

IN THE MATTER between **BKGK**, Applicant, and **HS and CR**, 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**, Rental Officer,

BETWEEN:

BKGK

Applicant/Landlord

-and-

HS and CR

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	October 5, 2016
<u>Place of the Hearing:</u>	Behchoko, Northwest Territories
<u>Appearances at Hearing:</u>	LH, representing the applicant EN, representing the applicant TM, representing the applicant CR, respondent HS, respondent
<u>Date of Decision:</u>	October 24, 2016

REASONS FOR DECISION

An application to a rental officer made by BKGK as the applicant/landlord against HS and CR as the respondents/tenants was filed by the Rental Office March 16, 2016. An addendum to the application was received by the Rental Office September 30, 2016. The application was made regarding a subsidized public housing residential tenancy agreement for a rental premises located in Behchoko, Northwest Territories. The applicant personally served a copy of the filed application on the respondents March 21, 2016, and personally served a copy of the addendum to the application on the respondents September 29, 2016.

The applicant alleged the respondents had failed to comply with rental officer orders, had repeatedly failed to pay the full amount of rent when due, had accumulated rental arrears, and had caused damages to the rental premises. An order was sought to rescind paragraph 1 of Rental Officer Order Number 10-14571, for lump sum payment of rental arrears, for payment of costs for repairs and cleaning, for termination of the tenancy agreement, and for eviction.

A hearing was scheduled for October 5, 2016, in Behchoko, Northwest Territories. Ms. LH, Ms. EN, and Ms. TM appeared representing the applicant. They called Mr. BM as a witness to the claims of damages. Ms. CR appeared as respondent. Mr. HS appeared as respondent after the hearing had commenced.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them for subsidized public housing commencing October 26, 2004. On or about August 19, 2016, the respondents were transferred to a different rental premises under the existing tenancy agreement. I am satisfied a valid tenancy agreement is in place in accordance with the *Residential Tenancies Act* (the Act).

Previous orders

Rental Officer Order Number 10-14571 dated May 22, 2015, ordered: CR solely to pay rental arrears in the amount of \$272; the respondents jointly to pay rental arrears in the amount of \$48,872.86 in minimum monthly installments of \$250 starting in May 2015; and the respondents to pay their future rent on time.

Rental arrears

The lease balance statements and lease ledger entered into evidence represent the landlord's accounting of monthly assessed rents and payments made against the respondents' rent account. All rents have been assessed subsidies based on reported household income. The respondents did not dispute the accuracy of the statements. I am satisfied the statements accurately reflect the current status of the respondents' rent account.

The statements clearly show inconsistent payments against the respondents' rent account in amounts that do not cover the monthly assessed rents and the ordered minimum monthly installments. Since filing of the last rental officer order, the respondents have accumulated additional rental arrears in the amount of \$14,230. This pattern, which has been established since prior to the last rental officer hearing, discredits the respondents' assurances that they can and will pay their rent on time in the future and make payments to resolve their rental arrears.

I am satisfied the respondents have repeatedly failed to pay their assessed rent on time and in full. I am satisfied the respondents have repeatedly failed to pay the minimum monthly installments as ordered. I am satisfied the respondents have accumulated additional rental arrears since the last rental officer order was issued. I find the respondents have repeatedly failed to comply with their obligation to pay rent. I find the respondents have repeatedly failed to comply with a rental officer order. I find the respondents have accumulated rental arrears to date totalling \$63,374.86.

Repairs and cleaning

The parties agreed the respondents had been transferred from one rental premises to another rental premises on September 27, 2016, in accordance with section 3 of the tenancy agreement. Section 3 of the tenancy agreement stipulates the tenant's agreement to transfer to other premises when the landlord determines the premises are no longer suitable. In this instance, the original rental premises had been contracted by the landlord from a local company for the purposes of renting to tenants under the subsidized public housing program and that contract was terminated (possession of the premises was returned to the local company). There is no dispute that the transfer to alternate accommodations complied with the terms of the tenancy agreement and did not end the tenancy agreement.

An exit inspection report was prepared on September 27, 2016, followed immediately by a unit condition rating report. Both were shared with the respondents. The unit condition rating report detailed the cleaning and repairs to the rental premises and their associated costs.

Allowed claims

There was no dispute regarding the following claims, which are allowed:

Cleaning throughout	\$815.00
Replace/repair exterior doors	\$1,480.00
Replace interior doors	\$300.00
Replace electrical plates (covers)	\$100.00
Repairs holes in walls and ceilings	\$2,445.00
Replace window crank handles	\$150.00
Repair closets	\$75.00
Repair bathroom vanity shelving	\$15.00
Replace two smoke detectors	\$75.00

After some consideration, I have decided to also allow the claimed 80 percent of the costs for repainting the rental premises as a result of the extensive amount of damages to the walls and ceilings which necessitated the repainting. I considered the acknowledgement that the premises had not been painted since prior to the landlord contracting possession of the premises. Had the repainting been solely necessitated by normal wear and tear or the age of the existing paint job then the costs of repainting would be denied entirely. However, 80 percent of the area to be painted was due to the damages, and 80 percent of the costs to repaint the walls and ceiling is what the landlord is claiming, in the amount of \$2,800.

