

IN THE MATTER between **BKGK**, Applicant, and **J(J)N**, 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**, Rental Officer,

BETWEEN:

BKGK

Applicant/Landlord

-and-

J(J)N

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: October 5, 2016

Place of the Hearing: Behchoko, Northwest Territories

Appearances at Hearing: LH, representing the applicant
EN, representing the applicant
TM, representing the applicant
JN, respondent
MWB, Tlicho interpreter for the respondent

Date of Decision: October 5, 2016

REASONS FOR DECISION

An application to a rental officer made by BKGK as the applicant/landlord against J(J)N as the respondent/tenant was filed by the Rental Office April 25, 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 respondent May 2, 2016, and personally served additional submissions on the respondent July 12, 2016.

The applicant alleged the respondent had repeatedly failed to pay rent, had accumulated rental arrears, and had refused to comply with a transfer to more suitable premises. An order was sought for payment of rental arrears, that future rent be paid on time, conditional termination of the tenancy agreement, conditional eviction, and to transfer the respondent to seniors housing.

A hearing was scheduled for October 5, 2016, in Behchoko, Northwest Territories. Ms. LH, Ms. EN, and Ms. TM appeared representing the applicant. Mr. JN appeared as respondent. Ms. MWB appeared as Tlicho translator for the respondent.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between the parties for subsidized public housing commencing February 28, 2010. I am satisfied a valid tenancy agreement is in place between the parties in accordance with the *Residential Tenancies Act* (the Act).

Transfer to other premises

The applicant's representatives testified that they have spoken with the respondent repeatedly about transferring out of the current assigned rental premises into the seniors complex where the respondent can receive assisted living. The respondent has refused such a transfer, arguing that he can look after himself and is not ready to move into seniors housing.

At hearing I determined that while I could consider terminating the tenancy agreement, I could not order a tenant to transfer to another unit as that would effectively be ordering the tenant to enter into a new tenancy agreement. This would be an appropriate determination for market rental or private tenancy agreements. However, what I now realize I failed to consider is that subsidized public housing residential tenancy agreements include the following section:

“3. Reallocation Transfer to Other Premises

The Tenant agrees to accept a transfer to other premises when, in the Landlord’s opinion, the Premises are no longer suitable.”

This section essentially means the landlord can transfer a tenant from one premises to another without terminating the tenancy agreement, as many times as required throughout the tenancy. The tenant has already agreed to accept any such transfer simply by entering into the tenancy agreement. It would certainly facilitate good relations between the parties if such a transfer were amicable rather than simply demanded by the landlord, but as long as the reasons for the transfer are justified then the tenant would be required to comply. In this instance, the landlord has made efforts to communicate with the respondent about transferring to the seniors complex, citing the transfer as a more suitable location for the respondent. The respondent’s unwillingness to accept a transfer effectively forced the applicant’s hand in making the application to a rental officer on the matter.

As I have already made a decision at hearing to deny the applicant’s request to order a transfer, I will not reverse that decision. What I will do is require the respondent to comply with his obligation to accept a transfer to other premises in accordance with section 3 of his tenancy agreement.

Rental arrears

Lease ledgers, lease balance statements, rent ledger spreadsheets, and statements of account were entered into evidence by the applicant representing the landlord’s accounting of monthly assessed rents and payments made against the respondent’s rent account. All rents have been subsidized based on reported household income. The respondent did not dispute the amount of rental arrears claimed, and acknowledged the debt.

I am satisfied the respondent has repeatedly failed to pay his rent. I find the respondent has accumulated rental arrears in the amount of \$4,673.

Disturbances

The applicant's representatives testified there have been some incidents where other individuals have apparently taken advantage of the respondent and "taken over" his rental premises for their own use. These incidents have resulted in disturbances complained of by other tenants in the residential complex. There have been no recent complaints. The respondent acknowledged there have been occasional incidents and accepted responsibility for them. I am satisfied the respondent has failed to comply with his obligation not to disturb other tenants' or the landlord's enjoyment or possession of the rental premises or residential complex.

Maintenance issues

The respondent suggested that there were maintenance issues with the rental premises. It was explained to the respondent that the application before me today is not regarding maintenance issues, but if he wished to have a hearing regarding maintenance issues he could file an application to a rental officer on that matter.

Termination of the tenancy agreement and eviction

The parties were in agreement that termination of the tenancy agreement and eviction should be conditional on the respondent paying the rental arrears in full and paying his rent on time. In consideration of the respondent's repeated failure to pay his rent and the amount of rental arrears accumulated, I am satisfied termination of the tenancy agreement and eviction are justified. I am in agreement with the parties that the termination and eviction should be conditional as requested.

Orders

An order will issue: requiring the respondent to pay rental arrears in the amount of \$4,673; requiring the respondent to pay his future rent on time; requiring the respondent to comply with his obligation not to disturb the landlord's or other tenants' enjoyment or possession of the rental premises or residential complex; requiring the respondent to comply with his obligation to accept a transfer to other premise in accordance with section 3 of his tenancy agreement; terminating the tenancy agreement January 31, 2017, unless the rental arrears are paid in full and the rents for November, December, and January are paid on time; and evicting the respondent from the rental premises on February 1, 2017, if the termination of the tenancy becomes effective.

Adelle Guigon
Rental Officer