

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

**HW**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:** July 6, 2017

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

**Appearances at Hearing:** AS, representing the applicant

**Date of Decision:** July 6, 2017

**REASONS FOR DECISION**

An application to a rental officer made by HRHA on behalf of the NTHC as the applicant/landlord against HW and SA as the respondents/tenants was filed by the Rental Office March 3, 2016. The application was made regarding a subsidized public housing residential tenancy agreement for a rental premises located in Hay River, Northwest Territories. The filed application was served on the respondents by registered mail signed for April 18, 2016.

The applicant alleged the respondents had repeatedly failed to report household income as required under the written subsidized public housing residential tenancy agreement, the respondents had repeatedly failed to pay the full amount of rent when due, and the respondents had accumulated rental arrears. An order was sought for payment of rental arrears, payment of future rent on time, and reporting of household income as required.

A hearing was originally scheduled for April 28, 2016, which was postponed at the request of the applicant in consideration of serious medical issues being dealt with by the respondents. The hearing was re-scheduled to June 7, 2016, which was postponed by the mutual consent of both parties primarily due to continuing serious medical issues being dealt with by the respondents.

From a telephone conversation with HW the morning of August 4, 2016, it was agreed to provide the respondents with adequate time to attend to SA's serious medical issues and for the respondents to seek legal counsel on the issues raised in the application. SA passed away in September 2016. A hearing tentatively scheduled for December 2016 was postponed at the request of the applicant out of consideration for HW's personal circumstances.

The hearing was re-scheduled for February 8, 2017, which was postponed when it was learned that HW had been hospitalized. Subsequent attempts to re-schedule the hearing were hindered by HW's repeated hospitalizations.

Voicemail messages had been left for HW at the numbers provided on file March 20<sup>th</sup>, March 27<sup>th</sup>, and April 3<sup>rd</sup>, none of which were returned. It was learned on June 12<sup>th</sup> that HW was believed to be back home, albeit largely bedridden. An attempt to telephone him that day found both telephone numbers on file were no longer working. Inquiries of the applicant indicated they had the same telephone numbers as were on file.

A hearing was finally scheduled for July 6, 2017, by three-way teleconference. AS appeared representing the applicant. HW was sent notice of the hearing by registered mail deemed served June 23, 2017, pursuant to section 71(5) of the *Residential Tenancies Act* (the Act). The respondent did not appear at the hearing, nor did anyone appear on his behalf. The hearing proceeded in the respondent's absence pursuant to section 80(2) of the Act.

#### *Preliminary matters*

The application to a rental officer was made against HW and SA as the respondents/tenants. On June 14, 2017, the applicant formally requested the application be amended to remove SA as a respondent. Under the circumstances of her death, the applicant's request was granted, the application was amended, and the style of cause going forward will identify HW as the sole respondent/tenant to the application.

#### *Tenancy agreement*

The applicant's representative testified and provided evidence of various tenancy agreements between the parties. HW and SA lived together continuously in the same residences since January 1, 2003. They had entered into joint tenancy agreements covering the period of January 1, 2003, to March 31, 2007. SA entered into sole tenancy agreements, with HW listed as an occupant, for the period of April 1, 2007, to March 31, 2009. HW and SA again entered into a joint tenancy agreement covering the period of April 1, 2009, to March 31, 2012.

The most recent tenancy agreement commencing April 1, 2012, identified both SA and HW as tenants on its face, however, only the landlord's agent and SA signed the agreement as HW refused to. HW continued to occupy the rental premises with SA, and has continued occupying the rental premises since SA's death.

Tenant is defined in the Act as "a person who pays rent in return for the right to occupy rental premises and his or her heirs, assigns and personal representatives." Regardless of whether or not HW signed the most recent tenancy agreement, he has continuously occupied the rental premises as SA's common-law spouse. There is no evidence suggesting HW is not SA's heir. As SA's heir, and as a recognized uninterrupted occupant of the rental premises, and in consideration that HW has continued to make minimal subsidized monthly rental payments, I am satisfied that a residential tenancy agreement for subsidized public housing is in place in accordance with the Act for which HW is responsible for since January 1, 2003.

#### *Reporting of income*

Section 6 of the written tenancy agreement requires the total income for all adult occupants of the rental premises to be reported to the landlord at such times and in such forms as may be specified by the landlord from time to time. Until June 2016, the applicant required that reporting on a monthly basis and were generally satisfied with such documents as pay stubs and bank statements. Subsidies would be calculated monthly based on that information. Effective July 1, 2016, the applicant's policies changed and tenants are now required to report their household income with their CRA income tax assessments for the prior calendar year, from which the subsidies would be calculated on an annual basis for July to June.

