

IN THE MATTER between **RK**, Applicant, and **JT**, 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:

RK

Applicant/Landlord

-and-

JT

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: August 24, 2016, and September 29, 2016

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: RK, applicant
JT, respondent

Date of Decision: November 4, 2016

REASONS FOR DECISION

An application to a rental officer made by RK as the applicant/landlord against JT as the respondent/tenant was filed by the Rental Office May 20, 2016. The application was made regarding a residential tenancy agreement for a rental premises located in Inuvik, Northwest Territories. The applicant personally served a copy of the filed application on the respondent June 7, 2016.

The applicant alleged the respondent had repeatedly failed to pay rent, the respondent had accumulated rental arrears, and that the applicant required possession of the property for his own use as a residence. An order was sought for termination of the tenancy agreement and eviction.

A hearing was commenced August 24, 2016, and completed September 29, 2016, both days by three-way teleconference. Mr. RK appeared as applicant both days. Ms. JT appeared as respondent both days. Subsequent written submissions were permitted until October 27, 2016, after which the following decision was rendered.

Preliminary matters

The respondent raised the question of jurisdiction on this dispute. She claimed that because the respondent and applicant were common-law spouses that the *Residential Tenancies Act* (the Act) did not apply. The applicant disputed the common-law relationship and reiterated the nature of their relationship as one of landlord and tenant. Evidence was heard regarding the nature of the parties relationship. After deliberation on the matter, I have decided that my authority as rental officer does not extend to determining whether or not a common-law relationship exists or ever existed between the parties; that is a decision to be made through family law court. My authority as rental officer extends to determining whether or not a tenancy agreement exists between the parties in accordance with the Act.

Tenancy agreement

The applicant testified and provided evidence in the form of written statements from friends and colleagues, and a written tenancy agreement, establishing a residential tenancy agreement between the parties. He testified that he had initially permitted the respondent to store some items at the rental premises in August 2015, and then when she asked a few days later if she could stay there until she could find a new place he agreed on the condition that the respondent pay for the utilities. The applicant then moved to another premises to reside temporarily. In January 2016, the respondent signed a written agreement for the rental of the premises at \$1,900 per month plus utilities. The respondent did not make any payments towards the rent until March 2016 when she paid \$4,000; two additional payments of \$500 each were received in April and May 2016. By May, the applicant decided he wished to move back into the rental premises as he was incurring costs, including paying rent where he was staying. He filed an application to a rental officer requesting termination of the tenancy agreement and eviction.

The respondent disputed that she had entered into any form of residential tenancy agreement, reiterating her assertion that she and the applicant had been residing together in a common-law relationship. She disputed the reliability of the written statements submitted by the applicant as containing entirely false information, and that the persons writing the statements are not friends of either herself or the applicant. The respondent denied signing a written agreement in January 2016, disputing that the signature thereon was hers. The respondent confirmed that she paid the respondent \$4,000 but stated that it was not for rent, it was for repairs to the rental premises. The respondent asserts that she and the applicant had been living together until May 2016 when the applicant moved out after an argument.

Written statements

Seven written statements were entered into evidence supporting the applicant. The statements were signed by: MH dated September 24, 2016; HM dated August 26, 2016; LG-M dated August 26, 2016; MA dated

September 14, 2016; WM dated September 15, 2016; AE dated September 11, 2016; and MH, J [unreadable last name], JH, and [unreadable name] dated September 24, 2016. . While there are some similarities in writing between some of the statements, they are not of any significance to raise a concern that the parties were coerced or told exactly what to write. The parties who signed the August 26th statements are married; their statements are the closest to being identical, yet they are not exact. I am satisfied the statements were made independently of each other in support of the applicant and without coercion. I find it difficult to believe without substantive evidence to reasonably question their respective characters that eight different individuals would put their names to documents that were not true.

Ownership of applicant's current residence

The applicant confirmed that he is a 50 percent owner of the property he is currently residing at, but that he is paying his co-owner rent. The statements dated September 24, 2016, confirm this. They also confirm the applicant's testimony that he moved into the co-owned property in September 2015 but did not start paying rent until November 2015.

Signed tenancy agreement

The applicant submitted into evidence an agreement between himself and the respondent dated January 1, 2016. The agreement was for rental of the rental premises for \$1,900 per month plus utilities, and the respondent was granted four months to pay a damage (security) deposit of \$1,200. The applicant did not sign the agreement, but the respondent did on January 5, 2016. The respondent disputes that the signature is hers. There are three different documents in the rental office file with the respondent's signature from which I can compare the signature on the agreement. All appear to have notable similarities, with the signature on the August 22, 2016, letter from the respondent to the applicant regarding "Separation Agreement and Division of Assets" being the closest to that on the agreement. I am satisfied that the signature on the January 1, 2016, agreement is that of the respondent.

