

IN THE MATTER between **Behchoko Ko Gha K'aodee**, Applicant, and **Glenda Apples and Clayton Football**, 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, **Adelle Guigon**, Deputy Rental Officer, regarding a rental premises within **the community of Behchoko in the Northwest Territories**.

BETWEEN:

BEHCHOKO KO GHA K'AODEE

Applicant/Landlord

- and -

GLEND A APPLES and CLAYTON FOOTBALL

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent/tenant Glenda Apples must pay to the applicant rental arrears in the amount of \$12,225.58 (twelve thousand two hundred twenty-five dollars fifty-eight cents).
2. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondents/tenants Glenda Apples and Clayton Football must pay to the applicant rental arrears in the amount of \$20,484.53 (twenty thousand four hundred eighty-four dollars and fifty-three cents).

3. Pursuant to sections 42(3)(e) and 45(4)(d) of the *Residential Tenancies Act*, the respondents/tenants Glenda Apples and Clayton Football must pay to the applicant compensation for expenses for the repair and cleaning of the rental premises known as Unit #3, 471 Ehtsi Ehtse Tili in Behchoko, Northwest Territories, in the amount of \$1,123.50 (one thousand one hundred twenty-three dollars fifty cents).

DATED at the City of Yellowknife in the Northwest Territories this 6th day of January 2014.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Behchoko Ko Gha K'aodee**, Applicant, and **Glenda Apples and Clayton Football**, Respondents.

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

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BETWEEN:

BEHCHOKO KO GHA K'AODEE

Applicant/Landlord

-and-

GLEND A APPLES and CLAYTON FOOTBALL

Respondents/Tenants

REASONS FOR DECISION

| | |
|---------------------------------------|---|
| <u>Date of the Hearing:</u> | December 5, 2013 |
| <u>Place of the Hearing:</u> | Yellowknife, Northwest Territories, via Teleconference |
| <u>Appearances at Hearing:</u> | Michael Keohane, representing the Applicant Lorraine Hewlett, representing the Applicant Glenda Apples, representing herself |
| <u>Date of Decision:</u> | January 4, 2014 |

REASONS FOR DECISION

The application to a rental officer made by Behchoko Ko Gha K'aodee as the applicant/landlord against Glenda Apples and Clayton Football as the respondents was filed by the Rental Office on July 26, 2013. The application was made regarding a tenancy agreement for the rental premises known as Unit #3, 471 Ehtsi Ehtse Tili, in Behchoko, Northwest Territories. The applicant served a copy of the filed application package on the respondents by personal service August 7, 2013.

The applicant alleged in the application the tenant had accumulated rental arrears and failed to pay rent on time. The respondents vacated the premises in September 2013. The applicant amended their application to include a claim for tenant damages and provided copies of additional supporting documentation to the respondent by both registered mail sent October 18, 2013, and by personal service November 7, 2013. Evidence submitted is listed in Appendix A attached to this order.

A hearing was originally scheduled for October 1, 2013, for which both parties were sent notices of attendance by registered mail sent September 10, 2013. At the time of the hearing the respondent had not signed for their notice and did not appear at the hearing. The presiding rental officer adjourned the matter *sine die* pending confirmation of a new address for the respondents.

The hearing was rescheduled for November 22, 2013. The applicant was served the notice of attendance by registered mail sent November 1, 2013; Mr. Michael Keohane appeared representing the applicant. The respondents were served the notice of attendance by e-mail sent November 1, 2013; Ms. Glenda Apples appeared representing the respondents. Ms. Apples requested an adjournment of the hearing to accommodate the attendance of Mr. Clayton Football, who had just started working for DDMI on a two-week in/two-week out rotation and was on site at the time. Mr. Keohane had no objection to the adjournment of the hearing for this purpose. The presiding rental officer adjourned the matter to December 5, 2013.

On December 5, 2013, Mr. Keohane appeared with Ms. Lorraine Hewlett representing the applicant and Ms. Apples appeared representing herself. Ms. Apples reported that Mr. Football was made aware of the re-scheduled hearing date and time, but refused to appear. The hearing proceeded in his absence.

Mr. Keohane testified that Ms. Apples had entered into a fixed-term tenancy agreement for subsidized public housing with the applicant on July 12, 2007. At that time she was named the sole tenant and fixed-term tenancy agreements continued with her alone until July 6, 2010, when Mr. Football was added to the tenancy agreements. Ms. Apples and Mr. Football continued as joint tenants from July 6, 2010, until September 12, 2013.

Ms. Apples had accumulated rental arrears since the beginning of the tenancy in 2007 and they continued to grow after Mr. Football joined the tenancy in 2010. Subsidized public housing rent is assessed based on reported monthly household income. The respondents had not reported their household income for the months of March through September 2013, therefore, their rent was not subsidized and they were assessed the full market rent of \$1,545 for each month. The applicant is claiming accumulated rental arrears as of September 12, 2013, of \$34,030 less security deposit plus interest of \$1,319.89 for a total of \$32,710.11.

