

IN THE MATTER between **NWT Housing Corporation**, Applicant, and **Howard Simon Elleze and Jennifer Lee Simba**, 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 Kakisa in the Northwest Territories**.

BETWEEN:

**NWT HOUSING CORPORATION**

Applicant/Landlord

- and -

**HOWARD SIMON ELLEZE and JENNIFER LEE SIMBA**

Respondents/Tenants

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondents must pay to the applicant rental arrears in the amount of \$11,138.50 (eleven thousand one hundred thirty-eight dollars fifty cents).
2. Pursuant to section 41(4)(c) of the *Residential Tenancies Act*, the tenancy agreement between the parties regarding the rental premises known as Lot 19, House #4 in Kakisa, Northwest Territories, is terminated effective February 28, 2014, and the respondents must vacate the rental premise on or before that date.

DATED at the City of Yellowknife in the Northwest Territories this 10th day of February 2014.

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Adelle Guigon  
Deputy Rental Officer

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-and-

**HOWARD SIMON ELLEZE and JENNIFER LEE SIMBA**

Respondents/Tenants

**REASONS FOR DECISION**

**Date of the Hearing:** January 30, 2014

**Place of the Hearing:** Yellowknife, Northwest Territories, by Teleconference

**Appearances at Hearing:** Yvonne Burke, representing the Applicant  
Tom Gross, representing the Applicant  
Howard Elleze, representing himself as the Respondent  
Jennifer Simba, representing herself as the Respondent

**Date of Decision:** January 30, 2014

**REASONS FOR DECISION**

An application to a rental officer made by NWT Housing Corporation as the applicant/landlord against Howard Simon Elleze and Jennifer Lee Simba as the respondents/tenants was filed by the Rental Office November 20, 2013. The application was made regarding the rental premises known as Lot 19, House #4 in Kakisa, Northwest Territories. The applicant served a copy of the filed application package on the respondents by registered mail signed for December 27, 2013.

The applicant alleged the respondents had accumulated rental arrears. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for January 30, 2014. Both parties were served with notices of attendance. Ms. Yvonne Burke and Mr. Tom Gross appeared representing the applicant; Mr. Howard Elleze and Ms. Jennifer Simba appeared representing themselves as the respondents.

Ms. Burke testified that Mr. Elleze and Ms. Simba had been joint tenants of the NWT Housing Corporation since January 1, 2008. Initially they held a market rent tenancy agreement. In August 2008 the parties entered into a Homeownership Entry Level Program (HELP) contract which altered the tenancy agreement to one in which the monthly rent was subsidized based on household income. The tenancy at the rental premises has been continuous since January 2008.

Ms. Burke testified that Mr. Elleze and Ms. Simba had accumulated rental arrears as of the hearing date of \$11,138.50. The last payment received from the respondents was on April 3, 2012.

Ms. Burke requested an order on behalf of the applicant requiring payment of the rental arrears, termination of the tenancy agreement for failure to pay rent and repeatedly failing to pay rent on time, and eviction.

Mr. Elleze and Ms. Simba did not dispute that they had accumulated the rental arrears, nor did they dispute the amount of rental arrears. Mr. Elleze advised his was the sole income for the household and he lost his job working on the Merv Hardie ferry in 2012. Mr. Elleze said he had utilities bills and truck lease payments still to be made, which were prioritized before the rent. He confirmed when asked that the last time he reported his income to the applicant was in 2010 or

2011. Ms. Burke advised the applicant was not inclined to pursue a report of the respondents' household income as she believed their income in 2012 might actually increase the assessed rent and the applicant did not wish to impose any additional amounts on Mr. Elleze and Ms. Simba.

Mr. Elleze and Ms. Simba indicated they hoped the tenancy agreement would not be terminated as they have no place else to go. Ms. Burke countered that although the applicant had other units in the community, Mr. Elleze and Ms. Simba would not be eligible for them due to the rental arrears they have accumulated. Ms. Burke alleged the respondents have family they can stay with in the community until they can find another place to stay, and that the local band may have housing available. Ms. Burke reiterated the applicant's request for termination of the tenancy and eviction.

#### *Tenancy agreement*

Two tenancy agreements were entered into evidence by the applicant: the first was made January 1, 2008, for a 12-month fixed-term ending December 31, 2008; the second was made February 1, 2010, for a six-month fixed-term ending July 31, 2010. Both tenancy agreements were for the same rental premises identified as Lot 19 in Kakisa, Northwest Territories. Neither respondent disputed that they were in a tenancy agreement with the applicant. I am satisfied a valid tenancy agreement was in place.

