

IN THE MATTER between **Fort Smith Housing Authority**, Applicant, and **Penny Bourke and Teanna Bourke**, 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, **Adelle Guigon**, Deputy Rental Officer, regarding a rental premises located within the **town of Fort Smith in the Northwest Territories**.

BETWEEN:

FORT SMITH HOUSING AUTHORITY

Applicant/Landlord

- and -

PENNY BOURKE and TEANNA BOURKE

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 67(4) of the *Residential Tenancies Act*, the respondents must compensate the applicant for use and occupation of the rental premises in the total amount of \$6,500.00 (six thousand five hundred dollars).
2. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondents must compensate the applicant for the cost of repairs, call-outs to unlock the rental premises doors, and replacement keys in the total amount of \$1,071.82 (one thousand seventy-one dollars eighty-two cents).

DATED at the City of Yellowknife in the Northwest Territories this 7th day of April 2015.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Fort Smith Housing Authority**, Applicant, and **Penny Bourke and Teanna Bourke**, 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 **Adelle Guigon**, Deputy Rental Officer,

BETWEEN:

FORT SMITH HOUSING AUTHORITY

Applicant/Landlord

-and-

PENNY BOURKE and TEANNA BOURKE

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	March 31, 2105
<u>Place of the Hearing:</u>	Fort Smith, Northwest Territories, by teleconference
<u>Appearances at Hearing:</u>	Kevin Mageean, representing the applicant Penny Bourke, respondent
<u>Date of Decision:</u>	March 31, 2015

REASONS FOR DECISION

An application to a rental officer made by Fort Smith Housing Authority as the applicant/landlord against Penny Bourke and Teanna Bourke as the respondents/tenants was filed by the Rental Office December 10, 2014. The application was made regarding a subsidized public housing residential tenancy agreement for the rental premises known as Unit #0017A, 81 St. Ann's Street, in Fort Smith, Northwest Territories. The applicant personally served the respondents with a copy of the filed application package December 30, 2014.

The applicant alleged the respondents had accumulated rental arrears and caused damages to the rental premises, and that the tenancy agreement had not been renewed after November 30, 2014. The applicant sought an order for payment of rental arrears, compensation for the cost of repairs and call-outs, and termination of the tenancy agreement. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for March 31, 2015, by teleconference. Mr. Kevin Mageean appeared representing the applicant. Ms. Penny Bourke appeared as respondent and for Ms. Teanna Bourke.

Mr. Mageean testified and provided evidence establishing a residential tenancy agreement between the parties for subsidized public housing. The agreement was for a rental premises known as Unit #0017A, 81 St. Ann's Street, in Fort Smith, Northwest Territories. The tenancy began in October 2011 for a fixed-term to October 31, 2014. On November 1, 2014, the tenancy automatically renewed on a month-to-month basis pursuant to section 49(1) of the *Residential Tenancies Act* (the Act). All rents up to and including for November 2014 have been assessed a rent subsidy based on reported household income. The maximum monthly rent has been established at \$1,625.

In August 2014 the front exterior door, screen, and weatherstripping were damaged and required replacement and repair; a work order was generated, the work was completed, and an invoice was charged against the respondents in the amount of \$438.88. A credit of \$11.40 was applied by the applicant against this amount, resulting in a remaining total owing for repairs of \$427.48. This amount has not been paid by the respondents.

Between October 2013 and December 2014, the respondents required the applicant's assistance with gaining entry to the rental premises and/or replacing lost keys 12 times; of those occurrences, two key replacements occurred in June 2014 and four call-outs occurred in November 2014. As a consequence of the repeated call-outs for service, the applicant began charging the respondents the full actual cost incurred by them, that being: \$13.55 for call-outs during regular weekday working hours, \$195.24 for call-outs after regular working hours during the weekdays, and \$216.76 for call-outs on the weekends. The cost just for cutting replacement keys is \$5 per key; the rental premises in this case required two separate keys – one for the main building entrance and one for their premises. The total accumulated arrears specifically for call-outs and key replacements are currently \$644.34. This amount has not been paid by the respondents.

By correspondence to the respondents dated October 30, 2014, the applicant gave the respondents a 30-day notice to terminate their tenancy in accordance with section 51(5) of the *Residential Tenancies Act* (the Act). Although subsidized public housing landlords do not require a reason to terminate a tenancy, section 55(3)(e) requires a reason for termination of the tenancy be stated in any landlord's termination notice. The applicant has complied with this requirement by citing the reasons for terminating the tenancy due to tenant damage arrears.

