

IN THE MATTER between **APM**, Applicant, and **JB**, 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:

**APM**

Applicant/Landlord

-and-

**JB**

Respondent/Tenant

**REASONS FOR DECISION**

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

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

**Appearances at Hearing:** Robert Hawkins, representing the applicant  
JB, respondent  
CS, on behalf of the respondent

**Date of Decision:** August 11, 2017

### **REASONS FOR DECISION**

An application to a rental officer made by APM as the applicant/landlord against JB as the respondent/tenant was filed by the Rental Office June 23, 2017. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was served on the respondent by email deemed received July 2, 2017, pursuant to section 4(4) of the *Residential Tenancies Regulations* (the Regulations).

The applicant alleged the respondent had repeatedly failed to pay the full amount of rent when due, repeatedly failed to pay for utilities, and failed to pay the full amount of security deposit when due. An order was sought for payment of rental arrears, payment of utilities arrears, payment of security deposit arrears, termination of the tenancy agreement, and eviction.

A hearing was scheduled for August 9, 2017, in Yellowknife. Robert Hawkins appeared representing the applicant. JB appeared as respondent with CS appearing on his behalf.

#### *Tenancy agreement*

The parties agreed and evidence was presented establishing a residential tenancy agreement between them commencing December 1, 2016. I am satisfied a valid tenancy agreement is in place in accordance with the *Residential Tenancies Act* (the Act).

#### *Rental arrears*

The late rent summaries entered into evidence represent the landlord's accounting of monthly rent, payments received, and late payment penalties calculated against the respondent's rent account. Rent was established at \$2,500 per month due the first of the month. Late payment penalties were calculated in accordance with the Act and Regulations.

The rents for December, January, and February were paid in full and on time. The rent for March was paid in two installments: \$1,250 on March 3<sup>rd</sup> and \$1,250 on March 8<sup>th</sup>. The rent for April was paid in full on April 5<sup>th</sup>. The rent for May was paid in full on May 3<sup>rd</sup>. The rent for June was paid in two installments: \$2,000 on June 5<sup>th</sup> and \$500 on June 6<sup>th</sup>. The rents for July and August have not been paid.

The respondent did not dispute the accuracy of the landlord's accounting, acknowledging his debt and accepting responsibility for it.

I am satisfied the late rent summaries accurately reflect the current status of the respondent's rent account. I find the respondent has repeatedly failed to pay his rent in full when due and has accumulated rental arrears in the amount of \$5,092.

#### *Utilities*

Paragraphs 20 and 21 of the written tenancy agreement set out the tenant's responsibility for all utilities to the rental premises. The applicant's representative testified that the respondent had failed to have the electricity and water accounts transferred to his name, resulting in the property owner being directly billed for those utilities. The respondent confirmed that those utilities had not been transferred right away, explaining that the electricity company had failed to process his application to transfer the account, and he had experienced similar delays at the City of Yellowknife with respect to the water account. The electricity account was transferred in March while the water account was not transferred until June.

The electricity bills for December, January, and February totalled \$1,558.38. The respondent paid \$200 towards that bill, and he was credited \$500 by the applicant's representative in exchange for work performed. The remaining balance of electricity arrears is \$858.38. The water bills for December to May inclusive totalled \$700.01. No payments have yet been received against that bill.

As a result of having to process the payment of the utilities arrears and pursue resolution of the transfer of the accounts, the applicant's representative also claimed a 15 percent admin fee.

The respondent did not dispute the accuracy of the landlord's accounting of utilities arrears, acknowledging his debt and accepting responsibility for it, and accepted and agreed to the applicant's representative's claim of the 15 percent admin fee.

I am satisfied the respondent failed to have the electricity and water accounts transferred to his name and failed to pay the related bills incurred prior to the dates the respective transfers took effect. I am satisfied the landlord suffered losses as a direct result of the tenant's failure to transfer those utility accounts when the landlord was held responsible for paying the respective electricity and water bills. I am satisfied the imposition of a 15 percent admin fee against the utilities arrears is reasonable compensation for losses suffered, representing work that would otherwise not have been required by the landlord. I find the respondent failed to comply with his obligation to pay the utilities. I find the respondent liable to the applicant for the accumulated utilities arrears in the total amount of \$1,792.15.

#### *Security deposit*

The parties agreed and evidence was presented establishing that a security deposit of \$2,500 was required to be paid by the respondent. The respondent has made three installments towards the security deposit to date: \$800 in December; \$800 in January; and \$500 in June. There remains an outstanding amount of \$400. The written tenancy agreement and the Act clearly specify the security deposit must be paid in full within three months of commencement of the tenancy.

The respondent did not dispute the accuracy of the landlord's accounting of security deposit arrears, acknowledging his debt and accepting responsibility for it.

