

IN THE MATTER between **Fort Smith Housing Authority**, Applicant, and **Heather Henderson-Powder**, 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 town of Fort Smith in the Northwest Territories**.

BETWEEN:

FORT SMITH HOUSING AUTHORITY

Applicant/Landlord

- and -

HEATHER HENDERSON-POWDER

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 \$8,124.19 (eight thousand one hundred twenty-four dollars nineteen cents).
2. Pursuant to section 41(4)(c) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the rental premises known as Unit #0015, 77 St. Anne's Street, in Fort Smith, Northwest Territories, will terminate January 31, 2015, and the respondent must vacate the rental premises on or before that date.

DATED at the City of Yellowknife in the Northwest Territories this 16th day of January 2015.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Fort Smith Housing Authority**, Applicant, and **Heather Henderson-Powder**, Respondent.

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

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HEATHER HENDERSON-POWDER

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REASONS FOR DECISION

<u>Date of the Hearing:</u>	January 8, 2015
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories, by teleconference
<u>Appearances at Hearing:</u>	Kevin Mageean, representing the applicant Heather Henderson-Powder, respondent
<u>Date of Decision:</u>	January 8, 2015

REASONS FOR DECISION

An application to a rental officer made by Fort Smith Housing Authority as the applicant/landlord against Heather Henderson-Powder as the respondent/tenant was filed by the Rental Office November 7, 2014. The application was made regarding a subsidized public housing residential tenancy agreement for the rental premises known as Unit #0015, 77 St. Ann's Street, in Fort Smith, Northwest Territories. The applicant served a copy of the filed application on the respondent by registered mail signed for November 28, 2014.

The applicant alleged the respondent had accumulated rental arrears and repeatedly failed to comply with their obligation to report household income. An order was sought for payment of rental arrears and termination of the tenancy agreement. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for January 8, 2015, by teleconference. Mr. Kevin Mageean appeared representing the applicant. Ms. Heather Henderson-Powder appeared as respondent.

Mr. Mageean testified Ms. Henderson-Powder had been a tenant in subsidized public housing since December 2012. Over the course of the tenancy, Ms. Henderson-Powder had repeatedly failed to report her household income in accordance with her tenancy agreement and failed to pay her rent on time, resulting in a total of five notices since May 2013 to terminate the tenancy agreement. Each of these notices was appealed to the housing authority's board where promises were made to resolve the arrears and report income as required, resulting in revocations of the termination notices and extensions to the tenancy.

The last report of household income was received in August 2014 for the month of July 2014; the rent for August was consequently assessed a subsidy based on reported household income. The rent for August was paid on August 28, 2014, bringing the rent account balance to a credit of \$0.81. No other reports of household income or payments have been made since then. As such, the maximum monthly rent of \$1,625 was charged for the months of September 2014 to January 2015.

A notice to terminate the tenancy due to failure to pay rent and report household income was again given to Ms. Henderson-Powder on September 23, 2014, terminating the tenancy October 31, 2014. On October 29, 2014, Ms. Henderson-Powder met with the landlord's representatives but did not provide either the outstanding household income reports or any payments towards her rent account. On November 28th a meeting was arranged for December 2nd. Ms. Henderson-Powder was advised to bring the outstanding household income reports so her rent could be re-assessed and to clear her rent account; if these two factors were satisfied the matter of termination of her tenancy could be brought to the board for reconsideration – Ms. Henderson-Powder did not comply. The applicant's representatives have not heard from Ms. Henderson-Powder since. As such, Mr. Mageean stated the applicant has no choice but to request an order to terminate the tenancy and for payment of rental arrears.

Ms. Henderson-Powder did not dispute that she has rental arrears. She admits to not having made any payments since August 2014. She claims to have been told by the landlord in October and November that until her lease was fixed they could not accept any payments. Mr. Mageean denied telling Ms. Henderson-Powder any such thing, indicating the only time a payment may not have been able to be received would have been in October when they spoke after normal work hours. There was nothing to keep Ms. Henderson-Powder from attending the office during normal working hours to make any payments she could against her account.

Ms. Henderson-Powder also confirmed she has not reported her total household income since August 2014. She offered no excuses for failing to do so, or for failing to make any rent payments in September 2014.

Tenancy agreement

The residential tenancy agreement entered into evidence establishes a tenancy agreement between the parties for subsidized public housing starting December 1, 2012. There was no dispute to the validity of the tenancy agreement. I am satisfied a valid residential tenancy agreement is in place between the parties in accordance with the *Residential Tenancies Act* (the Act).

Reporting of Household Income

Section 6 of the tenancy agreement specifies the tenant's obligation to report the total household income whenever and as often as directed by the landlord. It was established at the start of the tenancy that the household income was required to be reported monthly. Testimony provided

establishes that the respondent repeatedly failed to report her total household income as required throughout the tenancy and currently has outstanding reports for the months of August to December 2014. The respondent did not dispute her failure to report household income. I find the respondent has failed to comply with her obligation to report household income in accordance with section 6 of her tenancy agreement.

Rental arrears

Section 7 of the tenancy agreement sets out the agreement as one for subsidized public housing, specifying that unless the tenant is in breach of any of the terms of the agreement they will be eligible for a rent subsidy. Schedule A to the tenancy agreement sets the maximum unsubsidized monthly rent at \$1,625. Having determined the respondent has failed to report her total household income for the months of August to December 2014, I find the application of the maximum unsubsidized rent for the months of September 2014 to January 2015 to be appropriate.

The lease balance statement entered into evidence by the applicant represents the landlord's accounting of monthly assessed rent and payments received against the respondent's rent account. It reflects the application of the maximum unsubsidized rent since September 2014. The respondent did not dispute the accuracy of the lease balance statement. I am satisfied the lease balance statement accurately reflects the status of the respondent's rent account. I find the respondent has accumulated rental arrears in the amount of \$8,124.19.

Termination of the tenancy agreement

In considering not only the respondent's current status of having failed to report household income and failing to make any payments against her rent account since August 2014, but also considering the respondent's repeated pattern of behaviour in this regard throughout the tenancy, I am satisfied termination of this tenancy agreement is necessary and justified.

An order will issue requiring Heather Henderson-Powder to pay rental arrears in the amount of \$8,124.19 and terminating her tenancy agreement on January 31, 2015.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

Exhibit 1: Lease balance statement dated November 3, 2014

Exhibit 2: Residential tenancy agreement fixed term lease dated December 11, 2012

Exhibit 3: Applicant's correspondence to respondent dated September 23, 2014

Exhibit 4: Applicant's renewal of fixed term lease unit #0015-77 St. Ann's Street
correspondence to respondent dated August 29, 2014

Exhibit 5: Move-in inspection report signed November 20, 2012

Exhibit 6: Lease balance statement dated January 7, 2015