

IN THE MATTER between **THA**, Applicant, and **DM**, 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:

**THA**

Applicant/Landlord

-and-

**DM**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:** November 21, 2016\*

**Place of the Hearing:** Yellowknife, Northwest Territories

**Appearances at Hearing:** JK, representing the applicant  
DM, respondent

**Date of Decision:** December 22, 2016

**REASONS FOR DECISION**

An application to a rental officer made by THA as the applicant/landlord against DM as the respondent/tenant was filed by the Rental Office May 30, 2016. The application was made regarding a residential tenancy agreement for a rental premises located in Inuvik, Northwest Territories. The applicant served a copy of the filed application on the respondent by registered mail signed for July 4, 2016.

The applicant alleged the respondent had accumulated rental arrears and had left the rental premises unoccupied for a lengthy period of time. An order was sought for payment of the rental arrears, termination of the tenancy agreement, and eviction.

A hearing was scheduled for August 18, 2016, in Inuvik, Northwest Territories. The rental officer appeared by telephone. Ms. JK appeared representing the applicant. Mr. DM appeared as respondent. It was learned at this time that the respondent is mute and was only able to communicate in writing or with assistance. All parties agreed to adjourn the hearing *sine die* pending the availability of a translator to accommodate the respondent's disability. The applicant's representative agreed the matter was not urgent in nature. The respondent agreed to try and find someone to interpret for him, and the applicant's representative agreed to remind the respondent to find an interpreter. The respondent also advised that he must travel for medical reasons every three months for three-week periods and was next scheduled to be away from approximately October 4<sup>th</sup> to October 25<sup>th</sup>.

The hearing was re-scheduled for November 8, 2016, in Inuvik. The rental officer anticipated appearing by telephone. Both parties were notified by registered mail. The respondent signed for his copy October 26, 2016. The applicant's representative had not yet received her copy of the notice when she received a written notice from the respondent indicating that he would be travelling to Whitehorse for a week. She contacted the rental officer to advise of the

respondent's travel plans, learning at that time of the scheduled hearing date. The applicant's representative agreed to try and reach the respondent to determine his availability for the scheduled hearing. On November 7, 2016, the applicant's representative contacted the rental officer in the respondent's presence at the applicant's office. The respondent was unable to secure an interpreter to assist with the hearing. After some discussion, it was agreed that under the circumstances a hearing based on written submissions from both parties would be the most reasonable solution to ensure a fair hearing. The rental officer emailed the applicant's representative confirming the details, indicating that both the applicant and respondent should prepare written submissions detailing their positions. Both parties were given until November 14<sup>th</sup> to make their written submissions, and then were granted until November 21<sup>st</sup> to submit any written replies to each others submissions, after which the rental officer would make a decision. All written submissions were to be forwarded to the rental officer's office by email, and the parties were directed to share their submissions with each other.

The applicant's representative forwarded the respondent's written submission the afternoon of November 7<sup>th</sup>. No written submissions or replies were received from the applicant, and there were no attachments to the original application to a rental officer.

#### *Tenancy agreement*

The respondent's written submission confirms that there is a residential tenancy agreement between the parties, and there does appear to be consensus that the tenancy agreement is for subsidized public housing. On a balance of probabilities, I am satisfied there is a valid tenancy agreement between the parties in accordance with the *Residential Tenancies Act* (the Act)

### *Rental arrears*

In the application to a rental officer, the applicant claimed rental arrears were owing. No rent ledgers or statements or other accounting was provided substantiating whether or not there were any arrears, and if there were for how much. In his written submissions, the respondent did acknowledge having rental arrears and promised to pay them out of his pension. I am satisfied that the respondent has failed to pay the full amount of his rent when due, but I cannot make a finding as to whether or not the respondent has any current rental arrears or for how much.

### *Occupancy*

In the application to a rental officer, the applicant claimed the rental premises had been empty for about five weeks (as of May 16th). No supporting evidence was provided to substantiate the claim or to suggest whether or not damages occurred to the rental premises as result of the respondent's absence. In his written submissions, the respondent acknowledged he had travelled to Whitehorse from late May to June. No specific reference was made by either party as to whether or not the respondent had notified the applicant that he would be away from the premises for a period of time. No reference was made as to whether or not a condition exists in the tenancy agreement requiring the tenant to notify the landlord of extended absences. No reference or claim was made suggesting any damages to the rental premises as a result of the respondent's absence. I cannot make a finding that the respondent breached an obligation to notify the landlord of any extended absences. I cannot make a finding that the respondent caused any damages to the rental premises as a consequence of any extended absences. I am not satisfied the respondent abandoned the rental premises.

### *Termination of the tenancy agreement and eviction*

In the application to a rental officer, the applicant requested termination of the tenancy agreement and eviction. In his written submissions, the respondent referred to receiving an eviction notice – presumably from the applicant – and appears to expect to be evicted from the rental premises. He accepts responsibility for failing to ensure his rent was paid and his utilities were paid.

I am not satisfied that termination of the tenancy agreement and eviction are justified in this case. I do not have enough evidence to support a substantial failure of the respondent to comply with his obligations as a tenant which would justify termination and eviction. As such, the applicant's request for an order to terminate the tenancy agreement and evict the tenant is denied.

*Order*

An order will issue for the respondent to pay his future rent on time.

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Adelle Guigon  
Rental Officer