

IN THE MATTER between **FORT SMITH HOUSING AUTHORITY**, Applicant, and  
**JANICE WANIANDY**, 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 -

**JANICE WANIANDY**

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 one hundred twenty dollars (\$120.00).
2. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondent shall pay the applicant costs of a key replacement in the amount of ten dollars (\$10.00).
3. Pursuant to sections 41(4)(c) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Unit 009, 61 St. Ann's Street, Fort Smith, NT shall be terminated on October 31, 2013 and the respondent shall vacate the premises on that date unless the security deposit, rent arrears and key replacement

charges totalling three hundred eighty dollars (\$380.00) are paid in full.

DATED at the City of Yellowknife, in the Northwest Territories this 15th day of October,  
2013.

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Hal Logsdon  
Rental Officer

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

**FORT SMITH HOUSING AUTHORITY**

Applicant/Landlord

-and-

**JANICE WANIANDY**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:**                      **October 9, 2013**

**Place of the Hearing:**                      **Fort Smith, NT**

**Appearances at Hearing:**                      **Kevin Mageean, representing the applicant**  
   **Kim Olsen, representing the applicant**  
   **Janice Waniandy, respondent**

**Date of Decision:**                              **October 15, 2013**

### **REASONS FOR DECISION**

The parties entered into a tenancy agreement on March 6, 2013 for a term ending on June 30, 2013. The premises are subsidized public housing. On May 30, 2013 the applicant served a notice of termination on the respondent by registered mail terminating the tenancy agreement on June 30, 2013 due to damages to the premises and non payment of rent. Photographs of the alleged damages were provided in evidence along with an estimate of repair costs totalling \$1710. The applicant sought an order evicting the respondent.

The respondent appealed to the Board of Directors who upheld the decision to terminate the tenancy agreement and informed the respondent by letter on June 27, 2013. Although there was no new written tenancy agreement executed by the parties, the June 27 letter implies that a new tenancy agreement ending July 31, 2013 has been formed. The respondent was charged a rent based on her household income in July but has been charged the full unsubsidized rent for each month since the applicant considers her to be an overholding tenant.

The respondent appealed the termination decision to the District Office who upheld the decision and notified the respondent by letter on July 23, 2013.

The respondent testified that she was sent to Yellowknife for medical attention and was absent from the community from April 17 to April 19, 2013. She stated that she left her two children in the care of others, and locked the premises. She stated that neither of the children had keys to the

premises nor did the caregivers. She testified that when she returned, she discovered the damage to the premises. She testified that her thirteen year old son admitted that he had gained entry to the premises with some friends and had created the damage. The respondent speculated that her son had gained entry through a window. She stated that she intended to repair the damages and had already purchased some materials. She did not dispute the rent arrears which were based on her income but stated that she did not have the income to pay the unsubsidized rent of \$1625 which had been charged since August, 2013.

Section 51(3) of the *Residential Tenancies Act* sets out the requirements for a landlord to terminate a term agreement for subsidized public housing by notice. Sections 71(5) and 71(6) set out service by registered mail.

**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.**

**71(5) A notice or other document served or given by registered mail is deemed to have been served on the seventh day after mailing.**

**71(6) Notwithstanding subsection (5), a notice or other document given by registered mail under subsection 11(1), 15(5), 17.1(5), 18(3), 18(7) or 18(9) is deemed to have been given on the day that it was mailed.**

Clearly the Act intends that a notice pursuant to section 51 served by registered mail take into consideration the additional seven days. There being no evidence that the respondent received the notice on or before May 30, 2013 the notice must be considered to be of no effect.

The June 27 notice and the assessment of a rent based on income seems to imply that a new

tenancy agreement ending July 31, 2013 has been formed and gives 30 days notice to terminate that agreement. In my opinion, in the absence of a written tenancy agreement, the term tenancy agreement was automatically renewed on a month-to-month basis in accordance with section 49(1).

**49(1) Where a tenancy agreement ends on a specific date, the landlord and tenant are deemed to renew the tenancy agreement on that date as a monthly tenancy with the same rights and obligations as existed under the former tenancy agreement, subject to any rent increase that complies with section 47.**

Although there is no indication how the June 27 notice was served, it relies solely on the breach of section 42 as the grounds for the termination. Unlike the earlier May 30 notice, it does not mention non-payment of rent.

Section 42 of the *Residential Tenancies Act* sets out the tenant's obligation 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.**

Although the respondent's son was normally permitted on the premises, the respondent took specific measures to prevent him from entering the premises while she was away. He did not enter with her permission. He entered despite her efforts to prevent his entry. In my opinion, the respondent's conduct was neither wilful nor negligent in causing the damages. The damages were caused by vandalism. It does not constitute grounds for termination of the tenancy agreement. I do not find the eviction is justified on the grounds that the respondent damaged the premises. The request for an eviction order and compensation for use and occupation are denied.

However, I do find the respondent in breach of her obligation to pay rent, her obligation to pay the key replacement cost and her obligation to pay the balance of the required security deposit. I find the rent arrears to be \$120, the key replacement costs of \$10 to be reasonable and the outstanding balance of the required security deposit to be \$250.

Since the applicant has charged the full unsubsidized rent for August, September and October, 2013 and there was no income information available at the hearing I am unable to determine rents for those months. The respondent should report her household income and the rents for these months should be adjusted accordingly.

In my opinion there are sufficient grounds to terminate the tenancy agreement unless the rent arrears, outstanding security deposit and the key charges totalling \$380 are promptly paid.

An order shall issue requiring the respondent to pay the applicant rent arrears of \$120 and key charges of \$10 and terminating the tenancy agreement on October 31, 2013 unless those amounts plus the outstanding security deposit are paid in full.

I calculate that amount to be \$380 as follows:

Rent arrears	\$120
Key charges	10
O/S security deposit	<u>250</u>
Total	\$380

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Hal Logsdon  
Rental Officer