

IN THE MATTER between **PAULATUK HOUSING ASSOCIATION**, Applicant, and
LAWRENCE RUBEN AND DIANE RUBEN, 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 **PAULATUK, NT**.

BETWEEN:

PAULATUK HOUSING ASSOCIATION

Applicant/Landlord

- and -

LAWRENCE RUBEN AND DIANE RUBEN

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondents shall pay the applicant rent arrears in the amount of forty seven thousand one hundred ninety three dollars (\$47,193.00).
2. Pursuant to sections 41(4)(c) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Unit #0050, Paulatuk, NT shall be terminated on November 30, 2015 and the respondents shall vacate the premises on that date unless the household income is reported in accordance with the tenancy agreement and the assessed rents for August, September, October and November, 2015 are paid in full.

DATED at the City of Yellowknife, in the Northwest Territories this 31st day of August,
2015.

Hal Logsdon
Rental Officer

IN THE MATTER between **PAULATUK HOUSING ASSOCIATION**, Applicant, and
LAWRENCE RUBEN AND DIANE RUBEN, Respondents.

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:

PAULATUK HOUSING ASSOCIATION

Applicant/Landlord

-and-

LAWRENCE RUBEN AND DIANE RUBEN

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: August 13, 2015

Place of the Hearing: Yellowknife, NT via teleconference

Appearances at Hearing: Marjorie Hansen, representing the applicant
Lawrence Ruben, respondent
Diane Ruben, respondent

Date of Decision: August 31, 2015

REASONS FOR DECISION

The applicant alleged that the respondents had breached the tenancy agreement by failing to pay rent. The applicant sought an order requiring the respondents to pay the alleged rent arrears and terminating the tenancy agreement and evicting the respondents. The premises are subsidized public housing.

The applicant provided a lease balance statement indicating a balance of rent owing in the amount of \$59,512.26. The applicant stated that they were currently receiving payments through a garnishment which was not completely satisfied. The applicant stated that the rent arrears that had accrued after the issuance of the garnishee summons were \$51,547. The applicant sought relief in that amount.

The applicant also alleged that the respondents' household income was in excess of the maximum income for continuing eligibility for public housing (the core need income threshold or CNIT). However, the applicant was unable to state what CNIT applied to the community. There was no mention of these grounds for termination on the application.

The respondents disputed the amount alleged owing and referred to a letter from the landlord dated January 2, 2015 which noted that the garnished amounts covered their rent arrears and current rent. The respondents stated that they had understood from that correspondence that they did not have to pay the monthly rent because it was being garnished from their salaries and

applied against the monthly rent and the rent arrears.

The applicant acknowledged the letter and contents and stated that the information contained in the letter was incorrect. The applicant referred to another letter, provided in evidence with the application, dated May 15, 2015 which sought to "clarify" how the payments from the garnishment were applied. The applicants stated that they did not remember receiving the letter although it is marked "hand delivered".

The respondents stated that they were not aware of any income restrictions for public housing eligibility. They stated that they had previously inquired about home ownership financing and had been told on one occasion that their income was too high and on another occasion told they did not earn enough income to qualify.

The issue of continuing eligibility for public housing has not been considered. First, it was not an allegation that was contained in the landlord's application. Second, the applicant has provided no evidence regarding the income eligibility criteria.

A previous order (file #20-12175, filed on July 12, 2011) required the respondents to pay rent arrears of \$45,938.38 and terminated the tenancy agreement on August 9, 2011. An eviction order to be effective on August 10, 2011 was also issued. The applicant failed to enforce the eviction order and entered into another tenancy agreement with the respondents.

As indicated by the lease balance statement, the respondents made only sporadic payments until March, 2013 when they ceased making any rent payments whatsoever. Payments through the garnishment did not began to be received until April, 2014. The garnishee summons was for \$45,938.38, the full amount of the previous order. To date, the lease balance statement indicates that payments totalling \$33,805.12 have been received by the applicant through the garnishment, leaving an unsatisfied balance of \$12,133.26.

At the previous hearing (June 28, 2011) the applicant's tenant ledger card indicated that the full unsubsidized rent had been charged for the month of June. The applicant testified at that hearing that the respondents' income had been reported and the June rent should be \$200 based on the household income. However, the adjustment made on the tenant ledger card was for a rent of \$386. There was no evidence to suggest that the June, 2011 was subsequently adjusted again. The final balance on the lease balance statement is therefore overstated by \$186 and should be \$59,326.26. In other respects, I find the rent records in order.

I do not agree with the \$51,547 sought by the applicant for relief. Rather, I find an amount due of \$47,193 calculated as follows:

Garnishee summons	\$45,938.38
Garnishments to date	<u>(33,805.12)</u>
Unsatisfied balance	\$12,133.26

Applying the unsatisfied balance to the adjusted lease balance statement:

Adjusted balance on lease balance statement	\$59,326.26
Unsatisfied balance of garnishment	<u>(12,133.26)</u>
Rent arrears since last order	\$47,193.00

An order shall issue requiring the respondents to pay the applicant rent arrears in the amount of \$47,193.

Certainly, the letter of January 2, 2015 was misleading and gave the impression that the monthly rent was being satisfied by the garnishment. However, the respondents ceased paying rent altogether over a year before the garnishment action commenced. It would appear that the failure of the respondents to pay the monthly rent was not simply a matter of misunderstanding.

In my opinion, there are adequate grounds to terminate the tenancy agreement for non-payment of rent. The respondent's expressed their sincere desire to address the problem and the applicant expressed their willingness to try to arrange some solution to the problem but notwithstanding the current garnishment, the monthly rent must be paid.

The order shall terminate the tenancy agreement on November 30, 2015 unless the monthly household income is reported to the landlord in accordance with the tenancy agreement and the assessed rents for August, September, October and November, 2015 are paid in full. If this order is not satisfied and the respondents fail to vacate the premises on November 30, 2015, the applicant may make an application for an eviction order.

Hal Logsdon
Rental Officer