Ms. Apples did not dispute the rental arrears, indicating her only concern was to ensure Mr. Football was held responsible for his share of the rental arrears as they were no longer living together.

Mr. Keohane further testified the applicant had been notified on or before September 12, 2013, by the respondents' neighbours that they had moved to Fort Smith. The applicant's maintenance staff inspected the rental premises September 12, 2013, and found the rental premises emptied of personal belongings. The applicant deemed the rental premises abandoned as of September 12, 2013, and retook possession. An exit inspection was completed. The applicant found the following defects and invoiced the respondents for tenant damages:

| | |
|--|-----------------|
| damaged exterior door - replacement cost: | \$840.00 |
| damaged and dirty refrigerator - repair and cleaning cost: | \$99.75 |
| missing cabinet doors - replacement cost: | \$84.00 |
| two damaged interior door, two damaged door stops - replacement cost: | \$530.25 |
| damaged switch covers - replacement cost: | \$36.75 |
| missing toilet paper holder - replacement cost: | \$36.75 |
| holes in walls/ceiling of utility area - repair cost: | \$57.75 |
| marks and chips to walls throughout the unit - repair and painting cost: | \$63.00 |
| entire unit left in uncleaned condition - cleaning cost: | <u>\$441.00</u> |

TOTAL DAMAGES CLAIMED: \$2,189.25

Cleaning and toilet paper holder

Ms. Apples did not dispute the uncleaned condition of the rental premises and accepted the costs associated with cleaning. I questioned the cost associated with the replacement of the toilet paper holder, noting from the evidenced photographs that the holder itself appeared to be intact and that the roller is what appeared to be missing. Mr. Keohane conceded \$36.75 for replacement of a plastic, spring loaded toilet paper roller was excessive and agreed to reduce that cost to \$15.75.

Exterior door

Ms. Apples also disputed the cost of replacement of the exterior door, citing that the door would repeatedly freeze shut every winter since she moved in. Being the only entry/exit to the home, she would have to break the ice away with a hammer to get the door open. She repeatedly notified the landlord of this problem, with no solution forthcoming. Mr. Keohane acknowledged exterior doors freezing up in the winter was a common problem for which the landlord had no viable solution as it stems from a problem with the foundation. He put forward that it was the landlord's position that they would not install storm doors as they never seemed to last on the units either, resulting in an ineffective expense. Mr. Keohane was prepared to acknowledge environmental factors in the condition of the door, but felt the damages evidenced seemed somewhat excessive in the circumstances. The photographs in evidence showed substantial pitting around the outside edges of the steel door, as well as deterioration of the wooden door trim.

Cabinet doors

Ms. Apples disputed the cost of replacing the missing cabinet doors, stating the doors had never been installed since she moved in. A review of the entry inspection report made July 13, 2007, confirmed Ms. Apples' assertion that the cabinet doors were not on the kitchen cabinet when she moved in. Mr. Keohane accepted this and agreed to withdraw the claim of \$84 for their replacement.

Utility area

Ms. Apples disputed the cost of the repairs of the holes in the utility area, stating these were caused by a water leak from upstairs which the landlord was aware of and were not tenant damages. Mr. Keohane agreed this was the case and withdrew the claim of \$57.75 for the repairs.

Baseboard

Ms. Apples disputed the cost of the repair of the baseboard in the hallway, stating this too was a consequence of the water damage and had actually been repaired. Mr. Keohane acknowledged in review of the photographs in evidence that it did appear that the baseboard had had some repair done to it and the condition it was left in may have been done by the maintenance workers. He agreed to withdraw the claim of \$63 for the repair of the baseboard.

Tenancy agreement

The tenancy agreements submitted by the applicant are for fixed-term tenancies for the subsidized public housing rental premises known as Unit #3, 471 Ehtsi Ehtse Tili, in Behchoko, Northwest Territories. The initial tenancy agreement was with Ms. Apples for a fixed-term from July 13, 2007, to October 31, 2007, and was renewed for consecutive fixed-terms to March 31, 2011. On July 6, 2010, the applicant entered into a replacement fixed-term tenancy agreement with Ms. Apples and Mr. Football. This joint tenancy continued with consecutive fixed-term tenancies until March 31, 2013, after which the tenancy agreement reverted to a periodic, month-to-month tenancy. I am satisfied Ms. Apples had a tenancy agreement with the applicant for the period of July 13, 2007, to July 5, 2010, and that Ms. Apples and Mr. Football had a joint tenancy agreement with the applicant for the period of July 6, 2010, to September 12, 2013.

