

IN THE MATTER between **BEHCHOKO KO GHA K'AODEE**, Applicant, and  
**RAYMOND MICHEL AND SHANNON WHANE**, 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 **BEHCHOKO, NT**.

BETWEEN:

**BEHCHOKO KO GHA K'AODEE**

Applicant/Landlord

- and -

**RAYMOND MICHEL AND SHANNON WHANE**

Respondents/Tenants

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 14.2(2)(d) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Unit #358, Behchoko, NT shall be terminated on January 31, 2014 and the respondents shall vacate the premises on that date.

DATED at the City of Yellowknife, in the Northwest Territories this 18th day of  
December, 2013.

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Hal Logsdon  
Rental Officer

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**RAYMOND MICHEL AND SHANNON WHANE**, 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:

**BEHCHOKO KO GHA K'AODEE**

Applicant/Landlord

-and-

**RAYMOND MICHEL AND SHANNON WHANE**

Respondents/Tenants

**REASONS FOR DECISION**

**Date of the Hearing:** December 3, 2013

**Place of the Hearing:** Behchoko, NT

**Appearances at Hearing:** Michael Keohane, representing the applicant

**Date of Decision:** December 17, 2013

### **REASONS FOR DECISION**

The respondents were personally served with Notices of Attendance but failed to appear at the hearing. The hearing was held in their absence.

The applicant testified that the respondents were former tenants of unit #4, six-plex. That tenancy agreement was terminated by order in 2005 and the respondents ordered to pay rent arrears of \$18,979 (file #10-8559 filed on September 8, 2005).

After vacating unit #4, six-plex, the respondents moved in with Mr. Michel's mother in unit #358. Mr. Michel's mother died in October, 2012 leaving a balance of rent arrears of \$18,880.32. Her security deposit was retained by the applicant and applied against the rent arrears.

The applicant refused to acknowledge that the respondents were tenants but permitted them to remain in #358 until January 31, 2013. No rent was charged on the understanding that the respondents would make consistent affordable monthly payments toward satisfying order #10-8559 and arrange to pay the February, 2013 rent of \$75 and utility and security deposits for #358 on or before January 31, 2013. The applicant stated that “consistent affordable monthly payments” meant about \$50/month. There was no evidence of any written agreement concerning this arrangement. Presumably, the landlord’s refusal to sign a tenancy agreement or charge any rent reflected their reluctance to formalize any landlord/tenant relationship.

The applicant alleged that the respondents had not made the required payments by January 31, 2013. A notice dated June 27, 2013 stated that the respondents had not complied with the requirements necessary to enter into a tenancy agreement and sought vacant possession of the premises on July 12, 2013 unless those requirements were met.

The respondents remain in possession of the premises.

In my opinion, Mr. Michel was entitled to possession of the premises after his mother's death as an heir to her estate. Section 1 of the *Residential Tenancies Act* sets out the definition of tenant.

**"tenant" means a person who pays rent in return for the right to occupy rental premises and his or her heirs, assigns and personal representatives.**

Ms Michel was a widow and died intestate. Therefore, Mr. Michel became the tenant as heir to her estate. He was responsible for the obligations set out in the tenancy agreement between the applicant and Ms Michel.

The abatement of rent was initially to continue to January 31, 2013 when the respondents were expected to make the following agreed upon payments to the applicant:

50% of the required security deposit	\$827
February, 2013 rent	<u>75</u>
Total	\$902

In addition, the respondents were required to pay a deposit of \$100 to the supplier of electricity in order to establish an account.

The applicant submits that the \$902 payment remains outstanding. Although the applicant testified at the hearing that nothing had been paid by the respondents, the tenant ledger, received after the hearing, indicates that a total of \$595 has been paid by the respondents since Ms Michel's death in October 2012. All of it has been allocated to the rent arrears for the previous unit. In my opinion, this allocation is reasonable as the "consistent affordable monthly payments" to satisfy the previous order were to be \$50/month. However, the \$595 paid falls short of satisfying the repayment plan for the previous premises allegedly agreed to in October, 2012 and nothing has been received for the security deposit. Having been tenants since October 13, 2012 the full security deposit of \$1654 is now overdue.

I find that a tenancy agreement between the applicant and Mr. Michel exists. I find no rent arrears as the applicant has, to date, waived the requirement to pay rent. However, I find the respondents in breach of their obligation to provide a security deposit. Despite requests to provide the deposit, the respondents have failed to provide any amount of the deposit since October, 2012. In my opinion, there are sufficient grounds to terminate the tenancy agreement and evict the respondents.

An order shall issue terminating the tenancy agreement on January 31, 2014. An eviction order to be effective on February 1, 2014 shall be issued separately.

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Hal Logsdon  
Rental Officer