

IN THE MATTER between **NTHC**, Applicant, and **FA**, 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:

NTHC

Applicant/Landlord

-and-

FA

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	October 4, 2016
<u>Place of the Hearing:</u>	Fort Smith, Northwest Territories
<u>Appearances at Hearing:</u>	CS, representing the applicant AH, representing the applicant FA, respondent
<u>Date of Decision:</u>	October 4, 2016, and November 18, 2016

REASONS FOR DECISION

An application to a rental officer made by FSHA on behalf of the NTHC as the applicant/landlord against FA as the respondent/tenant was filed by the Rental Office July 7, 2016. The application was made regarding a subsidized public housing residential tenancy agreement for a rental premises located in Fort Smith, Northwest Territories. The applicant served a copy of the filed application on the respondent by registered mail signed for July 22, 2016.

The applicant alleged the respondent had been repeatedly late paying rent, had accumulated rental arrears, and was no longer eligible for subsidized public housing. An order was sought for payment of rental arrears, termination of the tenancy agreement, and eviction.

A hearing was scheduled for October 4, 2016, in Fort Smith, Northwest Territories. The rental officer appeared by telephone. Mr. CS and Ms. AH appeared representing the applicant. Ms. FA appeared as respondent.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them for subsidized public housing commencing November 4, 2010. I am satisfied a valid tenancy agreement is in place between the parties in accordance with the *Residential Tenancies Act* (the Act).

Rental arrears

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

The statements corroborate the applicant's allegation that the respondent has been repeatedly late paying the full amount of her rent when due throughout the tenancy. Periods when the respondent's rent account has been in good standing have been roughly equal to periods when the respondent has carried rental arrears. Currently the respondent is only behind one month's rent in the amount of \$1,625.

I am satisfied the respondent has repeatedly failed to comply with her obligation to pay the full amount of her rent when due. I find the respondent has accumulated rental arrears in the amount of \$1,625.

Repairs

The parties agreed and evidence was presented establishing that damages to the back exterior door of the rental premises were the respondent's responsibility. The parties agreed to the claim of \$302 for the necessary repairs. I find the respondent liable to the applicant for the costs of repairs in the amount of \$302.

Ineligibility for subsidized public housing

Section 6 of the tenancy agreement requires the tenant to report her total household income whenever and as often as the landlord requests and in the form prescribed by the landlord. There is no dispute that until recently the respondent has complied with this obligation.

Section 7 of the tenancy agreement specifies that as long as the respondent is in compliance with the terms of the tenancy agreement the tenant will be eligible for a rent subsidy which would be calculated according to the GNWT Public Housing Rental Subsidy Program (the Program). It further clarifies that the Program may be amended or renamed from time to time.

In order to be eligible for subsidized public housing a tenant must prove that their household income falls below a certain monthly or annual income amount, as set out by the Core Need Income Threshold (CNIT) chart. CNIT is established by the landlord through internal policy and is amended from time to time.

Until July 1, 2016, the landlord required tenants to report their household income on a monthly basis from which the current month's rent would be subsidized based on the prior month's income. Effective July 1, 2016, the landlord amended their policies to require tenants to report their household income on an annual basis by providing their annual income tax assessments as proof of income. The rent subsidies would be calculated based on the previous year's income tax assessment and would result in a consistent amount of subsidized rent per month for a 12-month period. Tenants have been asked to sign a form consenting to the Canada Revenue Agency (CRA) releasing the tenant's income tax assessment to the landlord to facilitate calculating rent subsidies. The respondent had failed to provide the consent form to the landlord as requested, nor did she provide any other documentation to satisfy her obligation to report her household income. This failure has been remedied since the hearing date.

Because the respondent had been reporting her income on a monthly basis prior to the implementation of the new reporting requirements, the applicant had a record of the respondent's reported income during 2015. They reviewed this information and discovered that the respondent's reported income continued to exceed the maximum CNIT and as such the respondent was no longer eligible for subsidized public housing. Consequently, the applicant sent a notice to the respondent confirming her ineligibility for subsidized public housing and requested that she vacate the premises.

Section 57(b) of the Act requires a landlord to make an application to a rental officer where they are seeking to terminate a tenancy agreement because a tenant of subsidized public housing has ceased to meet the requirements for occupancy of the rental premises. The applicant prepared this application at the same time that they notified the respondent of her ineligibility for subsidized public housing, thereby complying with the requirements of section 57(b) of the Act.

