

IN THE MATTER between **FORT SMITH HOUSING AUTHORITY**, Applicant, and
PENNY BOURKE AND TEANNA BOURKE, 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 **FORT SMITH, NT**.

BETWEEN:

FORT SMITH HOUSING AUTHORITY

Applicant/Landlord

- and -

PENNY BOURKE AND TEANNA BOURKE

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(b) of the *Residential Tenancies Act*, the respondents shall pay future rent on time.
2. Pursuant to sections 14.2(2)(d) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Unit 0017A, 81 St. Ann's Street, Fort Smith, NT shall be terminated on October 31, 2013 and the respondents shall vacate the premises on that date, unless the balance of the security deposit in the amount of five hundred dollars (\$500.00) is paid in full.

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

Hal Logsdon
Rental Officer

IN THE MATTER between **FORT SMITH HOUSING AUTHORITY**, Applicant, and
PENNY BOURKE AND TEANNA BOURKE, Respondents.

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-

PENNY BOURKE AND TEANNA BOURKE

Respondents/Tenants

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
 Penny Bourke, respondent
 Teanna Bourke, respondent

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

REASONS FOR DECISION

The applicant served a notice of termination by registered mail dated May 3, 2013 on the respondents terminating the monthly tenancy agreement on June 30, 2013 on the grounds that the respondents failed to report the household income and non-payment of rent. The premises are subsidized public housing.

The applicant also alleged that the respondents had failed to pay the full amount of the security deposit and stated that there was a balance of \$500 still outstanding. There was no statement of the security deposit nor was there an executed copy of the monthly tenancy agreement indicating the amount of the required security deposit.

The applicant stated that the respondents appealed the decision to the Board of Directors but failed to appear at the hearing and the decision was upheld. A term tenancy agreement commencing July 1, 2013 and ending on July 31, 2013 was provided by the applicant in evidence but was not signed by either party and is therefore null and void. The applicant sought an eviction order.

The applicant provided a statement in evidence which indicated a balance of rent owing in the amount of \$4795. The full unsubsidized rent of \$1625 has been charged in August, September and October based on the applicant's understanding that the respondents are overholding.

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

51(5) Where a tenancy agreement for subsidized public housing is renewed as a monthly tenancy under subsection 49(1), a landlord may terminate the tenancy on the last day of a period of the tenancy, by giving the tenant a notice of termination not later than 30 days before that day.

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 is no evidence that the respondent received the notice on or before May 30, 2013. In addition, it would appear that the monthly tenancy agreement to which the May 30 notice applies was not preceded by a term agreement and renewed pursuant to section 49(1). Therefore, I find the May 30, 2013 notice to be of no effect and find that the monthly tenancy was not terminated and continues.

The respondents did not dispute that they owed the remaining balance of the security deposit in the amount of \$500 nor did they dispute that they had not paid the monthly rent or reported the household income on time.

The statement indicates that there is currently a rent credit of \$80. Because the tenancy agreement was not terminated in accordance with the Act, the respondents are not overholding and the full

unsubsidized rent is not reasonable. However, there was no income information available at the hearing to enable the calculation of a rent based on the household income so I am unable to determine the rents for August, September or October. The respondents should report their income in accordance with the tenancy agreement and the landlord should reassess those rents accordingly.

In my opinion, an eviction order is not justified. Ignoring the full unsubsidized rent, the account has a credit balance. The eviction order is denied. However, I find the respondents in breach of their obligation to provide the balance of the required security deposit. I find the balance owing to be \$500. In my opinion there are sufficient grounds to terminate the tenancy agreement if the balance of the security deposit is not promptly paid.

An order shall issue requiring the respondents to pay the monthly rent on time in the future and terminating the tenancy agreement on October 31, 2013 unless the balance of the security deposit in the amount of \$500 is paid in full.

Hal Logsdon
Rental Officer