

IN THE MATTER between **NWT Housing Corporation**, Applicant, and **Frances Mandeville and Garvin Lizotte**, 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, **Adelle Guigon**, Deputy Rental Officer, regarding a rental premises located within the **hamlet of Fort Resolution in the Northwest Territories**.

BETWEEN:

NWT HOUSING CORPORATION

Applicant/Landlord

- and -

FRANCES MANDEVILLE and GARVIN LIZOTTE

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 14.2(2)(a), 41(4)(a), and 83(2) of the *Residential Tenancies Act*, the respondents must pay to the applicant outstanding security deposit in the amount of \$100.00 (one hundred dollars) and rental arrears in the amount of \$7,980.42 (seven thousand nine hundred eighty dollars forty-two cents) for a total amount payable of \$8,080.42 (eight thousand eighty dollars forty-two cents) to be paid in minimum monthly installments of \$400.00 (four hundred dollars) starting in October 2014.

DATED at the City of Yellowknife in the Northwest Territories this 20th day of October 2014.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **NWT Housing Corporation**, Applicant, and **Frances Mandeville and Garvin Lizotte**, 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 **Adelle Guigon**, Deputy Rental Officer,

BETWEEN:

NWT HOUSING CORPORATION

Applicant/Landlord

-and-

FRANCES MANDEVILLE and GARVIN LIZOTTE

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	September 12, 2014
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories, by teleconference
<u>Appearances at Hearing:</u>	Jessica Carriere, representing the applicant
<u>Date of Decision:</u>	October 17, 2014

REASONS FOR DECISION

An application to a rental officer made by NWT Housing Corporation as the applicant/landlord against Frances Mandeville and Garvin Lizotte as the respondents/tenants was filed by the Rental Office June 19, 2014. The application was made regarding a market rental unit residential tenancy agreement for the rental premises known as Lot 19-28, Plan 582, in Fort Resolution, Northwest Territories. The applicant personally served a copy of the filed application on the respondents July 3, 2014.

The applicant alleged in the application the respondents had accumulated rental arrears and had caused damages to the rental premises, and sought an order for payment of rental arrears, compensation for repairs costs, termination of the tenancy agreement, eviction, and compensation for use and occupation post-termination. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for September 12, 2014, by teleconference. Ms. Jessica Carriere appeared representing the applicant. Ms. Frances Mandeville and Mr. Garvin Lizotte were sent notices of attendance by registered mail deemed served August 26, 2014, pursuant to section 71(5) of the *Residential Tenancies Act* (the Act). Ms. Mandeville and Mr. Lizotte did not appear at hearing, nor did anyone appear on their behalf. The hearing proceeded in their absence pursuant to section 80(2) of the Act.

Ms. Carriere withdrew the applicant's request for an order for compensation of the costs of repairs, termination of the tenancy agreement, eviction, and compensation for use and occupation post-termination, requesting only at this time an order for payment of rental arrears.

The respondents have been in market rental housing at the rental premises known as Lot 19-28, Plan 582, in Fort Resolution, Northwest Territories, since August 2008. They have carried continuous rental arrears since April 2009. Their monthly rent was set at \$1,085 as of April 1, 2009. A rent increase to \$1,100 was applied as of September 1, 2013. Biweekly electronic funds transfer (EFT) payments were initiated, 13 of which were returned insufficient funds (NSF) since April 2012. The current claimed rental arrears equal \$8,175.42. Also being claimed is \$100 outstanding from the required security deposit of \$500.

Tenancy agreement

The tenancy agreements entered into evidence by the applicant establish a market rental tenancy agreement between the parties which started in August 2008. The most recently signed agreement was for a fixed term from July 1 to September 30, 2010, after which the tenancy agreement automatically renewed as a monthly tenancy pursuant to section 49(1) of the Act. I am satisfied a valid tenancy agreement for market rental housing exists between the parties in accordance with the Act.

Security deposit

Section A16 of the July 1, 2010, tenancy agreement specifies a security deposit of \$500 must be paid by the tenants in accordance with section 14(1)(b) of the Act. The lease balance statement entered into evidence by the applicant refers to a payment of \$400 for the security deposit made January 20, 2012, resulting in an outstanding amount of \$100. I find the respondents have failed to pay the full amount of required security deposit.

Rental arrears

The tenant ledger chart and lease balance statement entered into evidence by the applicant represents the landlord's accounting of monthly rent and payments made against the respondents' rent account. I am satisfied these statements accurately reflect payments received by the applicants as of September 10, 2014.

The tenancy agreement established the monthly rent as of April 1, 2009, at \$1,085. The lease balance statement reflects the application of increased rent in the amount of \$1,100 as of September 2013. The applicant's representative Yvonne Burke advised me by e-mail the notification of rent increase was sent by regular mail to the respondents on May 15, 2013; the notice itself was not provided. The applicant provided an agreement to pay rent arrears signed by the respondents August 6, 2014, acknowledging rental arrears in the amount of \$8,225.42 and agreeing to pay \$400 per month towards those rental arrears. The applicant also provided preauthorized deduction forms dated July 31, 2014, authorizing a total of \$1,500 per month to be withdrawn from the respondents' bank accounts by the applicant. Ms. Burke argued in her e-mail that the respondents were aware the rent is \$1,100 and that they have been paying that amount without dispute.

