

IN THE MATTER between **Fort McPherson Housing Association**, Applicant, and
Wayne Greenland and Bella Greenland, 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, **Adelle Guigon**, Deputy Rental Officer,
regarding a rental premises within **the hamlet of Fort McPherson in the Northwest
Territories**.

BETWEEN:

FORT MCPHERSON HOUSING ASSOCIATION

Applicant/Landlord

- and -

WAYNE GREENLAND and BELLA GREENLAND

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 41(4)(a), 42(3)(e), and 84(2) of the *Residential Tenancies Act*, the respondents must pay to the applicant rental arrears in the amount of \$2,292.16 (two thousand two hundred ninety-two dollars sixteen cents) and compensation for the cost of repairs in the amount of \$106.16 (one hundred six dollars sixteen cents) for a total amount of \$2,398.32 (two thousand three hundred ninety-eight dollars thirty-two cents) to be paid in minimum monthly installments of \$250.00 (two hundred fifty dollars) starting in December 2014 until the arrears are paid in full.
2. Pursuant to section 41(4)(b) of the *Residential Tenancies Act*, the respondents must pay their monthly rent on time in the future.

3. Pursuant to section 45(4)(a) of the *Residential Tenancies Act*, the respondents must comply with their obligation to report their total monthly household income in accordance with section 6 of their tenancy agreement.
4. 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 0059 James Simon Road in Fort McPherson, Northwest Territories, will terminate December 31, 2014, and the respondents must vacate the rental premises on or before that date, unless the minimum monthly installment for December 2014 and the rents for November and December 2014 are paid on time.
5. Pursuant to sections 63(4)(b) and 83(2) of the *Residential Tenancies Act*, if the termination of the tenancy agreement becomes effective on December 31, 2014, the respondents must compensate the applicant for use and occupation of the rental premises at a rate of \$47.51 for each day they remain in the rental premises after that date.

DATED at the City of Yellowknife in the Northwest Territories this 30th day of October 2014.

Adelle Guigon
Deputy Rental Officer

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BETWEEN:

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-and-

WAYNE GREENLAND and BELLA GREENLAND

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	October 29, 2014
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories, by teleconference
<u>Appearances at Hearing:</u>	Shirley Wilson, representing the applicant Betty Firth, representing the applicant Wayne Greenland, respondent
<u>Date of Decision:</u>	October 29, 2014

REASONS FOR DECISION

An application to a rental officer made by Fort McPherson Housing Association as the applicant/landlord against Wayne Greenland and Bella Greenland as the respondents/tenants was filed by the Rental Office August 27, 2014. The application was made regarding a subsidized public housing residential tenancy agreement for the rental premises known as 0059 James Simon Road in Fort McPherson, Northwest Territories. The applicant personally served a copy of the filed application on the respondents September 3, 2014.

The applicant alleged in the application the respondents had failed to comply with rental officer order #20-13841, had accumulated rental arrears, and had caused damages to the rental premises; the applicant sought an order for payment of rental arrears, compensation for the cost of repairs, 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 originally scheduled for October 16, 2014, by teleconference. Both parties were served notices of attendance by registered mail. Mr. Wayne Greenland contacted the rental office October 15, 2014, advising that he was out of the territory attending to a death in the immediate family and would not be able to speak to the matter as scheduled. In consultation with Ms. Shirley Wilson, representing the applicant, I agreed to postpone the hearing to October 29, 2014, to be held by three-way teleconference. The contact numbers required to dial into the conference line were provided to both parties, along with confirmation of the date and time of the rescheduled hearing. On October 29, 2014, Ms. Shirley Wilson and Ms. Betty Firth appeared representing the applicant and Mr. Wayne Greenland appeared as respondent and representing Ms. Bella Greenland.

Ms. Wilson testified that the respondents have been tenants in subsidized public housing in Fort McPherson since November 1985. In February 2014 rental officer order #20-13841 was issued requiring the respondents to pay rental arrears of \$2,650.16 in minimum monthly installments of \$200 starting in March 2014, to pay future rent on time, and terminating the tenancy agreement April 30, 2014, unless the rents and installments were paid on time. Ms. Wilson provided tenant ledger cards in support of her allegation the respondents had failed to comply with the order by

not paying the full amount of their monthly rent when it was due and by not meeting the minimum monthly installments of \$200. The respondents' current rental arrears remain at \$2,292.16, although this now represents the rents for May to October 2014 and a charge for extra water delivery in the amount of \$201.81.

Mr. Greenland did not dispute that he has current accumulated rental arrears, including the cost for the extra water delivery. He expressed his attempts to address the arrears and to pay his rent were hampered by other obligations to make truck payments, pay other bills, make payments to a collections agent for his credit card, and assist his family with their financial burdens. He has been making what payments he can, as is evidenced by the tenant ledger cards, but acknowledged he has not been able to make the full payments he agreed to make.

