

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

**JW**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:** July 26, 2017

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

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

**Date of Decision:** July 26, 2017

**REASONS FOR DECISION**

An application to a rental officer made by YHA on behalf of the NTHC as the applicant/landlord against JW as the respondent/tenant was filed by the Rental Office April 5, 2017. The application was made regarding a subsidized public housing residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was personally served on the respondent June 8, 2017.

The applicant alleged the respondent had permitted unauthorized persons to reside in the rental premises, resulting in a revocation of rent subsidies. An order was sought for payment of the unsubsidized rental arrears, termination of the tenancy agreement, and eviction.

A hearing was scheduled for July 26, 2017, in Yellowknife, Northwest Territories. AB appeared representing the applicant. JW was sent notice of the hearing by registered mail deemed served July 29, 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.

*Tenancy agreement*

The applicant's representative testified and provided evidence establishing a residential tenancy agreement between the parties for subsidized public housing commencing June 12, 2015. I am satisfied a valid tenancy agreement is in place in accordance with the Act.

*Unauthorized occupants*

Paragraph 5 of the written tenancy agreement states:

"All people other than the Tenant who may occupy the Premises shall be listed on Schedule B. No additional persons may reside in the Premises without the prior written consent of the Landlord. The Tenant promises to notify the Landlord of any changes in the number of people occupying the Premises. ..."

The applicant's representative testified to her discovery in March 2017 that the respondent had a family of three residing with him from whom he was receiving rent. The family of three was sleeping in the living room. The family confirmed directly with the applicant's representative that they had asked the respondent if they could live with him after they vacated their previous residence and they agreed to pay the respondent rent in exchange for that favour. The family was informed that the respondent was not authorized to have additional occupants and they were asked to leave, which they did without incident.

The applicant's representative spoke directly with the respondent regarding the matter, and the respondent admitted to her that he did permit the family to reside with him in exchange for rent and that he had in fact had been permitting other persons to reside with him in exchange for rent since July 2016.

The applicant's representative reviewed the respondent's file and discovered notes indicating the respondent had called the landlord on a few occasions to assist with removing unwanted 'visitors' from his rental premises. The respondent admitted to the applicant's representative that those 'visitors' were in fact persons he had permitted to reside with him who then would not leave when he asked them to.

The applicant's representative reiterated that subsidized public housing is needs based and permitting unauthorized persons to reside in the rental premises constitutes a serious breach. The rental premises in question is a one-bedroom apartment unsuitable for more than two adults to reside in. The respondent is the only authorized occupant of the rental premises. And the respondent did not report the income received from the unauthorized residents for consideration in calculating his subsidized rent.

The applicant's representative confirmed that there is no evidence since the application to a rental officer was filed that the respondent has permitted any other unauthorized persons to reside with him.

I am satisfied on a balance of probabilities that the respondent did permit unauthorized persons to reside in the rental premises during the period of July 2016 to March 2017. I find the respondent has repeatedly failed to comply with his obligation to request the prior written consent of the landlord for additional persons to reside with him in the rental premises.

*Unsubsidized rental arrears*

Paragraph 7 of the written tenancy agreement states:

“... As long as the Tenant is not in breach of any of the terms or promises of this Agreement (including, but not limited to, the Tenant’s obligation to provide the Landlord’s subsidy agent with accurate reports in the form required by the subsidy agent as specified in clause 6 of the Agreement), the Tenant will be eligible for a rent subsidy. ...”

The applicant’s representative testified that because the tenant had breached his obligation under paragraph 5 of the written tenancy agreement the respondent was deemed ineligible for the rent subsidies applied during the period of July 2016 to March 2017. The landlord reversed the rent subsidies in the respondent’s rent account for that period.

The maximum monthly rent for the rental premises was established at \$1,625. During that period, the respondent’s subsidized rent had been assessed at \$80 per month. The subsidies amounted to a total of \$13,905 for the nine-month period.

Having found the respondent in breach of his obligations under paragraph 5 of the written tenancy agreement, I am satisfied the respondent was ineligible for any rent subsidies for the nine-month period of July 2016 to March 2017. I find the respondent has accumulated unsubsidized rental arrears in the amount of \$13,905.

*Termination of the tenancy agreement and eviction*

In light of the substantial and repeated breach of the respondent’s obligation not to permit unauthorized persons to reside with him, I am satisfied termination of the tenancy agreement and eviction are justified. I am not satisfied termination and eviction are justified on the grounds of what is now a substantial amount of rental arrears because until the subsidies were reversed the respondent had consistently paid his subsidized rent in full and on time.

To my mind in this case the more serious of the breaches is the one that lead to the respondent's ineligibility for subsidies in the first place, that being permitting unauthorized persons to reside with him over a nine-month period, not to mention receiving undeclared payments from those unauthorized residents. As it appears the respondent may now be complying with his obligation in this regard since filing of the application, I am inclined to provide the respondent an opportunity to prove he can continue to comply with his obligation by making the termination and eviction orders conditional on that requirement.

*Additional issue*

At hearing there was information provided suggesting the respondent was permitting unauthorized entry to the residential complex and rental premises of undesirable persons. While I can appreciate the applicant's concerns, no direct evidence either of the unauthorized entry or related disturbances was presented as part of the application or at hearing.

*Orders*

An order will issue:

- requiring the respondent to pay unsubsidized rental arrears in the amount of \$13,905;
- requiring the respondent to comply with his obligation not to permit unauthorized persons to reside in the rental premises and not to breach that obligation again;
- terminating the tenancy agreement October 31, 2017, unless no further breaches of the respondent's obligation not to permit unauthorized persons to reside in the rental premises occur; and
- evicting the respondent from the rental premises November 1, 2017, if the termination of the tenancy agreement becomes effective.

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Adelle Guigon  
Rental Officer