

IN THE MATTER between **Tsiigehtchic Housing Association**, Applicant, and **Beverly Elanik**, 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 community of Tsiigehtchic in the Northwest Territories**.

BETWEEN:

TSIIGEHTCHIC HOUSING ASSOCIATION

Applicant/Landlord

- and -

BEVERLY ELANIK

Respondent/Tenant

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 \$682.66 (six hundred eighty-two dollars sixty-six cents).
2. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondent must pay compensation to the applicant for expenses directly associated with the repair of damages to the rental premises in the amount of \$1,587.49 (one thousand five hundred eighty-seven dollars forty-nine cents).

3. Pursuant to sections 42(3)(f) and 54(1)(e) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the rental premises known as Unit 24 in Tsiigehtchic in the Northwest Territories is terminated effective July 31, 2013.

DATED at the City of Yellowknife in the Northwest Territories this 3rd day of February 2014.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Tsiigehtchic Housing Association**, Applicant, and **Beverly Elanik**, 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:

TSIIGEHTCHIC HOUSING ASSOCIATION

Applicant/Landlord

-and-

BEVERLY ELANIK

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	December 2, 2013
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories, via Teleconference
<u>Appearances at Hearing:</u>	Elaine Mary Blake, representing the Applicant Beverly Elanik, representing herself as the Respondent
<u>Date of Decision:</u>	January 31, 2014

REASONS FOR DECISION

An application to a rental officer made by Tsiigehtchic Housing Association as the applicant/landlord against Beverly Elanik as the respondent/tenant was filed by the Rental Office October 15, 2013. The application was made with respect to a tenancy agreement for subsidized public housing in Tsiigehtchic, Northwest Territories. The applicant served a copy of the filed application package on the respondent by personal service November 7, 2013.

The applicant alleged the respondent had accumulated rental arrears and had not paid for damages to the rental premises for which the respondent was responsible. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for December 2, 2013. Both parties were served with notices of attendance; Ms. Elaine Mary Blake attended representing the applicant and Ms. Beverly Elanik attended representing herself as the respondent.

Ms. Blake testified that Ms. Elanik had been a tenant in subsidized public housing in Tsiigehtchic; her most recent public housing unit in the community was identified as Unit #24 and was one unit of a duplex. Ms. Elanik agreed, indicating she had been in subsidized public housing units since approximately 2004.

Ms. Blake testified to and provided evidence of damages to Ms. Elanik's rental premises which occurred in April 2009 for which Ms. Elanik had not yet paid for the repairs of; invoices and work orders were submitted corroborating the work and the amounts charged. Ms. Blake claimed the amount of \$1,587.49 for tenant damages. Ms. Elanik did not dispute the damages occurred, nor did she dispute the amount owing for them, although she did mention the damages were not caused by herself but by persons who entered her premises – occasionally with her permission, occasionally without her permission – of whom she refused to press charges against.

Ms. Blake testified to and provided evidence of accumulated rental arrears owed by Ms. Elanik. Ms. Blake claimed \$799.66 for rental arrears to July 2013. Ms. Elanik did not dispute that she had rental arrears, but questioned the amount claimed. She believed she had paid down her rental arrears to an amount somewhat lower than that claimed. Ms. Blake provided a lease balance statement, tenant aged detail report, and tenant ledger cards in support of her claim.

Ms. Blake testified that a fire occurred in Ms. Elanik's unit on July 9, 2013, causing sufficient damage to cause the unit to be uninhabitable. The executive summary of the investigation of the fire conducted by Rick Lindsay identified the cause of the fire as a lit cigarette igniting a mattress. Ms. Elanik confirmed she had woken up to the fire in her bedroom burning her feet and hair and that she unsuccessfully attempted to remove the burning mattresses from the residence. The fire chief, Albert Ross, reported that there was a lot of smoke damage and melted plastic in the unit, and that one wall had to be taken down with an axe by firefighters to ensure the fire had not travelled into the walls. Ms. Blake testified that the tenant of the other unit of the duplex had to be moved to the housing association's only other available unit in the community due to smoke transfer into their unit. Ms. Blake testified that the assessment of the damages to the unit was such that the unit could not be occupied until repairs were conducted, and that the repairs required were of such an extent that the funds required to effect the repairs would not be available until the new fiscal year (2014-2015); for the duration the unit remains uninhabitable.

As of this hearing, the second unit in the duplex, Unit #25, had been repaired so as to become habitable again; however, Ms. Blake did not wish to return Ms. Elanik to a housing unit due to the significant damages caused to Unit #24 by Ms. Elanik's neglect nor did Ms. Elanik wish to reside in a duplex or any complex with multiple attached units. Ms. Elanik did not dispute the cause of the fire damages to the unit as being her responsibility, although she could not confirm that the cigarette which ignited the fire was hers as she had company that evening that had left after she fell asleep. Ms. Elanik did accept responsibility for the fire damages to the unit. Ms. Elanik also confirmed she had not been permitted back into the unit since mid-July – at which time she gained entry in order to clean out what she could from the premises – due to the unit being uninhabitable. Ms. Blake acknowledged she could not pursue the cost of repairs to the unit until the repairs had been effected and the final cost of the repairs could be determined and supported by invoices and work orders, however, she did request an order confirming termination of the tenancy as of July 2013.

