File #10-13552

IN THE MATTER between **MARINA TROAKE AND TREVOR TROAKE**, Applicants, and **ROSIE BROWNING AND ALEX WELLIN**, Respondents;

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 **HAY RIVER, NT.**

BETWEEN:

MARINA TROAKE AND TREVOR TROAKE

Applicants/Landlords

- and -

ROSIE BROWNING AND ALEX WELLIN

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondents shall pay the applicant rent arrears in the amount of one thousand six hundred dollars ($1600.00).
2. Pursuant to section 41(4)(c) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as 48 McBryan Drive, Hay River, NT shall be terminated on August 9, 2013 and the respondents shall vacate the premises on that date.

DATED at the City of Yellowknife, in the Northwest Territories this 26th day of July, 2013.

Hal Logsdon
Rental Officer

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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:

MARINA TROAKE AND TREVOR TROAKE

Applicants/Landlords

-and-

ROSIE BROWNING AND ALEX WELLIN

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing:	**July 25, 2013**
Place of the Hearing:	**Yellowknife, NT via teleconference**
Appearances at Hearing:	**Marina Troake, applicant** **Trevor Troake, applicant** **Rock Matte, representing the respondents**
Date of Decision:	**July 26, 2013**

REASONS FOR DECISION

The applicants alleged that the respondents had breached the tenancy agreement by failing to pay rent, failing to repair damages to the premises, failing to pay utilities, failing to maintain the premises in a clean condition and permitting overcrowding. The applicants also alleged that the respondents had breached a previous order. The applicants sought an order requiring the respondents to pay the alleged rent arrears and terminating the tenancy agreement and evicting the respondents.

The tenancy agreement between the parties was made for a term which ended on June 30, 2013. The premises are the only residence of the applicants in the Northwest Territories which enables them to give notice to terminate the tenancy in accordance with sections 51(2) and 52(2) of the *Residential Tenancies Act*. Although the applicants made it known to the respondents, verbally and through emails, that they did not intend to renew the tenancy agreement, none of the written notices conformed with section 55(3) of the Act and the tenancy agreement reverted to a monthly agreement on July 1, 2013 in accordance with section 49 of the Act.

The tenancy agreement obligates the tenants to pay the monthly rent on the 21st of every month. The monthly rent is $1500. A previous order (file #10-13143, filed on January 10, 2013) required the respondents to pay rent arrears of $2000 and the January rent of $1500 in accordance with the following schedule:

$500 payable on January 11, 2013

$2000 payable on January 21, 2013
$500 payable on January 25, 2013
$500 payable on February 6, 2013

That order also required the respondents to pay the monthly rent on time in the future.

The applicants stated that the current rent owing consisted of the July, 2013 rent ($1500) plus an unpaid balance from February, 2013 ($100), totalling $1600.

The respondents' counsel disputed the amount of rent owing stating that the respondents believed they were current with rent payments. He noted that it was difficult to follow the applicants' evidence which consisted of email confirmations of payments and handwritten notes rather than a traditional leger or statement of account.

The respondents' counsel also stated that the respondents did not receive the previous order and may not have understood the dates that the payments should have been made to satisfy the order.

While I agree that the documentation of the rent account would have been considerably more understandable if a ledger had been presented, there is nevertheless clear evidence of payments made in the form of email confirmations which were certainly known to the respondents. It must have been clear to the respondents what the monthly rent was and their indebtedness in January, 2013 when the arrears were determined at the hearing.

Starting from the balance found owing at the previous hearing, the rent which has been charged is $12,500 determined as follows:

Balance as per previous order	$2000
January - July @ $1500 x 7 months	10,500
Rent charged	$12,500

The applicant testified that the following payments had been received since the previous order was issued and provided email confirmations of payments received.

January 11, 2013	$500
January 20, 2013	800
February 6, 2013	800
February 7, 2013	1500
February credit for snow removal	100
February 22, 2013	1200
March 24, 2013	1500
April 20, 2013	1500
May 19, 2013	1500
July 19, 2013	1500
Total payments	$10,900

The resultant balance is, as the applicants testified, $1600. Clearly, the respondents also failed to meet the terms of payment set out in the previous order or to pay all future rent on time.

