

IN THE MATTER between **ARELP**, Applicant, and **CK and MG**, Respondents.

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:

**ARELP**

Applicant/Landlord

-and-

**CK and MG**

Respondents/Tenants

**REASONS FOR DECISION**

<b><u>Date of the Hearing:</u></b>	<b>January 31, 2018</b>
<b><u>Place of the Hearing:</u></b>	<b>Yellowknife, Northwest Territories</b>
<b><u>Appearances at Hearing:</u></b>	<b>BD, representing the applicant CK, respondent ST, on behalf of the respondents</b>
<b><u>Date of Decision:</u></b>	<b>March 8, 2018</b>

**REASONS FOR DECISION**

An application to a rental officer made by ARELP as the applicant/landlord against CK and MG as the respondents/tenants was filed by the Rental Office October 24, 2017. The application was made regarding a residential tenancy agreement for a rental premises located in Fort Liard, Northwest Territories. The filed application was served on the respondents by registered mail signed for November 24, 2017.

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

A hearing was scheduled for January 31, 2018, by three-way teleconference. BD appeared representing the applicant. CK appeared as respondent and on behalf of MG, with ST appearing on the respondents' behalf.

*Tenancy agreement*

The parties agreed and evidence was presented establishing a residential tenancy agreement between them. The respondent testified that she had entered into a written tenancy agreement, but no such written tenancy agreement was entered into evidence. The applicant's representative has no record of a written tenancy agreement. The parties did agree that the respondents had taken occupancy of a rental premises in July 2011. The *Residential Tenancies Act* (the Act) recognizes oral, written, and implied tenancy agreements. I am satisfied that an oral tenancy agreement was entered into between the parties commencing July 2011 in accordance with the Act.

### *Rental arrears*

A rent ledger prepared and submitted into evidence represents the landlord's accounting of monthly rents and payments received against the respondents' rent account from July 16, 2011, to January 10, 2018. From July 2011 to April 2012 the rent was \$1,250 per month. From May 2012 to September 2017 the rent was \$1,200 per month. The rent was increased to \$1,450 per month effective September 1, 2017. Although there are significant periods during the first four years of the tenancy when no payments were made against the respondent's rent account, since February 2016 there are seven out of 24 months in which either no payments or insufficient amounts were paid against the respondents' rent account.

The applicant's representative testified that throughout the tenancy the respondents had repeatedly failed to pay the full amount of their rent when due. At the time of the hearing the applicant claimed rental arrears in the amount of \$200 as of December 31, 2017, however, after reviewing evidence entered by the respondent acknowledged that there had been an incorrect entry in their ledger. That entry was corrected, clearing the ledger balance as of December 31, 2017, to zero. Although payments had been received in January 2018, they were applied against the rental arrears resulting in January 2018 rent not yet having been paid. This effectively results in rental arrears of \$1,450.

The respondents did not dispute that over the course of the tenancy they had repeatedly failed to pay their rent in full when due. That pattern of behaviour has improved over the last two years, although the payment of rent has still not been paid in full on time since April 2016. Explanations from the respondent for this pattern of behaviour included financial and personal factors which I do not find have any bearing on the respondents' responsibility to comply with their obligations as set out in the Act. How the applicant deals with its other tenancies has no bearing on the respondents' obligations under their own tenancy agreement. Ultimately, it is the respondents' obligation to ensure the rent is paid in full when due. In this case, it was acknowledged the rent is due the first day of the month.

The respondents provided evidence of payments applied to the rent which were not reflected in the applicant's rent ledger. Although an updated ledger provided by the applicant after the hearing did include the previously mentioned missing \$200 payment, the updated ledger did not include the other payments the respondents provided receipts for. Those remaining amounts are: \$200 paid by cheque on January 13, 2017; \$340.11 paid by cheque on January 27, 2017; and \$200 paid by debit card on January 27, 2017. I have applied those credits against the rental arrears for January 2018.

The applicant did not specifically request late payment penalties but they did clearly keep track of how many days each month's rent was late. Subsection 41(2) of the Act specifies the tenant's liability to a penalty for paying their rent late, calculated in accordance with section 3 of the *Residential Tenancies Regulations* (the Regulations). Given that the applicant could have made application, frankly, at any time during this lengthy tenancy and chose not to until now, and given that there is a six-month time limitation set out under section 68 of the Act for the making of an application from when a situation arose, I am not inclined to grant the applicant late payment penalties for the rents earlier than a year before the current application was filed. The current application was filed October 24, 2017; I am prepared to grant the applicant late payment penalties accumulated against the rents since October 2016. Based on the information provided in the amended rent ledger, I have calculated the late payment penalties for the rents for October 2016 to January 2018 to be \$750.

I am satisfied the amended rent ledger accurately reflects the current status of the respondents' rent account. I find the respondents have repeatedly failed to pay the full amount of their rent when due and have accumulated rental arrears, including late payment penalties, in the total amount of \$1,459.89.

### *Security deposit*

The rent ledger included an entry claiming an additional \$1,000 which the applicant's representative identified was for the security deposit. The respondents provided a receipt proving they had paid a \$500 security deposit in July 2011, which the applicant's representative acknowledged. The respondents also claimed they had paid an additional \$500 for their security deposit when they were transferred to a different rental premises under the same tenancy agreement in 2013. The applicant has no record of that payment and the respondent could provide no evidence of having made that payment. I am satisfied the respondents paid \$500 towards their security deposit at the commencement of the tenancy; I am not satisfied the respondents paid an additional \$500 towards their security deposit in 2013.

The applicant claimed the extra \$1,000 security deposit when the rent was increased to \$1,450 in September 2017. Section 14 of the Act does specify that the landlord may require a security deposit equivalent to no more than an amount equal to one month's rent. Therefore, the most the applicant can currently request from the tenant for a security deposit is \$1,450. Given that the respondent already paid \$500 at the commencement of the tenancy, I find the remaining security deposit the respondents owe to the applicant is \$950.

### *Termination of the tenancy agreement and eviction*

In light of the respondents' repeated failure to pay the full amount of their rent when due throughout their tenancy, considered in conjunction with the respondents technically failing to pay the full amount of their security deposit as required under the Act, I am satisfied that termination of the tenancy agreement and eviction are justified. However, the respondents recent efforts to resolve their accumulated rental arrears and pay their rent on time each month, and the fact that the rental arrears they currently have are limited to the approximate equivalent of one month's rent, I am of the opinion that a conditional termination and eviction order is warranted dependent on the respondents paying their rental arrears and security deposit arrears in full and paying their future rent on time.

*Additional item*

The respondents raised an issue regarding a period in 2013 when the furnace was not working and the propane tank sprung a leak. Although the parties did speak to these issues, I am not considering them in my deliberations under this application because they did not form part of the application, they are situations which arose over four years ago, and no substantive evidence of losses suffered by the respondent were entered into evidence. Section 68 of the Act, as previously referenced, sets a six-month time limitation of when an application to a rental officer can be made regarding an issue. The respondents did not exercise their right to make such an application to a rental officer, and there does not appear to have been any effort since 2014 to address the issue until now.

*Orders*

An order will issue:

- requiring the respondents to pay rental arrears in the amount of \$1,459.89;
- requiring the respondents to pay their rent on time in the future;
- requiring the respondents to pay the outstanding security deposit of \$950;
- terminating the tenancy agreement June 30, 2018, unless the rental arrears and security deposit arrears are paid in full, and the rents for April, May, and June are paid on time; and
- evicting the respondents from the rental premises July 1, 2018, if the termination of the tenancy agreement becomes effective.

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Adelle Guigon  
Rental Officer