

IN THE MATTER between **THA**, Applicant, and **PJ and DC**, 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-

**PJ and DC**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:** April 13, 2017

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

**Appearances at Hearing:** EW, representing the applicant  
DC, respondent

**Date of Decision:** April 13, 2017

**REASONS FOR DECISION**

An application to a rental officer made by THA as the applicant/landlord against PJ and DC as the respondents/tenants was filed by the Rental Office November 16, 2016. The application was made regarding a subsidized public housing residential tenancy agreement for a rental premises located in Inuvik, Northwest Territories. The applicant served the filed application on the respondents by registered mail signed for January 9, 2017.

The applicant alleged the respondents had permitted illegal activities to occur within the rental premises, had repeatedly failed to report household income as required under their tenancy agreement, had caused disturbances, had repeatedly failed to pay rent, and had failed to vacate the rental premises after the termination date. An order was sought for payment of rental arrears, that future rent be paid on time, termination of the tenancy agreement, and eviction.

A hearing was scheduled for March 8, 2017, in Inuvik, Northwest Territories. The Rental Officer appeared by telephone. EW appeared representing the applicant. DC appeared as respondent and on behalf of PJ. The applicant's representative was not prepared with the necessary supporting evidence to proceed with the hearing as scheduled, so the hearing was adjourned *sine die*.

The hearing was re-scheduled for April 13, 2017, in Inuvik, Northwest Territories. The Rental Officer appeared by telephone. EW appeared representing the applicant. DC appeared as respondent and on behalf of PJ.

*Preliminary matters*

The application to a rental officer spelled the applicant/landlord's name as "THA". Correspondence included with the application spelled the applicant/landlord's name as "THA". The applicant's representative confirmed that the correct spelling of the applicant/landlord's name is "THA" and agreed that the application to a rental officer should be amended to reflect the correct spelling. The style of cause going forward will reflect the correct spelling of the applicant/landlord's name as "THA".

*Tenancy agreement*

Although a copy of the written tenancy agreement was not entered into evidence, the parties agreed at hearing that they were parties to a month-to-month tenancy agreement for subsidized public housing commencing January 12, 2015. The maximum monthly rent for the rental premises was agreed to be \$1,300. I am satisfied a valid tenancy agreement is in place between the parties for subsidized public housing in accordance with the *Residential Tenancies Act* (the Act).

*Illegal activities*

A single piece of correspondence dated May 16, 2016, from the applicant to the respondent notified the respondents that "It was brought to our attention through the public that illegal activities are taking place from your unit." No description of the alleged illegal activities were described, no evidence of any direct observation of illegal activities taking place was provided, and no record of the dates and times of the alleged illegal activities was made. I am not satisfied that illegal activities occurred within the rental premises and therefore I do not find the respondents in breach of their obligation not to permit illegal activities to occur within the rental premises.

### *Disturbances*

A single piece of correspondence dated August 2, 2016, from the applicant to the respondent notified the respondents of a complaint of a noise disturbance, stating: "This is to inform you that we received a complaint of noise disturbance coming from your unit on August 2, 2016, at approximately 2:25 am. You were advised to have your guest leave the premises and this did not happen. The RCMP were also called and informed you to keep it down." The respondent did not dispute this occurrence. No further claims of disturbances were made, nor was any evidence of further disturbances submitted. I am satisfied the respondents are responsible for the disturbance reported as occurring the morning of August 2, 2016. I find the respondents have breached their obligation not to disturb other tenants' enjoyment and possession of the rental premises, but I am not satisfied an order to comply with this obligation is necessary.

### *Reporting of household income*

The parties agreed that a condition of the subsidized public housing residential tenancy agreement is for the tenants to report their total household income on a monthly basis. This reporting is required in order for the landlord to properly calculate any subsidies for which the tenants might be eligible under the subsidized public housing program. The requirement to report their income is an additional obligation under section 45(1) of the Act and failing to report household income as required constitutes a breach of both the tenancy agreement and the Act.

Correspondence from the applicant to the respondent dated July 20, 2016, referenced February 9, 2016, and February 19, 2016, memos given "to all tenants regarding monthly household income verification form as of April 2016 there were no effort to come in and fill out the monthly household verification income that is due the first of each month." I take this verbatim quote to mean that all tenants were reminded of their obligation to report their household income monthly and that as of April 2016 the respondents had made no effort to complete the monthly household verification of income forms. What this notice does not say is which month(s) income reports were not made by the respondents. This notice was referred to as a second warning, although no evidence was provided as part of the application to a rental officer of the implied first warning.

In correspondence to the respondents dated August 31, 2016, the applicant referenced letters in the respondents' file dated February 9, February 19, May 16, July 20, and August 2, 2016, "regarding monthly household income verification forms that all tenants are required to fill out monthly." None of the referenced letters were provided into evidence as part of this application, and no reference was made nor evidence provided establishing which month(s) these respondents failed to report income for.