Rental arrears

The tenant ledger cards submitted by the applicant into evidence are the landlord's accounting of assessed rent and payments made by the respondents throughout the tenancy from July 2007 to September 2013. Ms. Apples did not dispute the rental arrears alleged. I am satisfied the tenant ledger cards accurately report the payments made by the respondents throughout the tenancy.

In light of the distinction between the sole and joint responsibilities for the tenancy over the years, I find Ms. Apples responsible for the rental arrears accumulated between July 13, 2007, and July 5, 2010, in the amount of \$13,545.47. As the security deposit was paid by Ms. Apples during the course of her sole tenancy, the security deposit plus interest of \$1,319.89 will be applied against her rental arrears, thereby reducing the rental arrears Ms. Apples is solely responsible for to \$12,225.58.

I find Ms. Apples and Mr. Football jointly responsible for the rental arrears accumulated between July 6, 2010, and September 12, 2013, in the amount of \$20,484.53. Mr. Keohane acknowledged at hearing the applicant may seek less than this amount if the respondents were to report their household income for the months of March through September 2013, as this would give the applicant the information they need to re-assess the rent for the application of any subsidies.

Tenant damages

The applicant entered into evidence the entry/exit inspection reports for the rental premises, photographs of the condition of the rental premises when it was abandoned by the respondents, a condition rating report, and an invoice relating to the claims for the repair of tenant damages and cleaning costs. Mr. Keohane has agreed to withdraw the claims for the cabinet doors (\$84), the utility area repairs (\$57.75), and the baseboard repair (\$63). He has also agreed to reduce the amount claimed for the replacement of the toilet paper roller by \$21.

With respect to the exterior door, I find it difficult to conclude that the damages to the door were due to tenant negligence. Both parties agree and acknowledge the doors would freeze up in the winter throughout the tenancy, effectively barricading the respondents in the rental premises and requiring them to break themselves out on a regular basis. As no real efforts were made by the landlord to prevent this annual occurrence, I must find these damages are not the tenants' responsibility in this instance. The landlord's claim of \$840 for the replacement of the exterior door is denied.

I find the respondents responsible for the costs of repairs and cleaning to the rental premises as follows:

| | | |
|------------------------------------|---------------|--------------------------|
| amount claimed: | | \$2,189.25 |
| less | cabinet doors | \$84.00 |
| | exterior door | \$840.00 |
| | utility area | \$57.75 |
| | baseboard | \$63.00 |
| | TP roller | \$21.00 |
| | | <u>\$1,065.75</u> |
| TOTAL TENANT DAMAGES COSTS: | | <u><u>\$1,123.50</u></u> |

An order will issue requiring Ms. Apples to pay rental arrears in the amount of \$12,225.58; Ms. Apples and Mr. Football to pay rental arrears in the amount of \$20,484.53; and Ms. Apples and Mr. Football to pay tenant damages in the amount of \$1,123.50.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Landlord's Requests and Summary of History
- Exhibit 2: Residential Tenancy Agreement - Fixed Term Lease dated April 1, 2012
- Exhibit 3: Residential Tenancy Agreement - Fixed Term Lease dated July 6, 2010
- Exhibit 4: Residential Tenancy Agreement - Fixed Term Lease dated April 30, 2009
- Exhibit 5: Residential Tenancy Agreement - Fixed Term Lease dated November 18, 2008
- Exhibit 6: Residential Tenancy Agreement - Fixed Term Lease dated May 2, 2008
- Exhibit 7: Residential Tenancy Agreement - Fixed Term Lease dated October 31, 2007
- Exhibit 8: Residential Tenancy Agreement - Fixed Term Lease dated July 12, 2007
- Exhibit 9: Tenant Ledger Cards for July 13, 2007, to July 1, 2013
- Exhibit 10: Set of 19 photographs of tenant damages
- Exhibit 11: Tenant Ledger Cards for March 1, 2013, to September 13, 2013
- Exhibit 12: Applicant's Unit #3-471 (6 Plex) - Termination of Tenancy for Abandonment correspondence to respondents dated September 12, 2013
- Exhibit 13: Applicant's Damage Deposit correspondence to respondent dated September 13, 2013
- Exhibit 14: Tenant Ledger Cards for Damage Deposit from July 7, 2013, to September 13, 2013
- Exhibit 15: Tenant Ledger Cards for Tenant Damages from July 22, 2008, to September 13, 2013
- Exhibit 16: Applicant's Invoice 6960 for \$2,189.25 dated September 13, 2013
- Exhibit 17: Condition Rating Report dated September 10, 2013
- Exhibit 18: E-mail conversation between Robert McCallum and Jacynthia Rabesca dated September 12-13, 2013
- Exhibit 19: Tenant Check-in/out Condition Report dated for check-in inspection July 13, 2007