Section 7 of the written tenancy agreement establishes that subsidies for which the tenant is eligible will be calculated against rent in accordance with the landlord's Public Housing Rent Scale unless the tenant has breached any of the terms of the tenancy agreement, including but not limited to section 6 of the tenancy agreement.

The applicant's representative testified and provided evidence establishing that SA had successfully reported all her income as requested. HW refused to provide his CRA income tax assessments on principle, and after much contentious communication, the applicant agreed to accept Harvey's Werner's income report in other forms and on a monthly basis, at least for the time being. The respondent did provide bank statements to prove his income up to and including for June 2016, but refused to provide any subsequent income reports. No income reports have been received from HW in any form since July 2016.

I am satisfied that the respondent HW has failed to report his income as required for the period of July 1, 2016, to July 6, 2017. I find HW has failed to comply with his obligation to report his income as required under section 6 of the written tenancy agreement.

#### *Rental arrears*

The client aged detail entered into evidence represents the landlord's accounting of monthly assessed rent and payments received against the respondent's rent account. It includes charges accrued between June 1 and December 1, 2006, totalling \$2,787 which are claimed to account for re-assessed rent subsidies for the period. No reasonable explanation was available for why an application to a rental officer was not made regarding these apparent arrears within six months of their accrual. No other rental arrears are alleged to have accumulated between then and October 2015. Consequently, I determined those alleged arrears having accrued 10 years prior to this application being made it would be unfair to extend the time for making an application to a rental officer regarding them and denied the applicant's request for an order for that amount. As such, \$2,787 was deducted from the client aged detail balance.

All rents since September 2012 have been subsidized based on reported household income. The subsidized rent for September 2012 to June 2013 was assessed at \$40 per month. The subsidized rent for July 2013 to May 2014, October 2014 to September 2015, and March to June 2016 was assessed at \$80 per month. The subsidized rent for June and September 2014, December 2015, and February 2016 was assessed at \$160 per month. The subsidized rent for July and August 2014, October and November 2015, and January 2016 was assessed at \$365 per month.

As a consequence of failing to comply with his obligation to report his income as required, the respondent became ineligible for rent subsidies and the applicant charged the maximum monthly rent of \$1,625 for the months of July 2016 to July 2017. The applicant's representative acknowledged that if and when the respondent reports his income since July 2016 as required under the tenancy agreement, rent subsidies will be calculated and the respondent's rent account balance will be adjusted accordingly. However, the applicant maintains that until the respondent reports his income as required he is in breach of the terms of his tenancy agreement and consequently ineligible for any rent subsidies.

The respondent has regularly made monthly payments towards his rent account throughout the tenancy since September 2012. The subsidized rents were consistently paid in full until October 2015. The payments received in October, November, December 2015, and January 2016 were of insufficient amounts to cover the subsidized rents for those months. All payments received against the rent account since March 2016 have been in the amount of \$80 per month. Until July 2016, those \$80 payments were sufficient to cover the subsidized rent, but as of July 2016 they ceased to be enough to cover the unsubsidized rent due to the imposition of the maximum monthly rent as described above.

The applicant's representative acknowledged at hearing that there was a high likelihood that, upon receipt of HW's income reports for the outstanding period, the rent subsidies would be calculated to \$80 per month or thereabouts, which would resolve the majority of the balance of rental arrears being claimed. The applicant's representative reminded the tribunal that they are not seeking to terminate the respondent's tenancy, they really only need him to comply with his obligation to report his household income in the same manner required by every other subsidized public housing tenant.

I am satisfied the amended client aged detail accurately reflects the current status of the respondent's rent account. Having previously found the respondent has failed to report his household income since July 2016, and that the respondent has breached the terms of his tenancy agreement for subsidized public housing, I am satisfied that the applicant's imposition of the maximum rent of \$1,625 for the months of July 2016 to July 2017 is appropriate. Consequently, I find the respondent has accumulated rental arrears in the amount of \$20,899. I expect the applicant to apply rent subsidies to this balance if and when the respondent reports his income for the outstanding period.

*Orders*

An order will issue:

- requiring the respondent to pay rental arrears in the amount of \$20,899; and
- requiring the respondent to comply with his obligation to report his total household income as required under paragraph 6 of the written tenancy agreement, and requiring him not to breach that obligation again.

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Adelle Guigon  
Rental Officer