Upon review of the statements of account entered into evidence it is clear that all rents up to and including for July 2016 were subsidized based on reported household income. It could not be established at hearing which if any of the income for the months up to and including July 2016 were reported late, but it does appear that they were ultimately reported.

The respondent testified at hearing that there was some confusion at some point regarding reporting of income and payment of rents with a prior caretaker for the residential complex. I don't entirely understand what exactly occurred, but the respondent acknowledged – and the applicant's representative confirmed – that they only recently reported their household income for the months of October 2016 to March 2017; only the August and September 2016 household income reports remain outstanding. The respondent testified to her intention to report the outstanding income.

I am not satisfied that there is evidence to support that the respondents repeatedly failed to report their income as required prior to August 2016. I am satisfied based on the testimony provided at hearing that the respondents did repeatedly fail to report their household income on time for the months of August 2016 to March 2017 as required under the terms of their tenancy agreement. I am satisfied the respondents have since reported their household income for the months of October 2016 to March 2017, leaving only the months of August and September 2016 outstanding.

*Rental arrears*

The statements of account entered into evidence represent the landlord's accounting of monthly assessed rents up to and including for July 2016 and payments received against the respondents' rent account as of April 7, 2017. All rents up to and including for July 2016 were subsidized based on reported household income. The last payment received against the respondents' rent account was recorded September 19, 2016, in the amount of \$303.20.

The applicant's representative explained that no rent was charged for the months of August 2016 to present because until recently the applicant had not received the household income reports required in order to calculate rent subsidies. He could offer no explanation for why the maximum monthly rent of \$1,300 was not applied against those months.

The respondent did not dispute the accuracy of the landlord's accounting, acknowledging that the last payment they made against the rent account was the September 19<sup>th</sup> payment. The respondent accepted responsibility for the accumulated rental arrears. An agreement to pay \$400 per week starting September 9, 2016, towards rental arrears was signed by the respondents September 2, 2016, which was not complied with. The respondent explained that no subsequent payments were made because of further confusion as to whether or not they were required to pay rent and how much rent they were required to pay for each month. The respondent accepted responsibility not only for the rental arrears accumulated as of July 31, 2016, but also for those rental arrears accumulated since August 2016 which have yet to be determined. She expressed a commitment to paying at least \$1,200 per month towards the rental arrears in addition to the monthly assessed rent.

I am unable to determine from the evidence and testimony presented today the amount of rental arrears which would have accumulated between August 2016 and April 2017 given that subsidies have yet to be calculated from the household income that has been reported to date. I am satisfied that the statements of account do accurately reflect the subsidized rents up to and including July 2016. I am satisfied that the payment received September 19, 2016, was appropriately applied against the rental arrears accumulated as of July 31, 2016. I find the respondents have repeatedly failed to pay their rent and have accumulated rental arrears as of July 31, 2016, in the amount of \$3,307, which effectively represents the subsidized rents for March to July 2016.

*Termination of the tenancy agreement and eviction*

In the August 31, 2016, correspondence to the respondents, the applicant notified the respondents that they were terminating the tenancy agreement September 30, 2016, pursuant to section 51(5) of the Act because the respondents had repeatedly failed to report their household income as required and had repeatedly failed to pay their rent.

Section 51(5) of the Act does permit a landlord of subsidized public housing to terminate a month-to-month tenancy agreement by giving the tenant at least 30 days' written notice for the last day of a period of the tenancy. The applicant does appear to have terminated the tenancy agreement in accordance with the Act effective September 30, 2016.

The applicant's representative testified that he believed the tenancy agreement had not been reinstated after September 30, 2016. However, it has been acknowledged that the reason the rent was not charged for the months of August 2016 to present was because the household income had not been reported from which to calculate rent subsidies, not because the respondents were no longer eligible for the rent subsidies due to the tenancy being terminated. Further acknowledgement of the applicant's intent to assess rent subsidies once the household income is reported for August and September 2016 suggests to me that the termination of the tenancy pursuant to section 51(5) of the Act was rescinded.

In consideration of the respondents' repeated failure to pay their rent and the rental arrears that have accumulated, I am satisfied that termination of the tenancy agreement and eviction are justified. However, in further consideration of the expressed desire on the part of the respondents to resolve the reporting and payment issues, and the respondent's commitment to a substantial minimum monthly installment plan, I am satisfied the termination and eviction order should be conditional on the respondents submitting the outstanding household income reports, and paying the minimum monthly installments and rents on time.

*Orders*

An order will issue: requiring the respondents to pay rental arrears in the amount of \$3,307 in minimum monthly installments of \$1,200 starting in May 2017 and each month thereafter until the rental arrears are paid in full; requiring the respondents to pay their rent on time in the future; requiring the respondents to comply with their obligation to report their household income as required under their tenancy agreement; terminating the tenancy agreement July 31, 2017, unless all outstanding household income reports are provided to the applicant, and the minimum monthly installments and rents for May, June, and July are paid on time; and evicting the respondents from the rental premises on August 1, 2017, if the termination of the tenancy agreement becomes effective.

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Adelle Guigon  
Rental Officer