Termination of the tenancy was effective November 30, 2014; by remaining in the rental premises after that date the respondents have been overholding tenants. While they remain liable under section 67 of the Act for paying rent, they are no longer eligible for a rent subsidy and as such the applicant has charged the respondents the maximum monthly rent for December 2014 to March 2015. The current rental arrears claimed of \$6,500 represents the overholding rent for December to March.

Mr. Mageean testified that communication with either of the respondents has been unsuccessful since last Fall. Requests were made to establish a payment plan to cover the amounts owing. The applicant felt there was no other viable option than to terminate the tenancy and request an eviction. It was noted at hearing that the applicant did not in fact apply for an eviction order, which Mr. Mageean identified as an error but acknowledged as a consequence the eviction order could not fairly be considered at this time.

Ms. Penny Bourke did not dispute the claims made by the applicant. She acknowledged the costs for repairs and call-outs, although she did mention that the door was again damaged and required repair. Ms. Bourke cited personal family losses as reasons for her failure to focus on all her financial responsibilities since last summer. She understands that her housing must be a priority.

I am satisfied that a valid residential tenancy agreement for subsidized public housing was in place between the parties in accordance with the Act. I am satisfied the applicant gave notice to terminate the tenancy in accordance with the Act. I am satisfied that the charging of maximum monthly rent after the termination of the tenancy is appropriate. I am satisfied the respondents are responsible for the costs of repairs to the doors. I am satisfied the respondents are responsible for the costs claimed for the numerous call-outs and key replacements.

I find the tenancy was terminated on November 30, 2014, in accordance with section 51(5) of the Act. An order terminating the tenancy is unnecessary. Should the applicant find it necessary, they may make application for an eviction order under section 63(1) of the Act.

I find the respondents have been overholding tenants since December 1, 2014. I find the respondents liable for overholding rental arrears in the amount of \$6,500. I find the respondents liable for the total cost of repairs and call-outs in the amount of \$1,071.82.

An order will issue requiring Ms. Penny Bourke and Ms. Teanna Bourke to compensate the applicant for use and occupation of the rental premises in the amount of \$6,500 and to compensate the applicant for the cost of repairs and call-outs in the amount of \$1,071.82.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Lease balance statement dated December 3, 2014
- Exhibit 2: Applicant's outstanding rental arrears - 30 days correspondence to respondents dated November 13, 2014
- Exhibit 3: Pages 1, 6, 7, and tenant information sheets of residential tenancy agreement dated July 26, 2013
- Exhibit 4: Applicant's correspondence to respondents dated October 30, 2014
- Exhibit 5: Applicant's renewal of fixed term lease correspondence to respondents dated September 23, 2014
- Exhibit 6: Applicant's tenant damage data entry adjustment forms prepared: November 26, 2014; October 28, 2014; September 22, 2014; August 25, 2014
- Exhibit 7: Applicant's invoices numbered 93692, 93693, 93694, 93695, 89771, 85703, 82762
- Exhibit 8: Applicant's work orders numbered TD024244, TD024645, TD024644, TD024503, TD022172, TD016395
- Exhibit 9: Applicant's invoice #93695, #93694, #93693 & #93692 correspondence to respondents dated November 26, 2014
- Exhibit 10: Applicant's invoice #89771 correspondence to respondents dated October 28, 2014
- Exhibit 11: Email conversation between Kim G. Olsen, Amber Harrington, Dan Higgins, and Kevin Mageean dated September 22, 2014
- Exhibit 12: Set of two photographs
- Exhibit 13: Applicant's invoice's #82762 correspondence to respondents dated August 25, 2014
- Exhibit 14: Check-in housing unit rating report dated October 17, 2011
- Exhibit 15: Applicant's outstanding rental arrears correspondence to respondents dated November 6, 2014
- Exhibit 16: Applicant's correspondence to respondent Penny Bourke dated December 17, 2014
- Exhibit 17: Applicant's invoice #97480 correspondence to respondents dated December 29, 2014
- Exhibit 18: Applicant's invoice number 97480
- Exhibit 19: Lease balance statement dated March 30, 2015