

IN THE MATTER between **FORT SMITH HOUSING AUTHORITY**, Applicant, and
STACY NADARY, 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 **FORT SMITH, NT.**

BETWEEN:

FORT SMITH HOUSING AUTHORITY

Applicant/Landlord

- and -

STACY NADARY

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant rent arrears in the amount of eighty dollars (\$80.00).

DATED at the City of Yellowknife, in the Northwest Territories this 19th day of March,
2013.

Hal Logsdon
Rental Officer

IN THE MATTER between **FORT SMITH HOUSING AUTHORITY**, Applicant, and
STACY NADARY, 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:

FORT SMITH HOUSING AUTHORITY

Applicant/Landlord

-and-

STACY NADARY

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: March 8, 2013

Place of the Hearing: Fort Smith, NT via teleconference

Appearances at Hearing: Kevin Mageean, representing the applicant
Stacy Nadary, respondent

Date of Decision: March 16, 2013

REASONS FOR DECISION

The tenancy agreement between the parties was made for a term ending on December 31, 2012.

The agreement names the respondent as the sole tenant and Fred Kaskamin, Brooklyn Nadary, and Shadeen Kaskamin as occupants on Schedule B.

The applicant alleged that the respondent had repeatedly disturbed other tenants in the residential complex and had damaged the entry door to the premises. The applicant served a notice to the respondent on October 30, 2012 advising the respondent that the parties she was having in the premises were unacceptable. That notice also alleged that the respondent was permitting unauthorized persons to occupy the premises. Another warning notice was served on November 22, 2012 outlining an alleged disturbance on November 15 which the RCMP attended. An RCMP report of that incident was provided in evidence.

The applicant alleged that the entry door to the premises had been damaged and the costs to repair the door were \$101.16. A work order, invoice and photograph of the door were provided in evidence.

On November 29, 2012 the respondent was served with a notice advising her that her fixed term tenancy agreement would not be renewed due to continued disturbances and RCMP reports. The notice stated,

"This letter will serve as your 30 day notice to vacate Unit #0001 - 45 St. Ann's Street,

Fort Smith, NT by January 3, 2013."

The respondent was served with another notice on December 14, 2012 regarding another alleged incident on December 13 which the RCMP attended. An RCMP report of that incident was provided in evidence.

On January 9, 2013 the applicant informed the respondent by letter that they would permit her to stay in the premises until January 15, 2013. The applicant stated that the respondent is still in possession and consider her to be overholding. The applicant sought an eviction order and an order for compensation of \$3170 for use and occupation from February 1, 2013 to present. The applicant also sought relief of \$101.16 for repairs to a damaged door. The premises are subsidized public housing.

The applicant testified that the RCMP had informed him that they had attended the premises a total of 18 times between October 19, 2012 and February 23, 2013. He stated that he had intended to produce an RCMP officer as witness but he was not available.

The respondent denied permitting any persons to occupy the premises other than those named on the tenancy agreement.

The respondent stated that she had summoned the police on November 15, 2012 because a person had been banging on her door. The police report issued is not inconsistent with that testimony and further states that John Kaskamin and Tracy Nadary were in the apartment and "all

parties were intoxicated".

The respondent stated that she had also summoned the police on December 13, 2012 because she was being assaulted by her spouse. This testimony is also not inconsistent with the police report which also stated that Dorothy Kaskamin and Fred Kaskamin Sr. were in the premises and all appeared intoxicated.

The respondent stated that the door was broken by her mother who came to the premises when she was not at home. She stated that her mother did not live with her and broke the door to gain entry to the premises.

Section 43 of the *Residential Tenancies Act* sets out the tenant's obligation to not create any disturbance.

43. (1) A tenant shall not disturb the landlord's or other tenants' possession or enjoyment of the rental premises or residential complex.

(2) A disturbance caused by a person permitted by a tenant to enter the residential complex or the rental premises of the tenant is deemed to be a disturbance caused by the tenant.

The premises consist of a unit in a duplex. None of the evidence provided suggests that the other occupant of the duplex has complained about the disturbances. It does not appear that the landlord has been disturbed in any way. I can not give the hearsay evidence concerning the other alleged visits by the RCMP much weight nor can I determine without the reports why the police presence at the premises was necessary. In my opinion, there is insufficient direct evidence to

conclude that the respondent has disturbed the landlord or other tenants.

In my opinion the notice of termination served on November 29, 2012 did not effectively terminate the tenancy agreement. Sections 51(3) and 55(3) of the *Residential Tenancies Act* set out the requirements for such a notice.

51.(3) Where a tenancy agreement for subsidized public housing specifies a date for termination of the agreement, the landlord may terminate the tenancy on the date specified in the agreement by giving the tenant a notice of termination not later than 30 days before that date.

55.(3) A notice of termination from a landlord to a tenant must
(a) be in writing;
(b) be signed by the landlord or an agent of the landlord;
(c) identify the rental premises to which the notice applies;
(d) state the date on which the tenancy is to terminate; and
(e) state the reason for the termination of the tenancy.

The only date provided in the notice of November 29, 2012 is January 3, 2013. This is not the last day of the term. The applicant continued to apply the subsidized rent for the month of January, 2013 implying that the term tenancy agreement was allowed to be automatically renewed as a monthly agreement on January 1, 2013. In my opinion, the tenancy agreement has not been terminated in accordance with the Act. The request for an eviction order is denied.

The applicant has applied the full unsubsidized rent for February and March, 2013 based on their position that the respondent is overholding and not eligible for a subsidy. In my opinion, the respondent is not overholding and a subsidized rent should apply. The respondent testified at the hearing that her income has not changed. Applying a subsidized rent for February and March,

2013 would result in rent arrears of \$80, calculated as follows:

February rent	\$80
March rent	80
Payment February 4/13	<u>(80)</u>
Total	\$80

Section 42 of the *Residential Tenancies Act* obligates a tenant to repair damages.

42. (1) A tenant shall repair damage to the rental premises and the residential complex caused by the wilful or negligent conduct of the tenant or persons who are permitted on the premises by the tenant.

There is no evidence to suggest that the door was broken by the respondent or that her mother was permitted on the premises. The request for relief for the damages is denied.

In my opinion the amount of rent owing does not warrant termination of the tenancy agreement.

An order shall issue requiring the respondent to pay the applicant rent arrears in the amount of \$80.

Hal Logsdon
Rental Officer