Partially allowed claim

The living room window was documented as damaged (cracked) and photographs support the claim. However, the respondents testified that the outside panel of the window was damaged shortly after they moved in, presumably due to shifting. The respondents admitted they did not report the damage to the landlord. The initial small crack eventually extended to the point where an entire section of the glass panel was cracked. As a result of failing to report the damage, the landlord did not have the opportunity to effect less expensive repairs before the damage became too extensive. The parties agreed to share responsibility for the damage to the window. I find the respondents liable to the applicant for costs to repair the living room window in the amount of \$150.

Disallowed claims

In the unit condition rating report the applicant had claimed costs for replacement of the front and side entry floor tiles, and replacement of the stove and fridge. It was admitted at hearing that these items had all exceeded their average useful life, and some of the damage to them was pre-existing the tenancy. The total costs claimed for these items of \$2,250 is denied.

The applicant's claim for replacement of the bathroom door was not supported with either photographic evidence or with reference of the damage in the exit inspection report. The claim for \$300 to replace the bathroom door is denied.

The applicant claimed costs to replace the bathroom toilet paper holder and towel holder. The entry inspection report indicates neither of these items were present at commencement of the tenancy. The claim of \$45 for replacement of these two items is denied.

The applicant claimed replacement costs for four floor grills (vent covers) due to damage. The entry inspection report indicates the floor grills were damaged at commencement of the tenancy. The claim of \$60 for replacement of the floor grills is denied.

The applicant claimed costs to replace a fire extinguisher. The entry inspection report did not reference the presence of a fire extinguisher at commencement of the tenancy, and the respondents denied that one was present. The claim of \$75 for replacement of the fire extinguisher is denied.

The applicant claimed costs to remove a vehicle and dog house from the yard, and to clean the yard. The respondents did not dispute that this work needed to be done but promised to have that work done by the end of the week. It was agreed at hearing that should the yard work and removal of items be completed by October 7th the claim for costs for the applicant to do it would be denied. I did receive confirmation from the applicant by email on October 19th that the respondents had cleaned the yard as required by October 7th. The applicant's claim of \$300 to clean and remove items from the yard is denied.

The applicant claimed costs to replace the exterior outlet cover. The parties agreed that an inspection of the outside of the premises was not conducted during the entry inspection. As such, the entry inspection report has no indication of whether or not the exterior outlet cover was present at commencement. The claim of \$25 to replace the exterior outlet cover is denied.

The applicant claimed costs to remove exterior Christmas lights from around the porch. There not having been an inspection of the outside of the premises during the entry inspection, there is no indication on the entry inspection report of whether or not the lights were there at commencement. The respondents claimed the lights were there since prior to commencement of their tenancy. The applicant could not refute the claim. The claim of \$25 to remove the Christmas lights is denied.

Damages summary

In summary, the claims for repairs and cleaning which are allowed are:

Cleaning throughout	\$815.00
Replace/repair exterior doors	\$1,480.00
Replace interior doors	\$300.00
Replace electrical plates (covers)	\$100.00
Repairs holes in walls and ceilings	\$2,445.00
Replace window crank handles	\$150.00
Repair closets	\$75.00
Repair bathroom vanity shelving	\$15.00
Replace two smoke detectors	\$75.00
Painting throughout (80%)	\$2,800.00
Repair living room window	\$150.00
Total	\$8,405.00

Termination of the tenancy agreement and eviction

In consideration of the respondents' repeated failure to comply with a rental officer order, repeated and ongoing failure to pay the full amount of their rent when due, and accumulation of substantial rental arrears, I am satisfied termination of the tenancy agreement and eviction are justified. The decision to terminate the tenancy and evict the respondents was made known to them at hearing, but the determination of the effective dates of termination and eviction were reserved. The respondents were cautioned at hearing to begin seeking alternate accommodations because their tenancy would be terminated. After some deliberation, which included taking time to finalize calculations related to the claims for damages, I am satisfied termination of the tenancy for October 31, 2016, is justified, but the eviction order will not be effective until November 30, 2016. The respondents will be ordered to compensate the applicant for daily use and occupation of the rental premises after October 31, 2016.

Orders

An order will issue: rescinding paragraph 1 of Rental Officer Order Number 10-14571; requiring the respondents to pay rental arrears in the amount of \$63,374.86; requiring the respondents to pay costs of repairs and cleaning in the amount of \$8,405; terminating the tenancy agreement October 31, 2016; evicting the respondents from the rental premises November 30, 2016; and requiring the respondents to pay compensation for use and occupation of the rental premises at a rate of \$50.79 for each day they remain in the rental premise after October 31, 2016.

Adelle Guigon
Rental Officer