Ms Browning was at the January, 2013 hearing. The decision was made at that hearing as a result of an agreement between the parties. The order was sent to the respondents by registered mail. The respondents failed to pick up the order and it was returned to the rental office unclaimed. Given the deeming provision contained in section 71(5) of the Act but more particularly the fact the Ms Browning was made aware of the payment amounts and dates at the January hearing, I cannot accept that she was unaware of the requirements of the order.

The respondents' counsel stated that the applicants had promised to replace the furnace when they raised the rent to $1500. He submitted that the furnace was quite old and inefficient. An email from the respondents in April, 2013 complained that the furnace was not working properly and asked for a reduction in the rent. The applicant stated that the furnace was serviced, a thermocouple replaced and no other faults found. I find no evidence to suggest that the applicants failed to properly maintain the heating system or carry out any repairs in a timely manner. Any failure to replace the furnace with a newer, more efficient model would not relieve the tenants of their obligation to pay rent. In any case I find no evidence of any explicit promise to replace the appliance and it has no bearing on the rent increase.

The tenancy agreement between the parties contains the following paragraph:

> "Date of occupancy shall be: July 1, 2012 - June 30, 2013 with option to buy the house in June 2013. The tenancy may continue on a month to month basis after this date with one month notice to vacate to be given by owner or tenants."

The respondents' counsel submitted that the respondents had been denied an opportunity to exercise this option and suggested that remedy of termination be estopped to provide the respondents an opportunity to formulate an offer to purchase. The applicants stated that they would welcome an offer to purchase from the respondents or any other party but had not received any offer from the respondents in June or at any other time.

If the "option to buy" provision in the tenancy agreement constitutes any promise at all, it is simply that an offer to purchase the property would be considered by the applicants if made in June, 2013. It would appear that the respondents were waiting for the applicants to initiate the

process or provide them with appraisal or other information. I see no reason to not consider the remedies requested by the applicants to provide additional time for the respondents to prepare an offer.

With the exception of the alleged tenant damage and the failure to pay for utilities, the other grounds for termination named in the application have only hearsay evidence to support the allegations and I shall not consider any of them.

The damaged header in the basement stairwell is documented by photographic evidence. If it was damaged by the respondents, a matter on which I make no determination, then they are obligated to make the necessary repairs. There is no evidence to support any other allegations of significant damage. In my opinion this is not a major factor in the determination of whether the tenancy agreement should be terminated and is best left to the end of the tenancy and the resolution of the security deposit.

Prior to the hearing I contacted the utility suppliers and learned that the water and electricity accounts were current but the fuel account was in arrears in the amount of $852.79. This information was provided to the parties at the hearing.

I note that the respondents have served notice of termination of this tenancy agreement pursuant to section 52(2) of the Act. The termination date is September 30, 2013. The applicants submit that the failure of the respondents to pay the rent arrears in accordance with the previous order

and their subsequent failure to pay rent on the days it was due are sufficient to justify termination of the tenancy agreement before September 30, 2013. They are anxious to sell the property and fear that if they are unable to provide a buyer with vacant possession before September 30, the likelihood of finding a buyer will be significantly diminished. I also note that the applicants could have easily terminated this tenancy by notice on June 30, 2013 had they complied with the notice requirements set out in sections 51(2) and 55(3) of the Act. Therefore, in my opinion, the decision regarding termination should be made with regard to the breach of the order and tenancy agreement rather than the applicants' convenience in marketing the house for sale.

The previous order required that the rent arrears and the January, 2013 rent be paid in four installments and be fully paid by February 6, 2013. Only one of the ordered payments was paid on time and the order was not fully satisfied until February 7, 2013. In the six months to follow, the respondents failed to pay the rent on time, leaving the following balances on the due dates:

February 21, 2013	$1300
March 21	$1600
April 21	$100
May 21	$100
June 21	$1600
July 21	$1600

In my opinion, the repeated breaches of the respondents to pay the monthly rent on time and to pay the rent arrears and the January, 2013 rent in accordance with the previous order are sufficient to warrant the termination of the tenancy agreement by order.

An order shall issue requiring the respondents to pay the applicants rent arrears in the amount of

$1600 and terminating the tenancy agreement on August 9, 2013. An eviction order to be effective on August 10, 2013 shall be issued separately.

Hal Logsdon
Rental Officer