

IN THE MATTER between **Fort McPherson Housing Association**, Applicant, and
Clarence Robert, 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, **Adelle Guigon**, Deputy Rental Officer,
regarding a rental premises within **the Hamlet of Fort McPherson in the Northwest
Territories**.

BETWEEN:

FORT MCPHERSON HOUSING ASSOCIATION

Applicant/Landlord

- and -

CLARENCE ROBERT

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the Respondent shall pay to the Applicant rental arrears in the amount of \$133 (one hundred and thirty-three dollars).
2. Pursuant to sections 41(4)(c) and 54(4) of the *Residential Tenancies Act*, the tenancy agreement between the Applicant and the Respondent regarding Unit 0107 John Tetlich Drive in Fort McPherson, Northwest Territories, shall be terminated on June 15, 2013, and the Respondent shall vacate the premises on or before that day.

DATED at the City of Yellowknife, in the Northwest Territories this 31st day of May
2013.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Fort McPherson Housing Association**, Applicant, and
Clarence Robert, 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 **Adelle Guigon**, Deputy Rental Officer.

BETWEEN:

FORT MCPHERSON HOUSING ASSOCIATION

Applicant/Landlord

-and-

CLARENCE ROBERT

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	May 29, 2013
<u>Place of the Hearing:</u>	Fort McPherson, Northwest Territories, via Teleconference
<u>Appearances at Hearing:</u>	Shirley Wilson, representing the Applicant Elizabeth Firth, representing the Applicant
<u>Date of Decision:</u>	May 29, 2013

REASONS FOR DECISION

Application

The application package submitted by the Applicant regarding Unit 0107 John Tetlich Drive in Fort McPherson, Northwest Territories, was filed by the Rental Office on March 21, 2013. The Applicant served a copy of the filed application package on the Respondent by registered mail sent April 8, 2013, deemed served pursuant to section 71(5) of the *Residential Tenancies Act* (the Act) on April 15, 2013.

The application package indicated the Applicant was seeking the following remedies:

Payment of rental arrears in the amount of \$1,557.69 pursuant to section 41(4)(a) of the Act;

Payment of tenant damages in the amount of \$75.41 pursuant to section 42(3)(e) of the Act;

Termination of the tenancy for non-payment of rent pursuant to section 41(4)(c) of the Act;

Eviction pursuant to section 63(4)(a) of the Act; and

Compensation for use and occupancy post-termination pursuant to section 63(4)(b) of the Act.

The following exhibits were included in the application package:

Exhibit 1: Tenant Ledger for April 11, 2012, to February 28, 2013

Exhibit 2: Residential Tenancy Agreement Indeterminate Lease signed April 1, 2012

Exhibit 3: Demand Notice signed January 17, 2013

Exhibit 4: Termination Notice signed February 8, 2013

Exhibit 5: Invoice #13-179 and attached Work Order #1,152 initiated November 11, 2012

Hearing

A hearing was scheduled for May 29, 2013, for which notices were sent by registered mail to the parties on May 3, 2013. The Applicant appeared at hearing, represented by Ms. Shirley Wilson and Ms. Elizabeth Firth. The Respondent signed for their notice on May 8, 2013. The Respondent did not appear and was not represented at hearing. The hearing proceeded in the Respondent's absence.

Submissions

The Applicant submitted an amended request and an exhibit into the Rental Office on May 28, 2013, amending the amount of rental arrears requested to \$133 and withdrawing the request for payment of tenant damages.

Exhibit 6: Tenant Ledger for February 28, 2013, to May 10, 2013

At hearing, the Applicant acknowledged that adjustments had been made to the rent assessed against the Respondent based on new income information that had been provided and that some payments had been made against the new arrears since the application was originally made reducing the amount of rental arrears to \$133. Further, the Applicant acknowledged that the tenant damages originally applied for had also been paid. However, in light of the tenant's repeatedly late payment of rent and apparent inability to submit income statements in due time in order to properly assess the monthly rent, the Applicant still requested termination of the tenancy.

The Applicant further submitted that the damages for which Invoice 13-179 was generated consisted of an emergency call out due to smoke being noticed in the unit. An employee of the Applicant responded to the call, attended the unit, and woke up the tenant to check the unit. Smoke was found in the unit and the unit had to be aired out.

Determination

The Residential Tenancy Agreement Indeterminate Lease is for a month-to-month tenancy for subsidized housing Unit 0107 in Fort McPherson, Northwest Territories, effective April 1, 2012. The agreement indicates the monthly rent is due the first of each month for the term of the tenancy. This tenancy is not in dispute. I accept that the tenancy agreement is valid and current, and that it complies with the Act.

Invoice #13-179 and the attached Work Order #1,152 outline the reason for the call out on November 11, 2012, and the work required and performed. It was not disputed and I accept that it represents the actual work performed and the charges applied. I further accept the Applicant's submission as to the emergent nature of the call out. I accept that the smoke in the unit and/or the cause of the smoke in the unit represented a danger to the tenant and to the premises.

The Tenant Ledger is the landlord's accounting of transactions regarding the tenancy. In this case it includes charges for rent and damages, and payments made against the account. The Tenant Ledger is not in dispute and I accept that it accurately reflects payments made by the tenant to date. I find that the tenant has rental arrears in the amount of \$133 and has repeatedly failed to pay his rent on time. The amount of \$133 represents two months' rent. I find that termination of the tenancy agreement is justified pursuant to section 41(4)(c) of the Act.

The Termination Notice gave 13 days notice to the tenant of termination of the tenancy and required the tenant to vacate the premises on February 22, 2013, for repeatedly late payment of rent pursuant to section 54(1)(g) of the Act, which states:

54. (1) Subject to subsection (2), a landlord may, at any time, give a tenant a notice of termination of at least 10 days, where
- ...
- (g) the tenant has repeatedly failed to pay the full amount of the rent or to pay the rent on the dates specified in the tenancy agreement.

Section 54(4) of the Act states:

54. (4) A landlord who has given a notice of termination under subsection (1) shall make an application to a rental officer for an order to terminate the tenancy agreement and a rental officer may issue an order terminating the tenancy on the date specified in the order and ordering the tenant to vacate the premises on that date.

I accept that the Termination Notice given by the landlord complies with the requirements of section 54(1)(g) of the Act. I further accept that the landlord has complied with section 54(4) of the Act with the making of the application under consideration here and find that termination of the tenancy is justified.

The Applicant's request for eviction and compensation for use and occupation post-termination is pursuant to section 63(1) of the Act, which states:

63. (1) A landlord may make an application to a rental officer for an order evicting a tenant from rental premises, except rental premises on land in respect of which the tenant has an interest in land under the *Land Titles Act*.

Section 63(4) of the Act authorizes the Rental Officer to make an order evicting the tenant, and requiring the tenant to pay compensation for use and occupation of the rental premises for each day he remains in the premises after the termination date, where a tenancy has been terminated either by the Rental Officer or in accordance with the Act and the Rental Officer determines that an eviction is justified.

I accept the Applicant's submissions evidencing the repeatedly late payment of rent and continuous carrying of a balance of rent owing by the tenant. I further accept that the nature of the damages submitted constitute negligence on the part of the tenant for the condition of the premises. I find that under the circumstances an eviction order is justified.

Order

An order will issue requiring the Respondent to pay rental arrears in the amount of \$133 and terminating his tenancy effective June 15, 2013.

An order for eviction and compensation for use and occupation will follow under separate cover.

Adelle Guigon
Deputy Rental Officer