

IN THE MATTER between **AHMED EL SAIS**, Applicant, and **ABDALLA ELBUKAAI**, 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 **INUVIK, NT**.

BETWEEN:

AHMED EL SAIS

Applicant/Landlord

- and -

ABDALLA ELBUKAAI

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 three thousand six hundred dollars (\$3600.00).

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

Hal Logsdon
Rental Officer

IN THE MATTER between **AHMED EL SAIS**, Applicant, and **ABDALLA ELBUKAAI**, 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:

AHMED EL SAIS

Applicant/Landlord

-and-

ABDALLA ELBUKAAI

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: April 17, 2013

Place of the Hearing: Inuvik, NT via teleconference

Appearances at Hearing: Ahmed El Sais, applicant
Rhonda Schnee, representing the applicant
Sidney Bucina, interpreting for the applicant
Abdalla Elbukaai, respondent
Victor Ciboci, witness for the respondent

Date of Decision: April 18, 2013

REASONS FOR DECISION

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay the full amount of rent and sought an order requiring the respondent to pay the alleged rent arrears.

The premises consist of a lot in a mobile home park. The respondent purchased the mobile home from the applicant in September 2005 for \$8000 and entered into a verbal tenancy agreement to rent the lot for \$250/month. The applicant's representative stated that the rent was increased to \$300 in October, 2005. The applicant alleged that the respondent continued to pay \$250/month and ceased payments altogether in December, 2011. There was no accounting record of rent provided in evidence but the applicant's representative testified that the respondent currently owed \$6600 which she calculated as follows:

3 years @\$50/month	\$1800
11 months @\$300/month	3300
Dec./12 to April/13 @ \$300/month	<u>1500</u>
Total	\$6600

The respondent disputed the allegations. He stated that Mr. Ciboci, acting as the agent of the landlord had set the rent at \$250/month and had agreed in writing to not increase the rent until September 2020 for any reason. These were set out in a document entitled "AGREEMENT TO SELL" which was executed between Victor Ciboci as agent of the applicant and the respondent and notarized on September 5, 2005. The document also sets out that in consideration for the poor condition of the premises, no lot rent will be charged until September 1, 2006.

The respondent stated that he had always paid the agreed upon rent of \$250/month and had continued to provide cheques for that amount to the applicant after 2011 but the cheques were refused by the applicant and returned to him. The respondent provided copies of some of the uncashed cheques and a sealed envelope containing cheques sent to the applicant and returned unclaimed.

The applicant disputed Mr. Ciboci's authority to act on his behalf despite his statutory declaration sworn on July 22, 2004 that appoints Mr. Ciboci as his agent for any matters relating to the operation of the trailer court. The applicant acknowledged that he had refused to accept the respondent's rent payments.

In my opinion, the applicant gave the authority to Mr. Ciboci to act as the landlord of the mobile park but the promise made to freeze the respondent's rent for fourteen years is not enforceable. Section 47 of the *Residential Tenancies Act* sets out provisions that permit landlords to raise the rent with certain conditions. Those provisions can not be contradicted by any verbal or written promise. Section 39 of the Act permits other obligations of the landlord to be set out in a written tenancy agreement provided they are reasonable. In my opinion, even if one accepts the "AGREEMENT TO SELL" document as a written tenancy agreement, which I do not, the promise to prohibit any rent increase for fourteen years is both unreasonable and inconsistent with the Act and therefore of no effect.

Section 47 of the Act requires that a landlord give proper written notice to increase the rent. In

the case of a monthly tenancy agreement, the notice must be served three months before the effective date of the rent increase. The applicant's notice was dated July 3, 2009 and the effective date of the increase was October 1, 2009. This does not constitute a full three months. The provisions of section 47(3) make this increase effective November 1, 2009.

47.(3) An increase in rent by a landlord is not effective until three months have expired from the date of the notice of the rent increase.

I find that the lawful monthly rent for the premises is \$300 which became effective on November 1, 2009.

The applicant has produced no compelling evidence establishing the amount of rent owing. The applicant provided no accounting records whatsoever. At the hearing, the applicant agreed to three different balances owing. The applicant's representative stated that the rent increase became effective in 2005 when the notice, provided in evidence by the respondent clearly indicates 2009. The applicant's representative stated that no rent was paid after December, 2011 yet the respondent provided a receipt in evidence indicating a payment of \$250 in February 2012. In my opinion, the applicant has failed to establish the quantum of rent alleged to be owing.

However, given the evidence provided by both parties, it is reasonable to conclude that all rent payment cheques issued after March, 2012 were refused by the applicant. There is no evidence to suggest that the rent for these months was paid by any other method. Therefore that rent is outstanding. The cheques for April, May, June, July and August, 2012 were in the sealed envelope sent to the applicant and returned. Photocopies of uncashed cheques for September,

October and November, 2012 were provided by the respondent. I find that an outstanding amount of \$3600 is owed to the applicant, calculated as follows:

April, May, June, July and August, 2012 payments refused (cheques 0286,0287, 0288,0289 and 0290 returned uncashed) (5 months @ \$300/month)	\$1500
September, October, November, 2012 payments refused (cheques 0291,0292 & 0293 not cashed) (3 months @ \$300/month)	900
Unpaid rent December, 2012 - March, 2013 (4 months @ \$300)	<u>1200</u>
TOTAL	\$3600

I have not included the April, 2013 rent. The due date of rent is established in the tenancy agreement. In this case I can only conclude that the monthly rent is due on any day in that month.

In conclusion, I find that the lawful rent for the premises is \$300/month and the outstanding rent is \$3600. An order shall issue requiring the respondent to pay the applicant rent arrears of \$3600.

Hal Logsdon
Rental Officer