Tenancy agreement

Two residential tenancy agreements were submitted into evidence by the applicant. They establish a fixed-term tenancy between the Tsiigehtchic Housing Association and Ms. Elanik for subsidized public housing from April 1 to July 31, 2013. Ms. Blake and Ms. Elanik testified to Ms. Elanik's tenancy in subsidized public housing since 2004. The tenant ledger cards submitted into evidence reflect assessed rent applied to Ms. Elanik's tenancy since April 2009. I am satisfied a tenancy agreement existed between the parties at least since April 2009. .../4

Tenant damages

A tenant ledger card for tenant damages was submitted into evidence accounting for tenant damages charges of \$1,679.90 applied March 31, 2010, and a payment of \$200, bringing the amount owing and claimed to \$1,587.49. Invoices and work orders entered into evidence support the claim for repairs of tenant damages consisting of three broken windows and one damaged exterior door. Ms. Elanik did not dispute either the damages or the amount claimed for them. I am satisfied the damages to the windows and exterior door are Ms. Elanik's responsibility as tenant damages. I find Ms. Elanik owes \$1,587.49 in compensation for the repair of tenant damages to the applicant.

Rental arrears

The lease balance statement entered into evidence reflects the application of assessed rent and payments made towards the account between April 1, 2012, and July 1, 2013, including a partial month's rent for July 1 to 10, 2013, of \$23, accounting for the unit becoming uninhabitable as of July 10, 2013. The tenant aged detail entered into evidence reflects the application of assessed rent and payments made towards the account between April 5, 2011, and June 3, 2013, including a balance forward dated March 31, 2011, of \$3,266.66. The tenant ledger cards entered into evidence reflect the application of assessed rent and payments made towards the account between April 1, 2009, and July 2, 2013, including a balance forward credit to the account on April 1, 2009, of \$72.67 and the application of subsidized rent for July 2013 of \$70. Cross-referencing the three documents together, I am satisfied they collectively accurately represent assessed rent and payments made towards Ms. Elanik's rent account between April 1, 2009, and July 10, 2013.

Ms. Elanik disputed the amount of rent arrears claimed by Ms. Blake, who referred to the tenant ledger card balance of \$799.66. After an exhaustive review of the tenant aged detail, the tenant ledger cards, and the lease balance statement, I have found all to be in order except the following:

- one payment registered in the tenant ledger card of \$70 on February 22, 2013, has not been reported in the tenant aged detail;
- the assessed rent for July 2013 has not been reported in the tenant aged detail; and
- the assessed rent of \$70 applied in the tenant ledger card has not been adjusted in accordance with the partial-month assessed rent applied in the lease balance statement.

Accepting the application of \$23 for the partial-month rent for July 2013 due to the rental premises no longer being habitable as of July 10, 2013, I have calculated the rental arrears as follows:

Balance owing per tenant aged detail	\$729.66
Less payment made February 22, 2013	\$70.00
Plus partial-month rent for July 2013	<u>\$23.00</u>
Total rental arrears	<u><u>\$682.66</u></u>

Termination of tenancy agreement

In light of the evidenced and admitted fact that the rental premises is not in a habitable condition due to the negligence of Ms. Elanik or persons permitted in the premises by Ms. Elanik, termination of the tenancy is warranted due both to the extent of the damages and the resulting frustration of the contract. No other suitable housing is available in the community for Ms. Elanik to move into.

An order will issue requiring Ms. Elanik to pay to the applicant rental arrears in the amount of \$682.66, outstanding compensation for the repair of tenant damages in the amount of \$1,587.49, and terminating the tenancy agreement effective July 31, 2013.

The applicant may make application at a future date for the compensation of repairs to the rental premises related to the fire damage.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Lease balance statement for April 1, 2012, to July 1, 2013
- Exhibit 2: E-mail correspondence between Elaine Blake and Shona Barbour dated August 12, 2013
- Exhibit 3: Fire report of Rick Lindsay dated July 15, 2013
- Exhibit 4: Correspondence from Tsiigehtchic Fire Chief Albert Ross dated July 10, 2013
- Exhibit 5: Set of 30 photographs of fire damage to rental premises
- Exhibit 6: Residential tenancy agreement - fixed term lease dated October 1, 2012
- Exhibit 7: Residential tenancy agreement - fixed term lease dated March 1, 2013
- Exhibit 8: Tenant aged detail for tenant damages as at April 1, 2011
- Exhibit 9: Tenant ledger card for tenant damages as of March 31, 2010
- Exhibit 10: Applicant's invoice number 2009-0159 dated June 30, 2009
- Exhibit 11: Applicant's work order number 392 dated April 1, 2009
- Exhibit 12: Applicant's work order number 386 dated April 1, 2009
- Exhibit 13: Applicant's work order number 391 dated April 1, 2009
- Exhibit 14: Applicant's work order number 415 dated June 18, 2009
- Exhibit 15: Tenant aged detail for rent as at November 30, 2013
- Exhibit 16: Tenant ledger cards for rent from April 1, 2009, to July 2, 2013