The applicant further claimed costs for maintenance workers to attend the rental premises in April 2014 to address issues related to a frozen toilet pipe. The workers were required to remove the toilet to facilitate ensuring the sewer pipes were clear of ice blockage, thereby preventing potential damages to the system. Mr. Greenland confirmed that when he returned to the home late in the afternoon after a time away he found the toilet had frozen and contacted the maintenance workers. He was told they would not be able to attend until the next day, so Mr. Greenland began pouring hot water into the toilet to facilitate melting the ice and getting the water flowing again. By the time the workers arrived at the premises, Mr. Greenland had melted the ice at least to the point that water was flowing and the toilet could be flushed. It was incumbent on the workers to assess the condition of the sewer pipes for any unseen damage that may have occurred, thus necessitating the removal of the toilet and inspection of the sewer pipes. Based on the provided work order, this work took two hours and the amount charged to the respondents totalled \$106.16. Mr. Greenland confirmed receiving the invoice for this amount, but did not pay it believing it was an unwarranted charge and ignored it.

Mention was also made by Ms. Wilson that the respondents repeatedly fail to report their monthly household income, an obligation identified in the tenancy agreement of which the respondents are fully aware. Ms. Wilson argued the respondents know they are supposed to report their household income each and every month and she shouldn't have to continually pursue them to submit the information. Reporting of total household income is required to calculate any subsidies the respondents might be eligible for under the subsidized public housing

program. Mr. Greenland argued that he has been working for the same organization for 30 years and since his employer switched to providing pay stubs on line rather than by mail he has had continual difficulties accessing his pay stubs, making it difficult for him report his income on time. Repeated attempts to work with his employer's human resources department to resolve the issue have been unsuccessful, although Mr. Greenland acknowledged it remains his responsibility to find a way to get the required information to his landlord and he suggested he would try to get the human resources division to simply fax or email his pay stubs directly to the applicant. He also pointed out that his biweekly pay cheques do not change, so he doesn't entirely understand why it is necessary for him to report his income every month.

Ms. Wilson reiterated the applicant's request for an order for payment of the rental arrears and compensation for the cost of repairs. She justified her request for an order terminating the tenancy and evicting the respondents with the respondents failure to comply with an order of the rental officer and their repeated and ongoing inability to comply with their obligations to pay rent.

Tenancy agreement

The applicant testified to the commencement of the respondents' tenancy agreement in November 1985. A residential tenancy agreement for subsidized public housing made between the parties on April 1, 2012, was also entered into evidence by the applicant reflecting a monthly tenancy agreement starting April 1, 2012. Mr. Greenland did not dispute the submissions of the applicant with respect to the existence and validity of the tenancy agreement between the parties. I am satisfied a valid tenancy agreement for subsidized public housing is in place between the parties in accordance with the *Residential Tenancies Act* (the Act).

Rental arrears

The tenant ledger cards submitted into evidence by the applicant represent the landlord's accounting of monthly assessed rent and payments received on the respondents' rent account. Mr. Greenland did not dispute the balance owing as reflected on the tenant ledger cards, although he did mention he has a request in to his MLA to do an audit of his monthly assessed rents. As I do not have any substantiating information regarding whether or not this audit is being conducted, nor whether or not there are errors in the assessments, I cannot consider potential outcomes in my

decision. Further, determination of the veracity of the assessments is not within my scope of authority as rental officer; my authority extends to determining whether the amount of rent applied in a given month under a subsidized public housing agreement exceeds the maximum monthly rent identified in the tenancy agreement between the parties, which in this case it has not. All monthly rents as reflected in the tenant ledger cards have been assessed a subsidy based on reported household income. I am satisfied the tenant ledger cards accurately reflect payments received against the respondents' rent account.

Section 8 of the tenancy agreement specifies the tenant shall pay for all utilities provided to the premises, including water. The Act defines rent as including the costs for services and facilities whether or not there is a separate charge for them. The applicant claimed the charges for water delivery in the amount of \$201.81 for which the landlord was billed. The respondent did not dispute this charge. I am satisfied the respondents are liable for the water delivery charge as an extension of rent. I find the respondents have total accumulated rental arrears in the amount of \$2,292.16, which consists of the water delivery charge and the rents assessed in the months of April to September 2014 inclusive.

Obligation to report household income

Section 6 of the residential tenancy agreement specifies the tenants' promise to provide the landlord with an accurate report of the tenants' total household income whenever and as often as the landlord requests, and that the reporting must be in the prescribed form. Mr. Greenland did not dispute that the landlord has requested and expects these reports on a monthly basis. Mr. Greenland did offer a reasonable explanation for his inability to successfully do so in recent times, however, he acknowledged his responsibility to resolve the issue. Some entries in the tenant ledger cards support the applicant's allegations as there are three months since December 2013 for which initial rent amounts entered were at the maximum monthly rent and then later credited with the subsidized amounts calculated based on reported household income. I find the respondents have failed to comply with their obligation to report household income in accordance with their tenancy agreement.

