

IN THE MATTER between **FORT MCPHERSON HOUSING ASSOCIATION**,
Applicant, and **LAURA NERYSOO**, 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, **HAL LOGSDON**, Rental Officer,
regarding the rental premises at **FORT MCPHERSON, NT**.

BETWEEN:

FORT MCPHERSON HOUSING ASSOCIATION

Applicant/Landlord

- and -

LAURA NERYSOO

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 45(4)(e) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as 0057 James Simon Road, Fort McPherson, NT shall be terminated on February 28, 2015 and the respondent shall vacate the premises on that date.

DATED at the City of Yellowknife, in the Northwest Territories this 3rd day of February,
2015.

Hal Logsdon
Rental Officer

IN THE MATTER between **FORT MCPHERSON HOUSING ASSOCIATION**,
Applicant, and **LAURA NERYSOO**, 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 **Hal Logsdon**, Rental Officer.

BETWEEN:

FORT MCPHERSON HOUSING ASSOCIATION

Applicant/Landlord

-and-

LAURA NERYSOO

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: December 23, 2014

Place of the Hearing: Yellowknife, NT via teleconference

Appearances at Hearing: Betty Firth, representing the applicant

Date of Decision: February 3, 2015

REASONS FOR DECISION

The respondent was sent a Notice of Attendance by registered mail. At the time of the hearing there was no confirmation of receipt but Canada Post confirmed that the respondent was provided with a notice on December 8, 2014 indicating where the item could be picked up. The application was also served by registered mail and was confirmed delivered. The respondent failed to appear at the hearing. In my opinion, it is not unreasonable to deem the Notice of Attendance served in accordance with section 71(5) of the *Residential Tenancies Act*. The matter was heard in the absence of the respondent.

The applicant alleged that the respondent has failed to comply with an order requiring her to submit income tax documents for her common law husband. The applicant sought an order terminating the tenancy agreement and eviction.

This application reflects an ongoing dispute between the parties. The rental premises are subsidized public housing. Although the applicant is currently the sole tenant, her common law husband, Mr. Alfred Itsi, was previously a joint tenant. Mr. Itsi was removed from the tenancy agreement in September, 2010 when he claimed to be living in a trailer belonging to his mother. Based on information obtained from the Canada Revenue Agency, the applicant notified the respondent in writing on March 28, 2013 requiring her to report Mr. Itsi's income in accordance with article 6 of the tenancy agreement.

6. Tenant's Income

The Tenant promises to provide a subsidy agent appointed by the Landlord with an accurate report of the Tenant's income, the income of any occupant of the Premises, the size of the Tenant's family, and the number of occupants residing on the Premises, whenever, and as often as, the subsidy agent requests such a report. All reporting by the Tenant must be in the form prescribed by the subsidy agent.

The applicant filed an application on June 14, 2013 alleging that the respondent had failed to comply with article 6 of the tenancy agreement.

Both the applicant and Mr. Itsi appeared at the hearing held on August 8, 2013 and testified that Mr. Itsi lived in a dwelling he had constructed on the highway near the community. Both filed statutory declarations to that effect after the hearing. However, other information available to the rental officer at the hearing appeared to contradict the testimony of the respondent and Mr. Itsi, particularly the respondent's income tax returns. In his reasons for decision, the rental officer wrote,

In most circumstances, I would be inclined to accept the statutory declarations as adequate evidence of Mr. Itsi's residence. However, the respondent's tax returns appear to contradict the declarations made by the respondent and Mr. Itsi. I must also consider the size of the community and the fact that, for better or worse, most everyone knows where everyone else lives. Therefore, on the evidence before me I am inclined to believe that Mr. Itsi is an occupant of the public housing unit and the respondent should be compelled to provide his tax returns for 2010 and 2011, particularly form T2222 which will clearly establish his residency.

An order was issued requiring the respondent to comply with her obligation to report the complete household income by submitting the income tax returns of Alfred Itsi for 2010 and 2011 including form T2222 (file 20-13553, filed on September 11, 2013).

Another application was filed by the applicant on December 2, 2013 alleging that the respondent

had failed to provide Mr. Itsi's income information as ordered and seeking termination of the tenancy agreement and eviction. The matter was heard on January 16, 2014. At the hearing, the respondent provided Mr. Itsi's 2010 and 2011 income tax reassessments and 2012 general return but did not provide the form T2222. The rental officer, referring to the fact that no compliance date was included in the previous order, ordered the respondent to submit Mr. Itsi's form T2222 no later than March 31, 2014.

The current application, filed on October 15, 2014, sought an order terminating the tenancy agreement and evicting the tenant due to the alleged failure of the respondent to submit the form T2222 on or before March 31, 2014. The applicant testified that the ordered document had not been provided to the landlord and testified that Mr. Itsi was commonly observed coming and going from the respondent's premises.

Rent based on household income is a fundamental principle of the public housing program. It ensures that shelter assistance is provided in accordance with financial need and that scarce resources are used in the most efficient way. Failure to accurately disclose income is, in my opinion, a serious breach of the tenancy agreement. Mr. Itsi earns considerable income which if included in the household income would undoubtedly result in a significantly higher rent than the respondent is currently assessed based on her income alone.

In this matter I have considered not only whether the respondent has breached the previous orders to provide Mr. Itsi's form T2222 - it is obvious that he has. I have also considered the previous

testimony and statutory declarations of the respondent and Mr. Itsi and whether these are credible in light of some of the other facts. Those facts include that Mr. Itsi has repeatedly included the respondent as his common law spouse and provided the address of the respondent's rental premises on his income tax returns. As noted in the reasons for decision included with the September 11, 2013 order,

I also note from my review Ms Nerysoo's 2010 and 2011 tax information that she claimed the full amount of the Northern Resident's deduction in 2010 but did not claim any Northern Resident's Deduction in 2011. It is common practice for married or common-law couples to either claim the full amount for one spouse or the other or split the deduction depending on which method yields the most favourable tax outcome. It would be unlikely that Ms Nerysoo would decline the deduction in 2011 unless someone else claimed the full amount for that public housing unit.

If Mr. Itsi did indeed claim a full Northern Resident's deduction for his supposed house on the highway, why would the respondent forego her deduction for the public housing unit? The refusal to provide the form T2222 which would have confirmed Mr. Itsi's residence suggests that the couple did not wish to have that information revealed. I have also considered that Mr. Itsi is commonly observed coming and going from the respondent's premises and that in a community the size of Ft. McPherson, most everyone is familiar with where everyone normally resides.

On the balance of probabilities I must conclude that Mr. Itsi and the respondent both normally reside at the rental premises and that Mr. Itsi's house on the highway is used occasionally but is not his normal place of abode. I find the respondent in breach of her obligation to declare the full and accurate household income as outlined in article 6 of the tenancy agreement. I also find the respondent in breach of the previous order. In my opinion, there are sufficient grounds to terminate the tenancy agreement.

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An order shall issue terminating the tenancy agreement on February 28, 2015. An eviction order to be effective on March 1, 2015 shall be issued separately.

Hal Logsdon
Rental Officer