#### *Rental arrears*

The tenancy agreement entered into January 1, 2008, identified the monthly rent as \$1,221 due the first of the month. This tenancy agreement did not identify the tenancy as one for subsidized housing.

The Homeownership Entry Level Program (HELP) is designed to assist approved applicants with the opportunity to assume the responsibilities of homeownership prior to purchasing a home. The contract requires the tenant to be directly responsible for the utilities for the rental unit while assessing subsidized rent based on the income of the tenant. A HELP contract was entered into between the parties on August 8, 2008, requiring the tenant to enter into six-month fixed-term leases beginning August 1, 2008, and continuing for a two-year period. At the expiration of the two-year period the tenancy agreements may be for either fixed-term or month-to-month tenancies and the subsidized rent is assessed based on the income of the tenant and any occupants who are 19 years of age or older. The HELP contract also requires the tenant to provide verification of income annually, when household income changes, and when requested by the Corporation.

The tenancy agreement commencing February 1, 2010, identified the tenancy as one for subsidized housing for which the monthly rent would be assessed based on household income.

The lease balance statement, tenant ledger, reconciliations, and statement of account are the applicant's accounting of monthly rent and payments made by the respondents between December 21, 2007, and January 1, 2014. The applicant and respondents agreed no payments have been made between January 1 and January 30, 2014.

I am satisfied the tenancy agreement between the parties has been continuous at the rental premises since January 1, 2008. I am also satisfied the accounting of payments made by the respondents over the course of the tenancy is accurate. I find Mr. Elleze and Ms. Simba have accumulated rental arrears in the amount of \$11,138.50.

*Termination of the tenancy agreement*

Both the tenancy agreements, the HELP contract, and the *Residential Tenancies Act* (the Act) require a tenant to pay their rent on time. The tenancy agreements identified the rent was due the first of each and every month. The statements and ledgers show: that what rent was paid was repeatedly late being paid; that the majority of payments made by cheque or automatic withdrawal were returned from the bank with insufficient funds; and that no efforts were made to make any payments since May 2012. The last successful payment was received April 3, 2012.

I am satisfied the respondents have breached their obligation to pay their rent and have done so to such significance as to justify termination of the tenancy agreement and eviction.

An order will issue requiring the respondents to pay rental arrears in the amount of \$11,138.50, terminating the tenancy agreement February 28, 2014. An eviction order effective March 1, 2014, will follow under separate cover.

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Adelle Guigon  
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Lease balance statement for April 1, 2012, to December 1, 2013
- Exhibit 2: Residential lease agreement (HELP)
- Exhibit 3: Homeownership Entry Level Program contract signed August 8, 2008
- Exhibit 4: Applicant's Homeownership Entry Level Program - Kakisa Lake, NT correspondence to respondent dated October 1, 2009
- Exhibit 5: Applicant's Homeownership Entry Level Program (HELP) correspondence to respondent dated September 23, 2009
- Exhibit 6: Applicant's Homeownership Entry Level Program (HELP) correspondence to respondent dated September 4, 2009
- Exhibit 7: Applicant's Homeownership Entry Level Program - Kakisa, NT correspondence to respondent dated June 12, 2009
- Exhibit 8: Applicant's Homeownership Entry Level Program - Kakisa Lake, NT, correspondence to respondents dated April 21, 2009
- Exhibit 9: Applicant's Homeownership Entry Level Program - Client - Jennifer Simba and Howard Elleze - Kakisa Lake, NT, correspondence to respondents dated February 24, 2009
- Exhibit 10: Applicant's correspondence to respondent dated January 9, 2009
- Exhibit 11: Applicant's correspondence to respondent dated December 12, 2008
- Exhibit 12: Applicant's Homeownership Entry Level Program - Client - Howard Elleze & Jennifer Simba - Kakisa Lake, NT, correspondence to Finance and Corporate Services dated December 12, 2008
- Exhibit 13: Applicant's Homeownership Entry Level Program correspondence to respondents dated October 8, 2008
- Exhibit 14: Applicant's Homeownership Entry Level Program correspondence to respondents dated September 11, 2008
- Exhibit 15: Applicant's Homeownership Entry Level Program correspondence to respondents dated September 9, 2008, regarding required income documents
- Exhibit 16: Applicant's Homeownership Entry Level Program correspondence to respondents dated September 9, 2008, regarding notification of arrears
- Exhibit 17: Lease balance statement for April 1, 2012, to June 1, 2014
- Exhibit 18: South Slave District Office reconciliations as of March 31, 2012
- Exhibit 19: Statement of account as of March 31, 2012
- Exhibit 20: Tenant ledger for December 21, 2007, to February 1, 2009
- Exhibit 21: Tenancy agreement between the parties effective January 1, 2008