

IN THE MATTER between **TUKTOYAKTUK HOUSING ASSOCIATION**,
Applicant, and **ANNA COCKNEY**, 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 **TUKTOYAKTUK, NT**.

BETWEEN:

TUKTOYAKTUK HOUSING ASSOCIATION

Applicant/Landlord

- and -

ANNA COCKNEY

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 41(4)(a) and 83(2) of the *Residential Tenancies Act*, the respondent shall pay the applicant rent arrears in the amount of three thousand four hundred eighty one dollars and ninety five cents (\$3481.95) in monthly installments of fifty dollars (\$50.00) payable on the last day every month until the rent arrears are paid in full. The first payment shall be due on August 31, 2013.
2. Pursuant to section 41(4)(b) of the *Residential Tenancies Act*, the respondent shall pay future rent on time.

DATED at the City of Yellowknife, in the Northwest Territories this 1st day of August,
2013.

Hal Logsdon
Rental Officer

IN THE MATTER between **TUKTOYAKTUK HOUSING ASSOCIATION**,
Applicant, and **ANNA COCKNEY**, 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:

TUKTOYAKTUK HOUSING ASSOCIATION

Applicant/Landlord

-and-

ANNA COCKNEY

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: July 18, 2013

Place of the Hearing: Tuktoyaktuk, NT via teleconference

Appearances at Hearing: Lucille Pokiak, representing the applicant
Anna Cockney, respondent
Mary Cockney, representing the respondent

Date of Decision: August 1, 2013

REASONS FOR DECISION

The applicant alleged that the respondent had breached the tenancy agreement by failing to pay rent and sought an order requiring the respondent to pay the alleged rent arrears and to pay the monthly rent on time in the future. The premises are subsidized public housing.

The applicant provided a copy of the tenant ledger in evidence which indicated a balance of rent owing in the amount of \$21,892.96.

The respondent's representative disputed the balance owing and provided a previous order and a number of notices demanding rent in evidence. The respondent noted that the order (file #20-4624, filed on April 2, 1997) required the respondent to pay the applicant rent arrears of \$7453.60 in monthly installments of \$200 and to pay the monthly rent on time in the future. The respondent's representative submitted that the amount currently owing should be the amount ordered in 1997 plus rent assessed since that date less rent paid since that date.

In the 1997 order the rental officer notes in Reasons for Decision,

"The applicant provided copies of the tenant ledger in evidence which indicated a balance of rent in the amount of \$26,576.61 and tenant damage charges of \$172.05. The applicant testified that they sought only \$8165.60 of the balance of rent shown on the ledger."

The tenant ledger indicated a rent balance of \$26,576.61 as at March 11, 1997. There is no

explanation as to why the landlord sought a lesser amount of relief than the balance indicated on the tenant ledger and the applicant's representative, who was also present at the 1997 hearing, could not recall why the applicant sought the lesser amount. There are no adjustments on the ledger reducing the rent balance owing to \$8165.60. At the 1997 hearing, the tenant disputed several charges for tenant damages and the rental officer reduced the relief for rent arrears from \$8165.60 to \$7453.60. That order has been fully satisfied.

Since the previous order was issued, the applicant has made an adjustment to the rent ledger reflecting the rental officer's decision to not accept all of the tenant damage costs. However the ledger has not been adjusted to reflect the reduced balance of rent that the applicant sought in 1997. The numerous demand notices provided by the respondent in evidence, correspond to balances on the tenant rent ledger and do not reflect the lower figure sought by the applicant in 1997.

In order to issue a monetary order, a rental officer must be satisfied, on the balance of probabilities, that the evidence supports the quantum of relief that the applicant seeks. In this unusual case, the applicant previously sought a lower quantum of relief than the evidence appears to support. In my opinion, the previous order is not a determination that \$7453.60 is the lawful rent owing but a judgement that relief of \$7453.60 is justified by the evidence. It appears now that the applicant seeks the relief that they declined in 1997 plus the rent arrears which have accrued since the last order was issued.

Section 68(1) of the *Residential Tenancies Act* sets out a time limitation on applications.

68. (1) An application by a landlord or a tenant to a rental officer must be made within six months after the breach of an obligation under this Act or the tenancy agreement or the situation referred to in the application arose.

In most cases, this tribunal has considered non-payment of rent to be an ongoing breach of the tenancy agreement and has not applied the time limitation pursuant to section 68(1) as long as the rent arrears apply to the same tenancy agreement. However, in this matter I believe it is appropriate to consider when these rent arrears accrued and consider the time limitation in section 68(1). The applicant declined to seek rent arrears of \$18,411.01 in 1997.

Balance as per ledger on March 11/97	\$26,576.61
Less amount sought	<u>(8,165.60)</u>
Amount declined	\$18,411.01

The amount declined by the applicant accrued prior to March 11, 1997. The applicant now seeks relief for these arrears which are more than more than sixteen years old. They clearly had the opportunity to do so in 1997. So much time has passed in the interim that even the parties who were at the hearing in 1997 do not know the reasons why these arrears were not pursued then.

In my opinion, the arrears which accrued prior to March 11, 1997 should not be considered as they exceed the time limitation in section 68(1). In my opinion the extension of the time limitation would not be reasonable given the time that has passed since the arrears have accrued and the lack of any information as to why the applicant failed to consider them in 1997.

I find the arrears which have accrued after March 11, 1997 to be \$3481.95, calculated as follows:

Current balance as per ledger	\$21,892.96
Less amount declined in 1997	<u>(18,411.01)</u>
Total	\$3481.95

or alternatively:

Amount sought in March, 1997	\$8165.60
Rent assessments less payments since	<u>(4683.65)</u>
Total	\$3481.95

The parties agreed that the arrears could be paid in monthly installments of \$50.

An order shall issue requiring the respondent to pay the applicant rent arrears in the amount of \$3481.95 in monthly installments of \$50, payable on the last day of every month until the arrears are paid in full. The first payment shall be due on August 31, 2013. The order shall also require the respondent to pay the monthly rent on time.

Hal Logsdon
Rental Officer