required to be paid by a tenant to a landlord or his or her agent for the right to occupy rental premises and for any services and facilities, privilege, accommodation or thing that the landlord provides for the tenant in respect of his or her occupancy of the rental premises, whether or not a separate charge is made for the services and facilities, privilege, accommodation or thing.**

Section 10(1) of the Act sets out that all tenancy agreements are deemed to include the provisions of the form of the tenancy agreement contained in the regulations.

**10. (1) A tenancy agreement is deemed to include the provisions of the form of a tenancy agreement set out in the regulations and, subject to subsection 12(1), any provision of a tenancy agreement that is inconsistent with the provisions of the form of tenancy agreement set out in the regulations has no effect.**

The tenancy agreement set out in the regulations contains the following form for rent:

**4. RENT**

**The Tenant agrees to pay the Landlord \$\_\_\_\_\_ on the \_\_\_\_ day of every \_\_\_\_\_, plus the following charges:**

**\$\_\_\_\_\_ for parking for each vehicle**

**\$\_\_\_\_\_ for \_\_\_\_\_**

**\$\_\_\_\_\_ for \_\_\_\_\_**

***If the Tenancy Agreement is made for a fixed term and the rental premises are not subsidized public housing check one of the following:***

☐ **The rent shall not be increased during the term of the Tenancy Agreement.**

☐ **The rent may be increased during the term of the Tenancy Agreement, 12 months after the last rental increase on these rental premises and with notice to the Tenant. (Section 47 of Act)**

**The date of the last rental increase for the rental premises was \_\_\_\_\_, 20\_\_.**

**[NOTE: A tenant who does not pay his or her rent on the date specified in the tenancy agreement may be liable to a penalty. (Section 41 of Act)]**

The regulations also set out what is included in the rent and what is not.

## **5. SERVICES AND FACILITIES**

**The following services and facilities are included in the rent:**

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**The following services and facilities are the responsibility of the Tenant:**

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Clearly, rent is not intended to be a variable charge. The Act permits a landlord to charge an amount for rent each month as well as separate charges for other services and facilities but there is no provision for these charges, which are all considered rent, to be variable. This is further reinforced by the provisions for rent increases set out in sections 47(1) and 47(2). In order to meet these provisions, one can not have a rent which increases more than once in a year or without notice.

- 47. (1) Notwithstanding a change in landlord, no landlord shall increase the rent in respect of a rental premises until 12 months have expired from**
- (a) the date the last increase in rent for the rental premises became effective; or**
  - (b) the date on which rent was first charged, where the rental premises have not been previously rented.**
- (2) The landlord shall give the tenant notice of the rent increase in writing at least three months before the date the rent increase is to be effective.**

The first month of this tenancy agreement, the landlord charged the tenants \$1334.03. The landlord extended an \$833 credit for work done on the premises and the tenants paid a total of \$700, satisfying the October, 2011 rent. In my opinion, \$1334.03 is the lawful monthly rent for the premises and is the maximum that the landlord was permitted to charge in the following months.

I calculate the total amount of rent to be \$8004.18 which represents a monthly rent of \$1334.03 for the months of October, November and December, 2011 and January, February and March, 2012. I have not included the rent for April as there is no evidence that the parties agreed on a due date for the monthly rent. I shall assume it is due before the end of each month. Deducting the amount paid by the tenants, \$4280, plus the credit of \$833 provided in October, 2011, results in an amount of rent owing of \$2891.18.

Section 30(1) and 30(3) of the *Residential Tenancies Act* set out the landlord's obligation to maintain the premises notwithstanding that the tenant had knowledge of the state of repair before entering into the tenancy agreement.

**30. (1) A landlord shall**

- (a) provide and maintain the rental premises, the residential complex and all services and facilities provided by the landlord, whether or not included in a written tenancy agreement, in a good state of repair and fit for habitation during the tenancy; and**
- (b) ensure that the rental premises, the residential complex and all services and facilities provided by the landlord comply with all health, safety and maintenance and occupancy standards required by law.**

**30. (3) Subsection (1) applies even where a tenant had knowledge of any state of non- repair before the tenant entered into the tenancy agreement.**

In *Nihjaa Properties Ltd. and John R. Rhynes* [Files #20-7158 and #20-7159, filed on December 5, 2002], the landlord rented an apartment to the tenants and proceeded to undertake a major renovation of the building while continuing to demand the full amount of the rent for most of the construction period. The condition of the building in that matter was quite similar. In that matter the rent was abated by one-third, representing the tenant's loss of full enjoyment of the premises

due to the landlord's failure to maintain the building in a reasonable state of repair during the lengthy construction period. In my opinion, the same abatement is reasonable in this matter.

Applying the compensation to the rent owing, I find an amount payable to the landlord of \$223.12 calculated as follows:

Rent (\$1334.03 x 6 months)	\$8004.18
Less 1/3 reduction as compensation	(2668.06)
Less rent paid to date of hearing	(4280.00)
Less credit for October, 2011	<u>(833.00)</u>
Amount due landlord	\$223.12

The Landlord's request for termination of the tenancy agreement is denied. I understand that two of the four tenants have moved out. In my opinion, the remaining tenants should have an opportunity to decide if they wish to continue the tenancy given the determination of the rent and the landlord should consider if he still wishes to rent the premises given it's condition.

An order shall issue requiring the tenants to pay the landlord rent arrears in the amount of \$223.12.

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Hal Logsdon  
Rental Officer