I am satisfied the landlord's accounting accurately reflects the current status of the respondent's security deposit account. I find the respondent has failed to comply with his obligation to pay the security deposit in full within three months of commencement of the tenancy. I find the respondent has accumulated security deposit arrears in the amount of \$400.

*Filing fee and costs*

The applicant's representative claimed the return of the \$100 fee for filing the application to a rental officer and costs for preparing the application and evidence necessary to make his case in the amount of \$650. These costs were denied as they are costs of doing business and were not incurred as a direct result of the respondent's breaches.

*Termination of the tenancy agreement and eviction*

The respondent explained that his difficulty in paying the rent on time, and at all in the last two months, was as a result of payments from his business vendors failing to come through when expected. The respondent is the sole proprietor of a contracting business. The respondent's witness, who resides with the respondent, also confirmed that she lost her job about two months ago. The recent effects on their joint income have admittedly put them in a difficult position.

The respondent argues that the late payment of the rents prior to July should not be considered in determining whether or not termination of the tenancy agreement is justified because the lateness of those rents was negligible being of only a few days past the due dates. While this may be true, the written tenancy agreement specifies the rent is due on the first of each month and the Act specifies that the tenant must pay the rent on the dates specified by the tenancy agreement. Additionally, the rents for July and August have yet to be paid at all.

The respondent argues that the failure to pay the utilities should have limited weight when considering termination of the tenancy agreement because of the circumstances which led to those debts. The respondent claims, in effect, that it wasn't his fault that the debts accumulated. While I can accept that there may have been some difficulties with the electricity company, it remained the respondent's responsibility to follow up with the electricity company when he did not receive the bills he should have expected. With respect to the water account, there is no indication that anything was done about transferring that account until after it was repeatedly brought to his attention that the landlord was suffering the consequences of the tenant's failure to have the account transferred.

The respondent testified that he expects an invoice to be paid by a vendor within the next three weeks. The payment will be of such a significant amount that he will be able to resolve his debts with the landlord in full and pay his future rent on time. The respondent also requested to fulfill the term of his fixed-term tenancy – which ends November 30, 2017 – indicating he and his partner may very well be returning to the East Coast.

The applicant's representative expressed concern with permitting the tenancy to continue, even under a conditional termination order, citing the respondent's pattern of payments over the last several months and the resulting negative effect on the property owner's personal finances. Despite the respondent's reasonable expectation to be able to pay the arrears and rent for September upon receipt of his outstanding business invoice payment, the applicant's representative and the property owner are not confident the respondent will comply with his obligation to pay his future rents on time.

The respondent's repeated failure to pay his rent, repeated failure to comply with his obligation to pay his utilities, failure to pay his security deposit in full when due, and the total amount of accumulated arrears together justify termination of the tenancy agreement and eviction. I reserved my decision on this matter, and upon deliberation have determined that while it is more likely than not that the respondent will have the resources to pay his future rent on time the applicant's concerns are justified. To balance the concerns, I have determined to issue staggered conditional termination and eviction orders dependent on the respondent meeting their financial obligations.

If the respondent fails to pay the rental, utilities, and security deposit arrears by the end of September, and fails to pay the rent for September on time, then the tenancy will end September 30<sup>th</sup> and the respondent will be evicted October 1<sup>st</sup>. If the respondent fails to pay his rent for October on time, then the tenancy will end October 15<sup>th</sup> and the respondent will be evicted October 16<sup>th</sup>. If the respondent fails to pay his rent for November on time, then the tenancy will end November 15<sup>th</sup> and the respondent will be evicted November 16<sup>th</sup>. If the respondent meets all of those financial obligations, then the tenancy will continue uninterrupted until it is otherwise terminated in accordance with the Act.

### *Orders*

An order will issue:

- requiring the respondent to pay rental arrears in the amount of \$5,092;
- requiring the respondent to pay his rent on time in the future;
- requiring the respondent to pay utilities arrears in the amount of \$1,792.15;
- requiring the respondent to pay security deposit arrears in the amount of \$400;
- terminating the tenancy agreement September 30, 2017, unless the rental arrears, utilities arrears, and security deposit arrears are paid in full, and the rent for September is paid on time;
- evicting the respondent from the rental premises October 1, 2017, if the termination of the tenancy agreement becomes effective on September 30, 2017;
- terminating the tenancy agreement October 15, 2017, unless the rent for October is paid on time;
- evicting the respondent from the rental premises October 16, 2017, if the termination of the tenancy agreement becomes effective on October 15, 2017;
- terminating the tenancy agreement November 15, 2017, unless the rent for November is paid on time; and evicting the respondent from the rental premises November 16, 2017, if the termination of the tenancy agreement becomes effective on November 15, 2017; and
- evicting the respondent from the rental premises November 16, 2017, if the termination of the tenancy agreement becomes effective on November 15, 2017.

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Adelle Guigon  
Rental Officer