

IN THE MATTER between **Northwest Territories Housing Corporation**, Applicant,
and **Evelyn Benwell**, 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:

NORTHWEST TERRITORIES HOUSING CORPORATION

Applicant/Landlord

- and -

EVELYN BENWELL

Respondent/Tenant

ORDER and EVICTION 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 \$4,715.00 (four thousand seven hundred fifteen dollars).
2. Pursuant to section 41(4)(b) of the *Residential Tenancies Act*, the respondent must pay her rent on time in the future.
3. Pursuant to section 45(4)(a) of the *Residential Tenancies Act*, the respondent must comply with her obligation to report total household income to the applicant in accordance with section 6 of her tenancy agreement.

4. Pursuant to sections 41(4)(c), 45(4)(e), and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties will terminate on January 31, 2016, and the respondent must vacate the rental premise on or before that date, unless the rental arrears are paid in full, the rents for December 2015 and January 2016 are paid on time, and the total household income is reported to the applicant for the months of August 2015 to January 2016.
5. Pursuant to sections 63(4)(a) and 83(2) of the *Residential Tenancies Act*, if the tenancy agreement between the parties is terminated in accordance with paragraph 4 of this order, the respondent will be evicted from the rental premises known as Unit #0038, 34 Poppy Crescent, in Fort Smith, Northwest Territories, on February 1, 2016.

DATED at the City of Yellowknife in the Northwest Territories this 9th day of November 2015.

Adelle Guigon
Deputy Rental Officer

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Applicant/Landlord

-and-

EVELYN BENWELL

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	November 3, 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>	November 3, 2015

REASONS FOR DECISION

An application to a rental officer made by Fort Smith Housing Authority as the applicant/landlord against Evelyn Benwell as the respondent/tenant was filed by the Rental Office July 21, 2015. The application was made regarding a subsidized public housing residential tenancy agreement for the rental premises known as Unit #0038, 34 Poppy Crescent, in Fort Smith, Northwest Territories. The applicant served a copy of the filed application on the respondent by registered mail signed for August 26, 2015.

The applicant alleged the respondent had accumulated rental arrears and had repeatedly failed to report household income. An order was sought for payment of the rental arrears, that future rent be paid on time, termination of the tenancy agreement, and eviction. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for November 3, 2015, in Fort Smith, Northwest Territories. Mr. Kevin Mageean appeared representing the applicant. Ms. Evelyn Benwell was served a notice of attendance by registered mail deemed served October 20, 2015. Ms. Benwell did not appear at hearing, nor did anyone appear on her behalf. The hearing proceeded in Ms. Benwell's absence pursuant to section 80(2) of the *Residential Tenancies Act* (the Act).

Preliminary matters

The application to a rental officer identified the landlord as Fort Smith Housing Authority. The written tenancy agreement identified the landlord as Northwest Territories Housing Corporation with Fort Smith Housing Authority as its agent. Mr. Mageean agreed at hearing that the application should appropriately identify the landlord as Northwest Territories Housing Corporation. The application and style of cause are amended going forward to reflect the landlord as Northwest Territories Housing Corporation.

Tenancy agreement

The residential tenancy agreements entered into evidence established an agreement between the parties for subsidized public housing which commenced May 15, 2012. The rental premises was identified as Unit #0038, 34 Poppy Crescent, in Fort Smith, Northwest Territories. The current maximum monthly rent was established at \$1,625. I am satisfied a valid tenancy agreement is in place between the parties in accordance with the Act.

Rental arrears and reporting of household income

Section 6 of the tenancy agreement specifies the tenant's obligation to report total household income of all adult residents occupying the rental premises as often as and whenever requested by the landlord. It was established that the reporting was required on a monthly basis. The reporting of household income is required for the landlord to calculate any subsidies for which the tenant might be eligible.

Section 7 of the tenancy agreement specifies that if the tenant is in compliance with all terms of the tenancy agreement they will be eligible for a rent subsidy to be calculated based on reported household income. By failing to report household income, the tenant would be in breach of a term of their tenancy agreement and therefore not eligible for the rent subsidy. Each month's rent is subsidized based on reported household income for the previous month.

The lease balance statements entered into evidence represents the landlord's accounting of monthly assessed rents and payments against the respondent's rent account. All rents except for September, October, and November 2015 have been assessed subsidies, indicating that household income for all months prior to August 2015 have been reported; the maximum rent of \$1,625 has been applied for each of September to November 2015. I am satisfied that the statements accurately represent the current status of the respondent's rent account. I find the respondent has accumulated rental arrears in the amount of \$4,715.

Mr. Mageean testified and provided evidence that the respondent has repeatedly been late reporting her household income on a regular basis, often going months between submission of reports. I find the respondent has repeatedly failed to comply with her obligation to report household income in accordance with her tenancy agreement.

The lease balance statements further substantiate the applicant's allegations that the respondent has been repeatedly late paying the full amount of rent when due, whether that rent was subsidized or not. The last three payments received against the respondent's rent account were recorded on: August 30, 2015, for \$400; June 28, 2015, for \$80; and May 30, 2015, for \$80. Schedule A to the tenancy agreement specifies that the monthly rent is due and payable on the first day of the month. I find the respondent has repeatedly failed to pay the full amount of her rent when due.

Termination of the tenancy agreement and eviction

The substantial amount of rental arrears represent five months' rent, three months of which the maximum monthly rent was applied. The repeated failure to pay the full amount of rent when due and the respondent's repeated failure to report household income as required are the more substantive justifications for termination of the tenancy and eviction. However, in recognition that should the respondent report her household income for the outstanding months the rents for those months will be re-assessed accordingly and thereby reduce the amount of rental arrears significantly, the applicant was open to termination and eviction being conditional on the payment of the rental arrears, reporting of household income, and rent being paid on time. I agree and am satisfied that while termination and eviction are justified, making them conditional is appropriate under the circumstances.

Order

An order will issue requiring Ms. Evelyn Benwell to pay rental arrears in the amount of \$4,715; to pay her rent on time in the future; to comply with her obligation to report household income; terminating her tenancy January 31, 2016, unless the rental arrears are paid in full, the rents for December 2015 and January 2016 are paid on time, and the total household income is reported for the months of August 2015 to January 2016; and evicting her from the rental premises February 1, 2016, if the termination of the tenancy becomes effective.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

Exhibit 1: Lease balance statement printed July 16, 2015

Exhibit 2: Unsigned residential tenancy agreement dated June 1, 2015

Exhibit 3: Applicant's correspondences to respondent dated: April 14, 2015; April 24, 2015;
March 30, 2015

Exhibit 4: Pages 1, 6, and 7 of unsigned residential tenancy agreement dated October 20, 2012

Exhibit 5: Pages 1, 6, and 7 of initialled residential tenancy agreement dated October 20, 2012

Exhibit 6: Signed residential tenancy agreement dated May 15, 2012

Exhibit 7: Tenant check-in inspection report dated May 15, 2012

Exhibit 8: Lease balance statement printed November 2, 2015

Exhibit 9: Applicant's correspondences to respondent dated: August 17, 2015; July 31, 2015;
July 17, 2015