

IN THE MATTER between **NWT HOUSING CORPORATION**, Applicant, and **THE ESTATE OF MARY LOUISE BISHOP AND MAXINE BISHOP**, 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 **WHATI, NT**.

BETWEEN:

NWT HOUSING CORPORATION

Applicant/Landlord

- and -

THE ESTATE OF MARY LOUISE BISHOP AND MAXINE BISHOP

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the Estate of Mary Louise Bishop shall pay the applicant rent arrears in the amount of one thousand seven hundred sixty two dollars (\$1762.00).
2. Pursuant to section 57(b) of the *Residential Tenancies Act*, the tenancy agreement between the applicant and Maxine Bishop as heir of Mary Louise Bishop for the premises known as unit 705D in Whati, NT shall be terminated on November 30, 2014 and Maxine Bishop shall provide vacant possession of the premises to the applicant on that day.

DATED at the City of Yellowknife, in the Northwest Territories this 4th day of November, 2014.

Hal Logsdon
Rental Officer

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REASONS FOR DECISION

Date of the Hearing: **October 15, 2014**

Place of the Hearing: **Yellowknife, NT via teleconference**

Appearances at Hearing: **Jessica Relucio, representing the applicant**

Date of Decision: **November 2, 2014**

REASONS FOR DECISION

The application was filed on May 16, 2014 and personally served on Maxine Bishop on June 5, 2014. The Notice of Attendance was also personally served on Maxine Bishop on September 25, 2014. Neither Maxine Bishop or any representative of the estate appeared at the hearing and the hearing was held in the absence of any respondent.

The applicant and Mary Louise Bishop entered into a term tenancy agreement commencing on October 17, 2012 for premises known as unit 705D in the Seniors Complex in Whati. That tenancy agreement expired on December 31, 2012. There is no evidence that another term agreement was executed by the parties so it is assumed that the tenancy continued on a month-to-month basis. The premises are subsidized public housing and the 4-unit complex is designed and intended to provide housing for senior citizens.

The applicant stated that Mary Louise Bishop appointed her granddaughter, Maxine Bishop, as her attorney pursuant to a general power of attorney. The applicant stated that she discovered Maxine Bishop and her household had moved into the premises in November, 2013. The applicant was advised in April, 2014 that Mary Louise Bishop had vacated the rental premises and would not be returning, preferring to stay at the seniors facility in Behchoko where better nursing care was available. The applicant notified Maxine Bishop on May 2, 2014 that she would be required to vacate the premises by May 31, 2014.

Mary Louise Bishop passed away shortly thereafter and Maxine Bishop remained in possession of the premises. The applicant sought an order requiring the estate of Mary Louise Bishop to pay rent arrears of \$2362 and evicting Maxine Bishop and all other occupants of 705D in Whati.

The applicant provided a statement of account in evidence which indicated a balance as at March 1, 2014 of \$2362. Included in that amount was a debit for the security deposit of \$600. The deposit was not paid. Therefore the actual amount of rent owing is \$1762. The applicant has not assessed any rent since March 1, 2014.

The applicant has only charged rent to March, 2014 based on their opinion that the departure and subsequent death of the sole tenant ended the tenancy agreement. The applicant does not consider Maxine Bishop to be a tenant. The applicant stated that Maxine Bishop is not eligible to be a tenant of subsidized public housing as she owes rent to the Rae-Edzo Housing Authority. The applicant also stated that unit 705D was specifically designed as a senior citizens unit and that there is an eligible senior citizen on the current waiting list for a designated senior unit.

Section 1(1) of the *Residential Tenancies Act* defines "tenant" as follows:

"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.

It is unclear if Maxine Bishop is the executrix of the estate but she is clearly an heir and is in possession of the rental premises. Although it was most certainly not the intention of the legislature to permit subsidized public housing units to be handed down from one generation to

the next, there is no exception to the definition as it applies to subsidized public housing. In my opinion, the tenancy agreement has continued and Maxine Bishop became the lawful tenant on the death of Mary Louise Bishop. Section 53 of the Act sets out provisions whereby a tenancy agreement may be terminated on the death of the tenant.

53. (1) Notwithstanding any other provision of this Act,

- (a) where a tenant dies or the health and physical condition of the tenant deteriorates and the tenant is unable to pay the rent, or**
- (b) where a spouse of a tenant dies and the income of the surviving spouse is insufficient to pay the rent, the tenant, his or her heirs, assigns or legal or personal representative may terminate the tenancy agreement by giving notice, in accordance with section 55.**

It seems quite clear that Maxine Bishop has no intention of terminating the tenancy agreement by notice. Therefore, an order is required. Although Maxine Bishop was not named as a party to this application, she was served with the filed application, which clearly set her eviction as a requested remedy, and was also served with the Notice of Attendance. In my opinion it is not unreasonable to consider Maxine Bishop to be a party to the application although she was not specifically named. Therefore I have included her along with the estate of Mary Louise Bishop as respondents.

I find rent arrears of \$1762 which are responsibility of the estate of Mary Louise Bishop. There may be rent which has accrued since the death of Mary Louise Bishop which would be the responsibility of Maxine Bishop but the applicant has not assessed any rent and the household income is unknown. Therefore any rent owed by Maxine Bishop can not be determined. An order shall issue requiring the estate of Mary Louise Bishop to pay the applicant rent arrears of \$1762.

In my opinion, there are sufficient grounds to terminate the tenancy by order. Section 57(b) of the Act sets out provisions for termination of a tenancy agreement where the tenant does not meet the eligibility requirements for subsidized public housing.

- 57. Where, on the application of a landlord, a rental officer determines that**
- (a) a tenant who, as a student or a staff member was provided with living accommodation that is not exempt from this Act by an educational institution, has ceased to meet the requirement for occupancy of the living accommodation,**
 - (b) a tenant of subsidized public housing has ceased to meet the requirement for occupancy of the rental premises, or**
 - (c) a landlord and a tenant who share a bathroom or kitchen facility have had personal differences that make the continuation of the tenancy unfair to either of them,**
- the rental officer may make an order terminating the tenancy on a date specified in the order and ordering the tenant to vacate the rental premises on that date.**

In my opinion, Maxine Bishop fails to meet the eligibility requirements to continue to occupy unit 705D on two grounds:

1. Maxine Bishop owes rent to the Rae-Edzo Housing Authority. Households who owe rent to another local housing organization are not eligible to become tenants of public housing and,
2. Unit 705D is a seniors unit which is only available to eligible senior citizen households.

In my opinion, there are sufficient grounds to terminate the tenancy agreement between the applicant and Maxine Bishop. It appears that Ms Bishop has a family and in my opinion it is reasonable to give her some time to find alternate accommodation. A order shall issue terminating the tenancy agreement on November 30, 2014. Ms Bishop shall report the household

income to the applicant and the applicant shall assess rent in the usual manner. An eviction order to be effective on December 1, 2014 shall be issued separately.

Hal Logsdon
Rental Officer