

IN THE MATTER between **Tuktoyaktuk Housing Association**, Applicant, and **David Noksana Jr.**, 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, **Adelle Guigon**, Deputy Rental Officer, regarding a rental premises within **the hamlet of Tuktoyaktuk in the Northwest Territories**.

BETWEEN:

**TUKTOYAKTUK HOUSING ASSOCIATION**

Applicant/Landlord

- and -

**DAVID NOKSANA JR.**

Respondent/Tenant

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent must pay to the applicant rental arrears in the amount of \$1,962.00 (one thousand nine hundred sixty-two dollars).
2. Pursuant to section 41(4)(b) of the *Residential Tenancies Act*, the respondent must pay his rent on time in the future.

3. Pursuant to sections 41(4)(c) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the rental premises known as Unit 154 in Tuktoyaktuk, Northwest Territories, will terminate September 30, 2014, and the respondent must vacate the rental premises on or before that date, unless the rental arrears are paid in full.

DATED at the City of Yellowknife in the Northwest Territories this 21st day of July 2014.

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Adelle Guigon  
Deputy Rental Officer

IN THE MATTER between **Tuktoyaktuk Housing Association**, Applicant, and **David Noksana Jr.**, 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 **Adelle Guigon**, Deputy Rental Officer.

BETWEEN:

**TUKTOYAKTUK HOUSING ASSOCIATION**

Applicant/Landlord

-and-

**DAVID NOKSANA JR.**

Respondent/Tenant

**REASONS FOR DECISION**

<b><u>Date of the Hearing:</u></b>	<b>July 14, 2014</b>
<b><u>Place of the Hearing:</u></b>	<b>Tuktoyaktuk, Northwest Territories, by teleconference</b>
<b><u>Appearances at Hearing:</u></b>	<b>Lucille Pokiak, representing the applicant</b>
<b><u>Date of Decision:</u></b>	<b>July 14, 2014</b>

**REASONS FOR DECISION**

An application to a rental officer made by Tuktoyaktuk Housing Association as the applicant/landlord against David Noksana Jr. as the respondent/tenant was filed in the Rental Office May 8, 2014. The application was made regarding a subsidized public housing residential tenancy agreement for the rental premises known as Unit 154 in Tuktoyaktuk, Northwest Territories. The applicant personally served a copy of the filed application on the respondent May 21, 2014.

The applicant alleged the respondent had accumulated rental arrears. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for July 14, 2014. Ms. Lucille Pokiak appeared representing the applicant. Mr. David Noksana Jr. was served a notice of attendance by registered mail signed for July 2, 2014. Mr. Noksana did not appear at the hearing, nor did anyone appear on his behalf. The hearing proceeded in his absence pursuant to section 80(2) of the *Residential Tenancies Act* (the Act).

Ms. Pokiak testified that Mr. Noksana has been a tenant in subsidized public housing since September 22, 2010. Mr. Noksana has accumulated the current rental arrears since April 2013. Mr. Noksana's rent is assessed a subsidy based on reported household income, which he has largely been consistent in reporting. In March 2013 Mr. Noksana's reported income exceeded the income threshold to be eligible for a rent subsidy, therefore he was assessed the maximum monthly economic rent for the unit in the amount of \$1,445. Ms. Pokiak testified that Mr. Noksana's rental arrears as of July 14, 2014, – including the maximum economic rent for March 2013 – was \$2,261.

Ms. Pokiak requested an order for payment of the rental arrears, that future rent be paid on time, and a conditional termination order in the event Mr. Noksana fails to pay the rental arrears.

*Tenancy agreement*

The residential tenancy agreement entered into between the parties and submitted as evidence by the applicant was dated September 22, 2010. This agreement is for subsidized public housing and references the rental premises known as Unit 154 in Tuktoyaktuk, Northwest Territories. The tenancy automatically reverted to a periodic, month-to-month tenancy on July 1, 2012, in accordance with section 49(1) of the Act. The agreement reflects I am satisfied a valid tenancy agreement has been entered into by the parties in accordance with the Act.

*Rental arrears*

The tenant ledger cards submitted into evidence by the applicant represent the landlord's account of assessed monthly rent and payments received between September 22, 2011, and July 2, 2014. I am satisfied they accurately represent the payments received from the respondent.

The rent calculation forms submitted into evidence by the applicant reflect the calculation of subsidized rent based on reported household income for the months of February to April 2014. I am satisfied these forms accurately reflect the reported household income and the calculation of subsidized rent. The rent calculation form for March 2014 confirms the respondent's total household income exceeded the income threshold to be eligible for a rent subsidy.

Schedule A of the residential tenancy agreement specifies the maximum monthly economic rent for the rental premises at \$1,146 as of April 1, 2012. The respondent initialled his acknowledgement of this amount May 3, 2012. Ms. Pokiak was unable to provide proof of notice of an increase of the maximum monthly economic rent to \$1,445, in order to substantiate the application of \$1,445.

Section 47 of the Act speaks to the amount of notice required to increase rents. Section 47(6) exempts subsidized public housing from the requirement to give notices of rent increases. Section 7 of the residential tenancy agreement, however, specifies the landlord's agreement to provide notice to the tenant of any increase to the amount shown in Schedule A at least one month in advance. The inclusion of an agreement to give notices of rent increases under section 7 of the residential tenancy agreement does not contravene Section 47 of the Act. Therefore, a notice of the increase to the amount shown in Schedule A of the residential tenancy agreement must have been given to the tenant by the landlord to be effective. Ms. Pokiak was unable to provide proof of such a notice being given increasing the amount shown in Schedule A to \$1,445.

I find Mr. Noksana's maximum monthly economic rent currently remains as reflected in Schedule A of the residential tenancy agreement, that being in the amount of \$1,146. The maximum rent assessable for the month of March 2013 is \$1,146; adjusting the tenant ledger card calculations accordingly, I find Mr. Noksana has accumulated rental arrears as of July 14, 2014, in the amount of \$1,962.

*Termination of the tenancy agreement*

Ms. Pokiak's request for a conditional termination order in this instance is not unreasonable and I find a conditional termination order should Mr. Noksana fail to pay his rental arrears in full is justified.

An order will issue requiring Mr. David Noksana Jr. to pay rental arrears in the amount of \$1,962, to pay his rent on time in the future, and terminating his tenancy agreement September 30, 2014, unless the rental arrears are paid in full.

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Adelle Guigon  
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Residential tenancy agreement fixed term lease dated September 22, 2010
- Exhibit 2: Rent calculation forms for February to April 2014
- Exhibit 3: Tenant ledger cards for rent from September 22, 2011, to April 1, 2014
- Exhibit 4: Applicant's payment over & above regular rent assessed correspondence to respondent dated March 18, 2014
- Exhibit 5: Applicant's payment over & above regular rent assessed correspondence to respondent dated February 20, 2014
- Exhibit 6: Applicant's outstanding rental & tenant damage arrears - 30 days correspondence to respondent dated January 24, 2014
- Exhibit 7: Applicant's outstanding rental & tenant damage arrears - 30 days correspondence to respondent dated November 18, 2013
- Exhibit 8: Tenant ledger card for rent from April 1 to July 2, 2014
- Exhibit 9: Applicant's new public housing rent scale correspondence to respondent dated June 4, 2012