

IN THE MATTER between **Acho Real Estate Limited Partnership**, Applicant, and
Marlene Timbre, 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 **hamlet of Fort Liard in the Northwest Territories**.

BETWEEN:

ACHO REAL ESTATE LIMITED PARTNERSHIP

Applicant/Landlord

- and -

MARLENE TIMBRE

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 67(4) of the *Residential Tenancies Act*, the respondent must compensate the applicant for use and occupation of the rental premises in the amount of \$1,010.06 (one thousand ten dollars six cents).
2. Pursuant to section 63(4)(b) of the *Residential Tenancies Act*, the respondent must compensate the applicant for use and occupation of the rental premises at a rate of \$32.88 for each day she remains in the rental premises after April 30, 2015.

DATED at the City of Yellowknife in the Northwest Territories this 10th day of April
2015.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Acho Real Estate Limited Partnership**, Applicant, and
Marlene Timbre, 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:

ACHO REAL ESTATE LIMITED PARTNERSHIP

Applicant/Landlord

-and-

MARLENE TIMBRE

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	April 8, 2015
<u>Place of the Hearing:</u>	Fort Liard, Northwest Territories, by teleconference
<u>Appearances at Hearing:</u>	Barney Dohm, representing the applicant Marlene Timbre, respondent
<u>Date of Decision:</u>	April 8, 2015

REASONS FOR DECISION

An application to a rental officer made by Acho Real Estate Limited Partnership as the applicant/landlord against Marlene Timbre as the respondent/tenant was filed by the Rental Office February 27, 2015. The application was made regarding a residential tenancy agreement for the rental premises known as 119 Liard Valley Road in Fort Liard, Northwest Territories. The applicant served a copy of the filed application on the respondent by registered mail signed for March 10, 2015.

The applicant alleged the tenancy agreement had been terminated in accordance with the *Residential Tenancies Act* (the Act), that the respondent continued residing at the rental premises, and that the respondent had accumulated rental arrears. An order was sought for payment of rental arrears and eviction. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for April 8, 2015, by teleconference. Mr. Barney Dohm appeared representing the applicant. Ms. Marlene Timbre appeared as respondent.

Mr. Dohm testified to and provided evidence that Ms. Timbre had entered into a tenancy agreement for a rental premises provided as a benefit of employment. The tenancy commenced June 1, 2014. The security deposit was waived. The monthly rent was agreed at \$1,000. The agreement included a condition indicating the landlord would grant 30 days' notice to vacate the rental premises after employment was terminated.

Ms. Timbre's employment ended on January 26, 2015. On February 1, 2015, Ms. Timbre was given 30 days' notice to vacate the rental premises in accordance with section 5 of the tenancy agreement. On February 26, 2015, the landlord made application to a rental officer for payment of rental arrears and eviction. That application was filed by the Rental Office February 27, 2015.

Mr. Dohm confirmed that a new tenancy agreement was discussed with Ms. Timbre in March 2015, but it was unsuccessful. Ms. Timbre remains currently in occupancy of the rental premises. She indicated at hearing that she expects to have alternate accommodations secured for early- to mid-May.

Mr. Dohm testified that the monthly rent of \$1,000 has continued to be applied against Ms. Timbre's rent account. After filing of the application, Ms. Timbre made additional payments to her rent account. As of this hearing date, the arrears claimed by the applicant amount to \$1,010.06, representing the rent for April and partial rent for March. Ms. Timbre acknowledged this debt and indicated she could have it paid by April 20th.

Section 56(1) of the Act specifies a tenancy provided as a benefit of employment terminates on the day the tenant's employment is lawfully terminated. There was no dispute that Ms. Timbre's tenancy ended on January 26, 2015. The written tenancy agreement made between the parties clearly identified the tenancy as one provided as a benefit of employment. I find the tenancy agreement between the parties was terminated on January 26, 2015, in accordance with the Act.

Section 56(2) of the Act specifies the employee-tenant must vacate the rental premises within one week after their employment is terminated. However, by section 5 of the written tenancy agreement – which states the landlord will give the employee-tenant 30 days' notice to vacate the rental premises when their employment is terminated – the parties agreed to a greater period within which the employee-tenant must vacate the rental premises, to the benefit of the tenant.

Section 67(1) of the Act specifies that a landlord is entitled to compensation for a former tenant's use and occupation of the rental premises after the tenancy has been terminated. Section 67(2) of the Act specifies that the acceptance of payments against rental arrears or compensation for use and occupation does not operate as reinstatement of the tenancy or creation of a new tenancy unless the parties so agree. In this case, the parties did not come to an agreement to create a new tenancy and as such Ms. Timbre has been an overholding tenant since January 26, 2015. The landlord's application of the monthly rent for February, March, and April is reasonable compensation for use and occupation of the rental premises. I find the respondent has overholding rental arrears in the amount of \$1,010.06, which constitutes the rent up to and including April 30, 2015.

Ms. Timbre's expressed intent to move out of the rental premises by the middle of May does not come with a secured tenancy agreement with another landlord. Her failure to vacate the rental premises to date and her inability to provide concrete assurance of her intent to move out justifies the necessity for an eviction order. Justification is also found for requiring Ms. Timbre to compensate the landlord for use and occupation after April 30, 2015.

An order will issue requiring Ms. Marlene Timbre to pay compensation for use and occupation of the rental premises in the amount of \$1,010.06; to pay compensation for use and occupation at a rate of \$33.88 for each day she remains in the rental premises after April 30, 2015; and evicting her from the rental premises on May 15, 2015. The eviction order will follow under separate cover.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Applicant's correspondence to respondent dated February 1, 2015
- Exhibit 2: Email correspondence from Barney Dohm to serenitie04@hotmail.com dated February 10, 2015
- Exhibit 3: Canada Post receipt dated February 10, 2015, for registered mail tracking number RW971838525CA
- Exhibit 4: Canada Post track history as of February 20, 2015
- Exhibit 5: Customer aged detail as at February 9, 2015
- Exhibit 6: Applicant's invoices to respondent numbered 4042276, 4042262, 4042251, 4042243, 4042235
- Exhibit 7: Residential tenancy agreement signed June 3, 2014
- Exhibit 8: Applicant's correspondence to NWT Rental Office dated March 6, 2015
- Exhibit 9: Email from Barney Dohm to serenitie04@hotmail.com with attached invoice number 4042284
- Exhibit 10: Applicant's correspondence dated April 6, 2015, with attached aged overdue receivables detail as at April 2, 2015
- Exhibit 11: Customer aged detail as at April 8, 2015
- Exhibit 12: Payment receipts numbered 19682, 19686, and 19688