

IN THE MATTER between **Fort Smith Housing Authority**, Applicant, and **Randy McDevitt**, 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 **town of Fort Smith in the Northwest Territories**.

BETWEEN:

FORT SMITH HOUSING AUTHORITY

Applicant/Landlord

- and -

RANDY MCDEVITT

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 41(4)(a) and 67(4) of the *Residential Tenancies Act*, the respondent must pay to the applicant rental arrears and compensation for use and occupation in the total amount of \$19,100.00 (nineteen thousand one hundred dollars).

DATED at the City of Yellowknife in the Northwest Territories this 7th day of April 2015.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Fort Smith Housing Authority**, Applicant, and **Randy McDevitt**, 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,

BETWEEN:

FORT SMITH HOUSING AUTHORITY

Applicant/Landlord

-and-

RANDY MCDEVITT

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	March 31, 2015
<u>Place of the Hearing:</u>	Fort Smith, Northwest Territories, by teleconference
<u>Appearances at Hearing:</u>	Kevin Mageean, representing the applicant
<u>Date of Decision:</u>	March 31, 2015

REASONS FOR DECISION

An application to a rental officer made by Fort Smith Housing Authority as the applicant/landlord against Randy McDevitt as the respondent/tenant was filed by the Rental Office January 6, 2015. The application was made regarding a subsidized public housing residential tenancy agreement for the rental premises known as Unit #0069-14, 60 Breynat Street, in Fort Smith, Northwest Territories. The applicant served a copy of the filed application on the respondent by registered mail deemed served January 21, 2105, pursuant to section 71(5) of the *Residential Tenancies Act* (the Act).

The applicant alleged the respondent had failed to report household income, had failed to pay the rent when it was due, and had accumulated rental arrears. 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 March 31, 2015, by teleconference. Mr. Kevin Mageean appeared representing the applicant. Mr. Randy McDevitt was served a notice of attendance by registered mail deemed served March 16, 2015, pursuant to section 71(5) of the Act. Mr. McDevitt did not appear at hearing, nor did anyone appear on his behalf. Mr. Mageean confirmed Mr. McDevitt still resides at the rental premises, and he confirmed Mr. McDevitt's mailing address on file as correct. The hearing proceeded in Mr. McDevitt's absence pursuant to section 80(2) of the Act.

Mr. Mageean testified to and provided evidence establishing a residential tenancy agreement with Mr. McDevitt for subsidized public housing for the rental premises known as Unit #0069-14, 60 Breynat Street, in Fort Smith, Northwest Territories. The tenancy commenced in April 2009 and was most recently renewed by written tenancy agreement as a fixed-term tenancy from April 1, 2012, to December 31, 2014. The maximum monthly rent was established as \$1,625 as of September 1, 2012. The respondent is obligated to report his total household income each month to facilitate the calculation of any rent subsidies he might be eligible for. Eligibility for rent subsidies is dependent on compliance with the terms and conditions of the tenancy agreement, including reporting of household income.

Mr. McDevitt has been on a fixed-income disability pension throughout the tenancy. Until the summer of 2013, Mr. McDevitt's pension was his only source of income and had been reported by him as such, from which the monthly rent was assessed a substantial subsidy. Mr. McDevitt habitually paid his subsidized rent several months in advance at a time. In the summer of 2013, Mr. Mageean made personal observations and received confirmation that Mr. McDevitt was working at the local golf course; Mr. McDevitt did not report this additional source of income to his landlord. Mr. Mageean gave Mr. McDevitt a break and did not pursue enforcement of the total household income reporting requirement for the 2013 summer period. That opportunity could not be further extended to the 2014 season. Repeated requests for updated and complete income verification reports since March 2014 went unanswered. Mr. Mageean confirmed Mr. McDevitt's continued employment at the local golf course during the 2014 season. Due to Mr. McDevitt's failure to comply with his obligation to report his household income, the maximum monthly rent of \$1,625 has been applied against his account since April 2014.

The last payment received from Mr. McDevitt was made June 2, 2014, for \$320. Mr. Mageean testified that Mr. McDevitt is completely aware of the situation that has evolved and of his obligations to report his income and pay his rent. His failure to comply with either obligation and his continued evasion of the landlord's representatives led the housing board to direct termination of Mr. McDevitt's tenancy agreement. By correspondence dated November 27, 2014, Mr. McDevitt was given notice terminating his tenancy on December 31, 2014. By correspondence dated December 22, 2014, and received by the applicant December 29, 2014, Mr. McDevitt requested the reinstatement of his rent subsidy and additional time to find alternate accommodations. Mr. Mageean confirmed that no agreement to reinstate the tenancy between the parties has been made and that Mr. McDevitt has been an overholding tenant in the rental premises since January 1, 2015; the maximum monthly rent has continued to be applied. The total accumulated rental arrears as of this hearing date is \$19,100.

Mr. Mageean confirmed that should Mr. McDevitt provide the required verification of total household income forms since March 2014 the monthly rent would be re-assessed for any subsidies Mr. McDevitt might be eligible for; the anticipated subsidies likely would reduce the rental arrears substantially. Until those forms are received, however, there is no subsidy to calculate and Mr. McDevitt remains liable for the maximum monthly rent per the terms of the tenancy agreement. Further, Mr. Mageean could not offer any assurance that Mr. McDevitt's tenancy would be reinstated.

Based on the evidence and testimony provided, I am satisfied: that a valid tenancy agreement for subsidized public housing was in place between the parties; that Mr. McDevitt failed to report his total household income in accordance with section 6 of his tenancy agreement; that Mr. McDevitt failed to pay the full amount of rent when it was due since June 2014; that the application of the maximum monthly rent for April to December 2014 is appropriate; and that Mr. McDevitt continues to reside at the rental premises.

I am also satisfied that the termination notice dated November 27, 2014, complies with the requirements of sections 51(3) and 55(3) of the Act and I find that the tenancy agreement between the parties was terminated December 31, 2014, in accordance with the Act. As such, an order terminating the tenancy agreement is unnecessary and will not be issued. I find that Mr. McDevitt has been an overholding tenant since January 1, 2015, and liable to compensate the applicant for use and occupation of the rental premises at the maximum monthly rental rate of \$1,625.

I find the respondent has accumulated rental arrears and overholding rent in the total amount of \$19,100 and an order will issue requiring Mr. Randy McDevitt to pay that amount.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Lease balance statement dated December 23, 2014
- Exhibit 2: Residential tenancy agreement dated April 1, 2012
- Exhibit 3: Applicant's registered mail correspondence to respondent dated November 27, 2014
- Exhibit 4: Applicant's outstanding rental arrears correspondence to respondent dated November 6, 2014
- Exhibit 5: Applicant's correspondence to respondent dated October 8, 2014
- Exhibit 6: Applicant's lease agreement and/or income verification correspondence to respondent dated August 7, 2014
- Exhibit 7: Applicant's correspondence to respondent dated June 17, 2014
- Exhibit 8: Check-in inspection report dated April 30, 2009
- Exhibit 9: Lease balance statement dated March 30, 2015
- Exhibit 10: Respondent's correspondence to the applicant dated December 22, 2014