The respondent Frances Mandeville contacted me by telephone on September 23, 2014, confirming that she did in fact enter into an agreement with the applicant to make installment payments against her rental arrears and asked that the agreement be incorporated into the order for payment of rental arrears. Communication by me with the applicant confirmed no objections to the incorporation of the agreed payment plan into an order to pay rental arrears.

Section 47(2) of the Act specifies a landlord must give a tenant three months' written notice of any rent increase. Section 71(5) of the Act and section 4(2) of the *Residential Tenancies Regulations* (the regulations) specify any notices or documents must be served on the party by personal service, registered mail, fax, or e-mail. While the notice referred to by the applicant was mailed more than three months prior to the effective date of the rent increase in accordance with the Act, it was sent by regular mail which is contrary to the Act. It means I do not have evidence confirming the respondents' awareness of the rent increase. The agreement to pay rental arrears of a specified amount also does not specifically acknowledge the respondents were aware that their monthly rent had been increased. The applicant's August 8, 2014, correspondence to the respondents refers to an agreement of \$1,100 towards monthly rent and \$400 towards arrears, however, there is no formal acknowledgement by the respondents of this agreement beyond that encompassed by the agreement to pay rental arrears, nor does it confirm when the respondents were made aware of the rent increase. The argument that the respondents had been paying the increased rent every month without dispute also doesn't hold because the respondents had been paying \$1,300 per month in biweekly EFTs since February 2012 – \$215 more than the \$1,085 rent that was in place since April 2009; How much the respondents have been paying per month is not an acknowledgement of increased monthly rent. The respondents' were not present at the hearing to confirm or deny knowledge of the rent increase, nor was that particular subject discussed during the telephone conversation with Ms. Mandeville on September 23, 2014. I find I do not have sufficient evidence to believe the respondents were notified of the rent increase in accordance with the Act.

Applying the monthly rent of \$1,085 for the months of September 2013 to September 2014, I find the respondents have accumulated rental arrears in the amount of \$7,980.42. I find it reasonable to incorporate a payment plan reflective of the agreement to pay rental arrears entered into by the respondents into an order for payment of rental arrears.

An order will issue requiring Ms. Frances Mandeville and Mr. Garvin Lizotte to pay rental arrears and security deposit in the total amount of \$8,080.42 in minimum monthly installments of \$400 starting in October 2014.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Lease balance statement for April 1, 2012, to June 9, 2014
- Exhibit 2: Tenant ledger for September 1, 2009, to March 31, 2012
- Exhibit 3: Applicant's rent arrears correspondence to respondents dated June 16, 2014
- Exhibit 4: Applicant's rent arrears correspondence to respondents dated November 18, 2013
- Exhibit 5: Applicant's outstanding rent correspondence to respondents dated February 11, 2011
- Exhibit 6: Applicant's rent arrears correspondence to respondents dated November 10, 2011
- Exhibit 7: Applicant's tenancy - market rental correspondence to respondent Frances Mandeville dated January 14, 2010
- Exhibit 8: Applicant's tenancy correspondence to respondents dated February 8, 2010
- Exhibit 9: Applicant's tenancy correspondence to respondents dated March 1, 2010
- Exhibit 10: Applicant's notice of termination of tenancy and Supreme Court action correspondence to respondent Frances Mandeville dated March 19, 2009
- Exhibit 11: Applicant's notice of eviction correspondence to respondent Frances Mandeville dated January 12, 2008
- Exhibit 12: Applicant's tenancy in unit located on Lot 19-28, Plan 582 correspondence to respondent Frances Mandeville dated October 17, 2008
- Exhibit 13: Applicant's tenancy in unit located on Lot 19-28, Plan 582 correspondence to respondent Frances Mandeville dated October 30, 2009
- Exhibit 14: Applicant's correspondence granting Frances Mandeville permission to establish delivery of utilities in her name, dated October 30, 2008
- Exhibit 15: Applicant's correspondence to Northwest Territories Power Corporation dated September 4, 2008
- Exhibit 16: Applicant's correspondence to Norn Fuel dated September 4, 2008
- Exhibit 17: Applicant's tenancy agreement correspondence to respondent Frances Mandeville dated December 3, 2008

Exhibit 18: Tenancy agreement with respondent Frances Mandeville only, effective August 1, 2008, signed October 30, 2008

Exhibit 19: Tenancy agreement with both respondents effective October 1, 2009

Exhibit 20: Tenancy agreement with both respondents effective July 1, 2010, signed June 16 and 17, 2010

Exhibit 21: Lease balance statement dated April 1, 2012, to September 10, 2014

Exhibit 22: E-mail between Yvonne Burke and Adelle Guigon dated September 18, 2014

Exhibit 23: Applicant's correspondence to respondents dated August 8, 2014

Exhibit 24: Agreement to pay rental arrears dated August 6, 2014

Exhibit 25: Pre-authorized deduction from bank account forms dated July 31, 2014

Exhibit 26: Note to file and e-mail to Yvonne Burke regarding telephone call from Frances Mandeville dated September 23, 2014

Exhibit 27: E-mail between Yvonne Burke and Adelle Guigon dated September 23, 2014