

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

SA

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	November 8, 2017
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	AB, representing the applicant
<u>Date of Decision:</u>	December 18, 2017

REASONS FOR DECISION

An application to a rental officer made by YHA on behalf of the NTHC as the applicant/landlord against SA as the respondent/tenant was filed by the Rental Office July 24, 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 July 27, 2017.

The applicant alleged the respondent had permitted an additional occupant to reside in the rental premises without the landlord's written consent, and had failed to report that occupant's income as required. An order was sought for the recovery of rent subsidies accumulated between January 2016 and July 2017.

A hearing was scheduled for November 8, 2017, in Yellowknife. AB appeared representing the applicant. SA was served notice of the hearing by registered mail deemed served October 24, 2017, pursuant to subsection 71(5) of the *Residential Tenancies Act* (the Act). The respondent did not appear at the hearing, nor did anyone appear on the respondent's behalf. The hearing proceeded in the respondent's absence pursuant to subsection 80(2) of the Act.

The applicant's request is denied for the following reasons:

Tenancy agreement

The applicant's representative testified and provided evidence establishing a residential tenancy agreement between the parties for subsidized public housing commencing April 1, 2012. I am satisfied a valid tenancy agreement is in place in accordance with the Act.

Additional occupants

According to Schedule B to the written tenancy agreement, JB was identified as an authorized occupant from November 17 to December 2, 2014.

The applicant's representative testified that maintenance personnel had reported seeing JB in the respondent's rental premises when they would attend, and that the applicant's representative often saw JB at the residential complex when she would attend to landlord duties there. An assumption was made based on the number of times JB was observed at the rental premises or residential complex that she was more likely than not living with the respondent again. The applicant's representative notified the respondent by correspondence dated June 6, 2017, of their suspicion and requested proof from the respondent that JB was not residing with the respondent in the form of two of the following documents belonging to JB: a current driver's licence, a current tenancy agreement, a recent utility or telephone bill, or her latest insurance bill.

A photocopy of JB's temporary driver's licence was provided. It was issued June 9, 2017, and identified her address as 41, 5010 - 50 Street in Yellowknife. The applicant's representative argued that the temporary driver's licence does not establish where JB's address was before June 9, 2017. A fair enough question, however, JB must have satisfied Driver and Vehicle Licensing of her residence in order to obtain her driver's licence. So at the very least the driver's licence does establish her residence at the same premises as confirmed by Samuel Park.

Correspondence dated June 7, 2017, from Samuel Park, Manager of 1190879 Alberta Ltd. o/a Gold Range Hotel, verified that JB has been residing at Apartment #41 at the Gold Range Hotel, 5010 - 50 Street, Yellowknife, since January 2016. Upon request from the applicant's representative, the respondent provided a set of receipts dated from December 2014 to June 2017. The receipts described receiving monies from "Janice B." for "Room Rent". However, the dates on all the receipts only identified the month and year, none of the receipts identified either the room number or a receipt series number, none of the receipts identified who issued them, and all the receipts were only initialled (not signed) by "S.P." Given the identifying features missing from the provided receipts, they were not accepted as conclusive evidence of JB's tenancy. The applicant's representative argued that the correspondence from Samuel Park could not be relied upon given it is not a sworn document and the signature cannot be verified as authentic.

In an effort to be as fair as possible to the unrepresented respondent, I contacted Samuel Park and inquired if he would be prepared to provide a sworn statement as to the details of JB's residency. He indicated he was, and by a declaration dated November 30, 2017, sworn before a commissioner for oaths he confirmed the following:

- that JB has a verbal lease with 1190879 Alberta Limited;
- that JB rents unit #41, 5010 - 50 Street, Yellowknife;
- that JB has rented the unit since December 1, 2015; and
- that JB pays \$750 per month all inclusive for rent.

The applicant's representative argued that Samuel Park's declaration should not be considered sufficient given the declaration says the tenancy started in December 2015 where the receipts say the tenancy started in December 2014, and suggested tax returns would be a more reasonable and reliable document to establish residency from. Frankly, I disagree with the applicant's representative regarding the reliability of Samuel Park's declaration. Samuel Park has sworn to the truth of the contents of his declaration before a commissioner for oaths. It has already been determined that the receipts provided by the respondent have no inherent value as evidence given the identified omissions. And although everyone is supposed to file their taxes yearly, not everyone does, so who's to say that JB even has tax returns to prove her residency?

Being the landlord's application, the onus lies with the landlord to prove on a balance of probabilities that the tenant has failed to comply with a condition of their tenancy. In this case, the landlord has alleged that the tenant permitted JB to live with her from January 2016 to June 2017 without the landlord's consent. The allegation was made based on observations of JB attending at the residential complex and within the rental premises.

Certainly the landlord cannot prove a negative, so this scenario does require the tenant to provide evidence that JB maintains her own residence. The tenant did this immediately upon the request of the landlord by providing JB's current driver's licence and a letter from JB's landlord confirming her residency for the time period questioned by the applicant.

While I can appreciate subsidized public housing landlords wishing to ensure their clients are not abusing the system, allegations of a breach must have substance. The tenant is allowed to have visitors any time and as often as she wishes, as long as the visitors don't cause a disturbance and actually do maintain their own separate residence.

I am satisfied that JB maintains her own residence at the Gold Range Hotel, and has done so since at least December 1, 2015. I am not satisfied that the respondent has permitted an unauthorized additional occupant to reside with her, and therefore I am not satisfied that the respondent has breached the terms of her subsidized public housing tenancy agreement. The applicant's request for an order that the respondent pay back the rent subsidies accumulated between January 2016 and June 2017 is denied.

Adelle Guigon
Rental Officer