

IN THE MATTER between **NTHC**, Applicant, and **MC**, 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-

**MC**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:** May 9, 2017

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

**Appearances at Hearing:** KB, representing the applicant  
DD, representing the applicant  
MC, respondent

**Date of Decision:** May 9, 2017

**REASONS FOR DECISION**

An application to a rental officer made by IHA on behalf of the NTHC as the applicant/landlord against MC as the respondent/tenant was filed by the Rental Office February 28, 2017. The application was made regarding a subsidized public housing residential tenancy agreement for a rental premises located in Inuvik, Northwest Territories. The applicant personally served the filed application on the respondent March 8, 2017.

The applicant alleged the respondent had repeatedly failed to comply with her obligation not to smoke in the rental premises or residential complex, had repeatedly committed an illegal act in the rental premises by smoking marijuana, had failed to vacate the rental premises upon termination of the tenancy agreement, and had accumulated overholding rental arrears. An order was sought for payment of rental arrears, eviction, and compensation for use and occupation of the rental premises.

A hearing was scheduled for May 9, 2017, in Inuvik, Northwest Territories. The Rental Officer appeared by telephone. KB and DD appeared representing the applicant. MC appeared by telephone as respondent.

*Tenancy agreement*

The parties agreed and evidence was presented establishing a residential tenancy agreement between them for subsidized public housing commencing June 30, 2015. Multiple fixed-term tenancy agreements were entered into during the tenancy, the last being for a fixed-term period from August 1 to 31, 2016.

Section 51(4) of the Act says that a tenancy agreement for subsidized public housing that specifies a fixed-term tenancy for a period of 31 days or less terminates on the last day of the fixed term period. A tenant information sheet attached as part of the tenancy agreement and signed by the tenant confirms the status of the tenancy agreement as being one for 31 days or less and clarifies the requirement for the tenant to be prepared to vacate the premises on or before the last day of the fixed term period.

The applicant confirmed to the respondent by notice on August 17, 2016, that the tenancy agreement would not be renewed and reminded the respondent of her obligation to vacate the rental premises.

I am satisfied there was a valid tenancy agreement in place between the parties in accordance with the Act. I am satisfied the tenancy agreement was terminated in accordance with section 51(4) of the Act on August 31, 2016.

#### *Disturbances*

Section 19 of the written tenancy agreement states the tenant's agreement to comply with all house rules established in writing by the landlord.

Section 20(a) of the written tenancy agreement states that no tenant or occupant will commit, attempt, or conspire to commit an illegal activity in the premises or in the residential complex.

Section 22 of the house rules forming part of the tenancy agreement states that the residential complex has been designated as a no smoking building and that smoking is prohibited in all areas of the building.

Section 45(1) of the Act states that where a tenant has undertaken additional obligations in a written tenancy agreement the tenant shall comply with those obligations and with the rules of the landlord that are reasonable in all circumstances.

Section 46 of the Act states that a tenant shall not commit an illegal act in the rental premises or in the residential complex.

The applicant's representative testified and provided evidence of at least eight instances between September 2015 and August 2016 of the respondent smoking cigarettes and/or marijuana in her rental premises. The respondent admitted to occasionally smoking both cigarettes and marijuana, and admitted that she did not have a prescription to smoke medical marijuana and has been unsuccessful at obtaining a prescription to smoke medical marijuana.

Of three notices terminating the tenancy agreement because of the breaches, two were successfully appealed on condition that the respondent not breach her obligation not to smoke in the rental premises. The respondent again failed to comply with the condition. The third notice given in August 2016 notified the respondent that her tenancy agreement would not be renewed.

The respondent again exercised her right to appeal the landlord's decision to terminate the tenancy agreement and filed a level 2 appeal before the district director. That appeal was denied in December 2016 and the termination of the tenancy was upheld. The respondent exercised her right to file a level 3 appeal before the Housing Appeal Committee. That appeal was also denied in February 2017.

Although there is clearly legislation forthcoming in the next year or so which will legalize the recreational use of marijuana, that legislation is not currently in force and therefore the use of recreational marijuana remains an illegal activity under the *Controlled Drugs and Substances Act*. There is legislation in place which has legalized the use of medical marijuana, but only by prescription from a licenced medical practitioner. Having heard the respondent's admission that she has smoked marijuana in the rental premises, I find the respondent has failed to comply with her obligation not to commit an illegal act in the rental premises or residential complex.

The residential complex has been designated as a non-smoking building. This designation is clearly referenced in the tenancy agreement house rules, which were explained to the respondent and signed by the respondent as understood at the commencement of the tenancy. The respondent admitted that she did know the residential complex is a non-smoking building when she smoked in the rental premises. She also confirms having repeatedly failed to comply with her promises not to do it again. The respondent offered physical and medical reasons for continuing to smoke, none of which I believe couldn't have been satisfied by smoking outdoors rather than indoors. I find the respondent has repeatedly failed to comply with her obligation not to smoke in the rental premises or residential complex.

Had a finding not already been made that the tenancy agreement had been terminated in accordance with the Act, I would be finding justification for termination of the tenancy agreement and eviction on the grounds of the respondent's repeated failure to comply with her obligation not to smoke in the rental premises or residential complex. I would further reiterate that, to my mind, the no-smoking rule would apply to any smoking product regardless of whether it is a legal product or not.

#### *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 prior to September 1, 2016, were subsidized based on reported household income, were assessed at \$80 per month, and were paid in full. The rents since September 1, 2016, were assessed the maximum monthly rent of \$1,625 due to the tenancy having ended August 31, 2016, and the respondent ceasing to be eligible for rent subsidies. No payments have been received against the respondent's overholding rent account.

I am not satisfied that it is appropriate to charge the respondent the maximum monthly rent for the months of September 2016 to February 2017. The respondent's choice to exercise her right to appeal the termination of her tenancy came with the possibility that she would be successful, resulting in the reinstatement of her tenancy agreement. Although this was not the result, I do not believe it appropriate to effectively punish the respondent for exercising her right to appeal. I am prepared to grant overholding compensation for use and occupation for the months of September 2016 to February 2017 at the previously subsidized monthly rent amount of \$80, and overholding compensation for use and occupation for the months of March to May 2017 at the maximum monthly rent of \$1,625. I find the respondent has accumulated overholding rental arrears in the amount of \$5,355.

*Eviction and compensation for use and occupation*

Having determined the tenancy agreement has been terminated in accordance with the Act effective August 31, 2016, and in consideration that the respondent remains in overholding occupancy of the rental premises to date, I am satisfied that an eviction order is justified and necessary, as is an order for the respondent to pay compensation to the applicant for use and occupation of the rental premises.

*Orders*

An order will issue: requiring the respondent to pay overholding rental arrears in the amount of \$5,355; evicting the respondent from the rental premises June 1, 2017; and requiring the respondent to pay compensation for use and occupation at a rate of \$54.08 for each day the respondent remains in the rental premises after May 31, 2017.

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Adelle Guigon  
Rental Officer