Respondent's witnesses

The respondent insisted on having her children give witness testimony, and provided written statements from two of them as well. She was cautioned against this as witness testimony from young persons in this situation would hold limited weight. This is not necessarily because the children cannot be believed, but rather because of potential influences to their testimony by the parent they are testifying for, whether intentional or not. The children are 17, 18, and 24 years old. No other independent witnesses were brought by the respondent, either in person or in writing.

Police-issued promise to appear and undertaking

The respondent submitted into evidence a police-issued promise to appear (PTA) and undertaking entered into by the applicant on September 6, 2015. The applicant admitted to the documents but indicated that the charges were dropped by the police. The nature of the charge is irrelevant to this application. One of the conditions of the undertaking was to "abstain from communicating with [the respondent] or from going to [the rental premises] except in accordance with the following conditions: Unless she consents and you must leave as soon as she removes consent. Otherwise, contact may only be done through a sober third party and only to get your personal belongings." The conditions of the undertaking suggest to me that on a balance of probabilities the applicant did move out of the rental premises in September as he has testified to. The undertaking also appears to support that the respondent was residing at the rental premises as of at least September 6, 2015. Those dates coincide with the dates the applicant has testified he permitted the respondent to move into the rental premises.

Definitions

Section 1(1) of the Act provides for the following definitions:

"landlord" includes the owner, or other person permitting occupancy of rental premises, and his or her heirs, assigns, personal representatives and successors in title and a person, other than a tenant occupying rental premises, who is entitled to possession of a residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent;

"rent" includes the amount of any consideration paid or required to be paid by a tenant to a landlord or his or her agent for the right to occupy rental premises and for any services and facilities, privilege, accommodation or thing that the landlord provides for the tenant in respect of his or her occupancy of the rental premises, whether or not a separate charge is made for the services and facilities, privilege, accommodation or thing;

"tenancy agreement" means an agreement between a landlord and a tenant for the right to occupy rental premises, whether written, oral or implied, including renewals of such an agreement;

"tenant" means a person who pays rent in return for the right to occupy rental premises and his or her heirs, assigns and personal representatives.

Based on the evidence and testimony provided, I am satisfied of the following:

- that the applicant owns the rental premises;
- that the respondent occupied the rental premises since at least September 2015;
- that the applicant moved out of the rental premises in September 2015;
- that there was an initial verbal agreement between the parties that the respondent could reside at the rental premises in exchange for paying utilities; and
- that in January 2016 the parties agreed that the respondent could continue to reside at the rental premises in exchange for \$1,900 per month in rent plus utilities.

As such, I am satisfied a valid tenancy agreement is in place between the parties in accordance with the Act.

Rental arrears

The applicant testified that the respondent has not paid the rent as agreed and has accumulated rental arrears. The parties agreed that the respondent had made three payments totalling \$5,000, the last payment having been received in May 2016. As mentioned previously,

I am satisfied that the parties agreed to a monthly rent of \$1,900 commencing in January 2016. Prior to January the agreement was for the respondent to pay utilities; no evidence was presented establishing whether or not the respondent paid the utilities for September to December 2015. Regardless of the issue of the utilities payments, I am satisfied the respondent has repeatedly failed to pay the monthly rent of \$1,900 since January 2016.

Termination of the tenancy agreement and eviction

The applicant requested termination of the tenancy agreement and eviction for two reasons: because the respondent has not paid her rent as required and because the applicant requires possession of the premises for his own residence.

Section 41(4)(a) of the Act requires the tenant to pay the full amount of her rent when due. Section 41(4)(c) of the Act offers remedies to the landlord where the tenant is found to have failed to comply with her obligation to pay her rent, including termination of the tenancy agreement. In consideration of the respondent's repeated failure to pay rent and the substantial amount of rental arrears accumulated to date, I am satisfied that termination of the tenancy agreement under section 41 is justified.

Section 58(1) of the Act permits a landlord to make an application to a rental officer to terminate the tenancy where the landlord requires possession of the rental premises for use as a residence by the landlord. The applicant has reiterated time and time again throughout the application process and the hearings that he wishes to move back into the rental premises. I have no reason to disbelieve the applicant's intentions in this regard. As such, I am satisfied that the applicant in good faith requires possession of the premises for his own use as a residence, and that the applicant has complied with section 58(1) by making the application to a rental officer. I am satisfied termination of the tenancy agreement under section 58 is justified.

Orders

An order will issue terminating the tenancy agreement November 30, 2016, and requiring the respondent to vacate the rental premises on or before that date. In light of the relatively short notice of the termination date, accounting for the time for service of the order and reasons, I will extend the eviction date to December 15, 2016, to ensure the respondent has ample opportunity to secure alternate accommodations.

Adelle Guigon
Rental Officer