At hearing, the respondent confirmed her 2015 income as approximately the amount the applicant calculated. She further confirmed her income for previous years has met or exceeded the CNIT. She does not understand why that should make a difference now when it apparently did not in previous years. The respondent argued that she was not notified when the CNIT changed. She also argued that the CNITs established by the landlord are unreasonable and not consistent with other jurisdictions, in particular for northern communities in Alberta.

How the landlord sets their policies and establishes CNIT is not within my jurisdiction as rental officer to review or consider. My jurisdiction extends to determining whether or not the terms and obligations under a residential tenancy agreement and the Act are being met. In this case I must only determine whether or not the tenant is eligible for subsidized public housing as the eligibility requirements are set out under the landlord's policies. If the tenant is no longer eligible then I must consider terminating the tenancy agreement.

The maximum monthly rent for the respondent's three-bedroom rental premises is established in Schedule A of her tenancy agreement at \$1,625. A review of the lease balance statement shows that between April 2012 and March 2013 the respondent had been assessed subsidies based on monthly reported income for 11 out of 12 months. All except one of the 11 subsidized months were assessed for greater than \$1,200. The monthly CNIT for 2012 was \$6,000 (or approximately \$72,000 per year); the monthly CNIT for 2013 was \$7,958 (or \$95,500 per year). The CNIT was defined by the community only. I infer from the subsidies calculated during this period that the respondent's household income only met or exceeded the CNITs once.

Between April 2013 and October 2013 the respondent was assessed subsidies based on monthly reported income for two out of seven months. Both of the subsidized months were assessed at \$1,295. I infer from the subsidies calculated during this period that the respondent's household income met or exceeded the CNIT in five of the months.

Between November 2013 and June 2016 the respondent continued occupying the subsidized public housing unit after being notified that she was no longer eligible for subsidized public housing, and was assessed subsidies based on monthly reported income for 17 out of 32 months; all except one of the subsidized months resulted in a subsidized rent of \$1,295. Effective January 2015, the annual CNIT was reduced from \$95,500 to \$70,100; the CNIT was defined by community and further defined according to the size of the rental premises. To be more specific, the CNIT for a three-bedroom rental premises in Fort Smith was established at \$70,100 per year. I infer from the subsidies calculated during this period that the respondent's household income met or exceeded the CNITs in 15 of the 32 months.

As previously stated, the respondent confirmed that her annual gross income for 2015 likely exceeded \$100,000. She clarified that income reflects extra work that she took on and training opportunities outside the community, and that realistically her base income is approximately \$80,000. What she fails to acknowledge is that even her base income exceeds the CNIT for subsidized public housing in Fort Smith by nearly \$10,000.

Prior to July 2016, for a tenant to receive rent subsidies they were required to report their income on a monthly basis. They would be required to attend the local housing organization, provide proof of their household income, and sign a household income form. The household income form detailed various information including the reported income amounts, how the subsidies were calculated, and what the CNIT was for that month. By signing the household income form the tenant is certifying their understanding of the form and that the information therein contained is correct and complete. I infer from this process that the respondent was notified on a monthly basis prior to July 2016 what the CNIT for her rental premises was.

On October 22, 2013, the respondent was notified that her monthly income had consistently exceeded the CNIT and that as such she no longer met the eligibility requirements for subsidized public housing; she was encouraged to either contact the landlord to discuss her eligibility for other housing programs or to look for private accommodations. As previously mentioned, the respondent was again notified on June 29, 2016, that her household income exceeds the CNIT and that she no longer meets the eligibility requirements for subsidized public housing; she was asked to vacate the rental premises and provided with a brochure providing information on the landlord's Homeownership Program.

I am satisfied the respondent's income exceeds the CNIT for her rental premises. I am satisfied the respondent is no longer eligible for subsidized public housing.

Termination of the tenancy agreement and eviction

Having been satisfied that the respondent is no longer eligible for subsidized public housing, I find termination of the tenancy agreement and eviction are justified. In light of the upcoming holiday season and the respondent historically resolving any rental arrears that she carries, I am satisfied that the delay of the termination and eviction to the end of January 2017 would not be unreasonable.

Orders

An order will issue: requiring the respondent to pay rental arrears in the amount of \$1,625; to pay her future rent on time; to pay costs of repairs in the amount of \$302; terminating the tenancy agreement January 31, 2017; evicting the respondent from the rental premises February 1, 2017; and requiring the respondent to compensate the applicant for use and occupation of the rental premises at a rate of \$53.42 for each day she remains in the rental premises after January 31, 2017.

Adelle Guigon
Rental Officer