

IN THE MATTER between **Fort McPherson Housing Association**, Applicant, and
Eileen Kay, 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,
regarding a rental premises located within the **hamlet of Fort McPherson in the
Northwest Territories**.

BETWEEN:

FORT MCPHERSON HOUSING ASSOCIATION

Applicant/Landlord

- and -

EILEEN KAY

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 \$460.00 (four hundred sixty dollars).
2. 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 0007 James Simon Road in Fort McPherson, Northwest Territories, will terminate November 30, 2014, and the respondent must vacate the rental premises on or before that date, unless the rental arrears and rent for November 2014 are paid in full.

3. Pursuant to sections 63(4)(b) and 83(2) of the *Residential Tenancies Act*, if the tenancy agreement between the parties for the rental premises known as 0007 James Simon Road in Fort McPherson, Northwest Territories terminates November 30, 2014, the respondent must compensate the applicant for use and occupation of the rental premises at a rate of \$47.51 for each day the respondent remains in the rental premises after November 30, 2014.

DATED at the City of Yellowknife in the Northwest Territories this 22nd day of October 2014.

Adelle Guigon
Deputy Rental Officer

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-and-

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REASONS FOR DECISION

<u>Date of the Hearing:</u>	October 21, 2014
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories, by teleconference
<u>Appearances at Hearing:</u>	Shirley Wilson, representing the applicant
<u>Date of Decision:</u>	October 21, 2014

REASONS FOR DECISION

An application to a rental officer made by Fort McPherson Housing Association as the applicant/landlord against Eileen Kay as the respondent/tenant 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 0007 James Simon Road in Fort McPherson, Northwest Territories. The applicant personally served a copy of the filed application on the respondent September 3, 2014.

The applicant alleged in the application the respondent had failed to comply with rental officer order #20-13843 by failing to pay rent on time and had accumulated rental arrears. The applicant sought an order for payment of rental arrears, 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 October 16, 2014, by teleconference. On October 14, 2014, Ms. Eileen Kay contacted the rental officer to advise she was scheduled to travel to Inuvik for an appointment from October 13 to 16, 2014, and requested a postponement of the hearing. In consultation with the applicant, the postponement was granted to October 21, 2014, and all parties were notified by phone and e-mail of the new date, time, and call-in telephone number for the hearing. On October 21, 2014, Ms. Shirley Wilson appeared representing the applicant. Ms. Kay did not appear at hearing, nor did anyone appear to represent her. The hearing proceeded in Ms. Kay's absence pursuant to section 80(2) of the *Residential Tenancies Act* (the Act).

Ms. Wilson testified Ms. Kay has been a tenant in subsidized public housing since February 2009. Starting in 2011, four rental officer orders have been issued against Ms. Kay: File #20-12002 dated April 8, 2011, File #s 20-13421 and 20-13421B dated June 3, 2013, and File #20-13843 dated February 12, 2014. Orders 20-12002, 20-13421, and 20-13843 all included conditions to pay rental arrears, to pay future rent on time, and terminating the tenancy agreement unless the rental arrears were paid by a specified date. Order 20-13421B is an order evicting the respondent from the rental premises unless the rental arrears are paid in full by a specified date. All conditions except payment of future rent on time were met to the applicant's satisfaction.

Ms. Wilson testified that Ms. Kay currently has rental arrears in the amount of \$460. As referenced in the tenant ledger cards and the previous rental officer orders, Ms. Kay has repeatedly and continuously been late paying her rent on time and in the full amounts due and, as such, Ms. Wilson argues Ms. Kay has not only failed to comply with her obligations under the tenancy agreement and the Act but also has failed to comply with an order of the rental officer. Ms. Wilson submitted that the repeated nature of Ms. Kay's actions or lack thereof were justification for termination of the tenancy and eviction. She indicated she would not be opposed to a conditional termination order effective only if the rental arrears were paid in full.

Tenancy agreement

A tenancy agreement made between the parties on April 1, 2012, was entered into evidence by the applicant. The previous rental officer orders substantiate the submission that the tenancy began prior to March 2011. The current tenancy agreement is for subsidized public housing. I am satisfied a valid tenancy agreement is in place between the parties in accordance with the Act.

Rental arrears

The tenant ledger cards entered into evidence by the applicant represent the landlord's accounting of monthly assessed rent and payments received on the respondent's rent account between December 9, 2013, and October 20, 2014. I am satisfied the tenant ledger cards accurately reflect the status of the respondent's rent account to date. I find the respondent has accumulated rental arrears of \$460.

Fail to comply with rental officer order

Rental officer orders number 20-12002, 13421, and 13843 all include a condition requiring the respondent to pay her rent on time in the future. Schedule A of the tenancy agreement specifies rent is due the first of the month. The tenant ledger cards show payments made against the respondent's rent account each month between December 2013 and October 2014, except in the months of July and August 2014, although none of the payments were made on time. I find the respondent has failed to comply with a rental officer order.

Termination of the tenancy agreement, eviction, and compensation for use and occupation

I agree with Ms. Wilson's submission that Ms. Kay's continuously late payment of her rent, her repeated accumulation of rental arrears, and her failure to comply with rental officer orders justifies the termination of the tenancy agreement and eviction. Ms. Wilson's offer of a conditional termination and conditional eviction order is generous under the circumstances, considering Ms. Kay has had three previous conditional termination orders and one previous conditional eviction order already, however, I am prepared to grant them as requested along with a conditional order of compensation for use and occupation of the rental premises post-termination. The termination order will be conditional upon payment in full of rental arrears and rent for November.

An order will issue requiring Ms. Eileen Kay to pay rental arrears in the amount of \$460, terminating the tenancy agreement on November 30, 2014, unless the rental arrears and rent for November 2014 are paid in full, evicting Ms. Kay from the rental premises December 1, 2014, unless the rental arrears and rent for November 2014 are paid in full by November 30, 2014, and if the tenancy terminates November 30, 2014, requiring Ms. Kay to compensate the applicant for use and occupation of the rental premises at a rate of \$47.51 for each day she remains in the rental premises thereafter. The 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 December 9, 2013, to August 14, 2014

Exhibit 3: Tenant ledger card for rent from April 4, 2014, to October 20, 2014