Previous rental officer orders

Since 1992 there have been seven rental officer orders issued against the respondents. All except one ordered payment of rental arrears; four included an order to pay future rent on time; three included minimum monthly payment plans; two included conditional termination orders. With respect to all except the last order (#20-13841), I have no evidence to suggest the previous orders were not satisfied other than the requirement to pay future rent on time. The conditions of rental officer order #20-13841 include:

1. An order to pay rental arrears of \$2,650.16 in minimum monthly installments of \$200 starting March 15, 2014 (this amount of rental arrears is accumulated as of December 5, 2013);
2. An order to pay future rent on time;
3. An order terminating the tenancy agreement April 30, 2014, unless the rents for January to April 2014 and the minimum monthly installments for March and April are paid on time.

Based on the tenant ledger cards, applying all the payments made since December 5, 2013, against the ordered rental arrears of \$2,650.16 results in those rental arrears being paid in full on May 30, 2014. All subsequent payments would then be applied first against the rents charged in December 31, 2013, to date. Although the previously ordered rental arrears can be considered paid, the requirement to pay both the monthly rents and minimum monthly installments on time was not met and I find the respondents have breached an order of the rental officer. This breach should have triggered the termination of the tenancy agreement on April 30, 2014, as ordered by rental officer order #20-13841, however, the applicant chose to permit the respondents to remain in the rental premises and continued to assess a rent subsidy in accordance with the tenancy agreement.

Repairs of damages

The applicant submitted an invoice and work order for work performed to thaw out ice build up in the toilet pipes of the rental premises. Section 12(b) of the tenancy agreement specifies the tenant's responsibility to pay for the costs of repairing any damage caused by the wilful or negligent conduct of the tenant. Section 18(b) of the tenancy agreement specifies the requirement of the tenant to give the landlord prior written notice if they intend to leave the rental premises unoccupied for longer than 24 hours between October 1st and April 30th. The notes in the work order submitted into evidence indicate the respondents had not notified the landlord they would be away from the rental premises for a period of time. Had they done so, the landlord would have been able to make arrangements to ensure the rental premises did not freeze up during the tenants' absence, thereby negating the likelihood of serious damages. The respondents did comply with their obligation to promptly notify the landlord when they discovered the toilet had frozen and did take action to thaw the pipes while waiting for the maintenance staff to attend. However, the maintenance staff were still required to attend the premises in response to an event that occurred due to the respondents' negligence, and the maintenance staff were required to exercise due diligence in ensuring no permanent or unseen damage occurred as a result. The amount of \$106.16 being claimed by the applicant for the conduct of this work is reasonable and find the respondents liable for the cost of repairs.

Termination of the tenancy agreement and eviction

The respondents repeated failure to comply with their obligations to pay rent on time and to comply with an order of the rental officer certainly substantiate justification to terminate this tenancy. These tenants have a history of being brought before the rental officer for the same breaches. Having heard the current difficulties the respondents are facing on more than one front, and Mr. Greenland's assertion that his final \$300 payment to the collection agent will be made next week which will enable him to put that monthly payment towards his rent and arrears, I am satisfied a final opportunity for the respondents to turn things around is reasonable and a conditional termination order is justified. However, in emphasis of the priority the respondents must give to complying with the tenancy agreement obligations, a conditional eviction order and order for compensation for use and occupation under section 63 of the Act are also justified.

An order will issue requiring the respondents to pay rental arrears and compensation for repairs costs totalling \$2,398.32 in minimum monthly installments of \$250 starting in December 2014 until the arrears are paid in full, requiring the respondents to pay their rent on time in the future, requiring the respondents to comply with their obligation to report their household income in accordance with their tenancy agreement, terminating the tenancy agreement December 31, 2014, unless the rents for November and December 2014 and the minimum monthly payment for December 2014 are paid on time, evicting the respondents from the rental premises January 1, 2015, if the termination order becomes effective, and requiring the respondents to compensate the applicant at a rate of \$47.51 for each day they remain in the rental premises after December 31, 2014, if the termination order becomes effective. The conditional eviction order will follow under separate cover.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

Exhibit 1: Residential tenancy agreement indeterminate lease dated April 1, 2012

Exhibit 2: Tenant ledger cards for rent from November 21, 2013, to July 31, 2014

Exhibit 3: Applicant's invoice number 15-004 dated May 29, 2014

Exhibit 4: Northwest Territories Housing Corporation work order number RM007710 dated
May 14, 2014

Exhibit 5: Tenant ledger card for April 8, 2014, to October 27, 2014