

IN THE MATTER between **XY**, Applicant, and **JS**, 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 **Hal Logsdon**, Rental Officer,

BETWEEN:

XY

Applicant/Landlord

-and-

JS

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: February 28, 2018

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: AB, representing the applicant

JS, respondent

GS, assisting the respondent

PS, witness for the respondent

LM, witness for the respondent (via telephone)

Date of Decision: March 7, 2018

REASONS FOR DECISION

The applicant is a provider of subsidized public housing. The respondent applied for housing on July 12, 2013 and was placed on the waiting list. The application form, provided in evidence by the applicant, sought information regarding assets held by the prospective tenant. The respondent reported that she owned no real estate. Her declaration obligated her to "notify the administering office immediately of any change in my circumstances.....which may affect my benefits received if accepted into one of the Social Housing Programs."

Ownership of a house, whether inside or outside of the NWT, would disqualify a prospective tenant from subsidized public housing eligibility. A copy of the eligibility policies was provided in evidence by the applicant.

The respondent was allocated a unit and a tenancy agreement executed on October 8, 2013. The tenancy ended on June 3, 2017.

The applicant filed an *Application to a Rental Officer* on November 10, 2017 alleging that the respondent had failed to declare her ownership of and income from a residential property in Brampton, Ontario. The applicant sought monetary relief representing the difference between the full unsubsidized rent (\$1625) and the subsidized rent charged for each month the respondent was in possession of the public housing unit.

The applicant provided a land parcel register in evidence which indicated that a property in Brampton was transferred to the respondent and PS on September 17, 2013 and was sold by them on July 31, 2017 for \$750,000. The applicant submitted that since the applicant had failed to disclose her ownership of or any income from the Brampton property she was not entitled to a rent subsidy. The applicant argued that because the respondent was not eligible for subsidized public housing throughout the entire term of the tenancy, the landlord was entitled to rent equal to the full unsubsidized rent less the rents that the applicant paid which were calculated to be \$42,890. The applicant also sought costs related to the application fee (\$100) and title search fees (\$103.58).

The applicant stated that although they suspected the respondent received rents from the Brampton property, they had no evidence of any rent revenue.

The applicant referred to Yellowknife Housing Authority v. Susan Smith; Susan Smith v. Yellowknife Housing Authority (1992 CarswellNWT 27, [1992] N.W.T.R. 146, 32 A.C.W.S. (3rd) 826). The Yellowknife Housing Authority had obtained an order from a rental officer terminating the tenancy and sought an eviction order from the Court. The grounds for termination related to breaches of the tenancy agreement concerning pets in the rental premises and the use of waterbeds. Ms Smith appealed the rental officer order terminating the tenancy agreement. The court denied Ms Smith's appeal and granted the eviction order. As well, the court ordered the payment of rent based on the full unsubsidized rent, finding that the tenant had been in breach of clause 6 from the date of occupation and had never qualified for a subsidized rent. Specifically the Court found Ms Smith in breach of sections 41(1), 45(1) and 45(3), all breaches of the tenancy agreement.

The respondent testified that she was not the owner of the Brampton property, only a co-signer on the mortgage loan. The applicant provided a CIBC fact sheet outlining the responsibilities of a co-signer as well as a co-signer fact sheet of unknown origin.

Both of the respondent's witnesses testified that the applicant was only a co-signer. PS stated that the applicant was named on the mortgage as mortgager. The witnesses both testified that they did not pay any rent to the applicant and the applicant testified that she never received any rent for the Brampton property.

Applicability of the Act

Section 6 of the *Residential Tenancies Act* sets out the applicability of the Act

6. (1) Subject to this section, this Act applies only to rental premises and to tenancy agreements, notwithstanding any other Act or any agreement or waiver to the contrary.

A landlord of subsidized public housing must be vigilant to ensure that only households in need are able to access the program and that families with the greatest need are served first. These programs have strict eligibility criteria and relative need is determined using detailed assessment information and point rating systems. As a social program with limited resources, it is vital that the program be operated as effectively as possible.

As the eligibility of prospective tenants is determined before the formation of a tenancy agreement, the Act does not apply to the eligibility or tenant selection process. It is only after the formation of a tenancy agreement that the Act has effect and a rental officer has jurisdiction. The process used to select tenants, whether in social housing or market housing is not within the scope of the Act or the jurisdiction of the Rental Officer.

Section 57 of the Act addresses the special case where a tenant of subsidized public housing ceases to be eligible for the assistance. Section 57 permits only the remedy of termination of the tenancy agreement.

57. *Where, on the application of a landlord, a rental officer determines that*

(b) a tenant of subsidized public housing has ceased to meet the requirement for occupancy of the rental premises,

the rental officer may make an order terminating the tenancy on a date specified in the order and ordering the tenant to vacate the rental premises on that date.

If the respondent did indeed misrepresent her assets on her application and was found to be ineligible for subsidized public housing the sole remedy permitted by s.57 would be termination of the tenancy agreement.

Income Reporting and Rent Assessment

Clause 6 of the tenancy agreement sets out the tenant's obligation to report household income and the calculation of a subsidized rent.

Tenant's Income

The Tenant promises to provide a subsidy agent appointed by the Landlord with an accurate report of the Tenant's income, the income of any occupant of the premises, the size of the Tenant's family and the number of occupants residing in the Premises, whenever, and as often as, the subsidy agent requests such a report. All reporting by the Tenant must be in the form prescribed by the subsidy agent.

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 this Agreement), the Tenant will be eligible for a rent subsidy. The rent subsidy will be calculated according to the GNWT Public Housing Rental Subsidy Program (as such Program may be amended or renamed from time to time).

There is no evidence that the income reported by the respondent was inaccurate or incomplete. It would appear that the respondent complied with clause 6 and was provided with adjusted rents as appropriate. The applicant alleges that the respondent misrepresented her application for housing, not that she breached any obligation pursuant to the tenancy agreement.

This matter is clearly distinct from *Smith*. In *Smith*, both the Rental Officer and the Court found breaches of the tenancy agreement. The Rental Officer found breaches of the tenant's obligations concerning prohibitions on water beds and pets contained in the written tenancy agreement. The Court after a trial de novo concluded that the respondent had breached the tenancy agreement by failing to report all occupants, the incomes of all occupants and the failure to pay rent and the security deposit, all breaches of the tenancy agreement.

In *Smith*, the Court found that given the continuous breach of article 6, a significant obligation contained in the tenancy agreement, the full unsubsidized rent was reasonable and consistent with the general proposition regarding full unsubsidized rent contained in *Inuvik Housing Authority v. Koe* (1991, [1992] N.W.T.R. 9, 85 D.L.R. (4th) 548 (S.C.)).

In the current matter, the application of the full unsubsidized rent is not based on any alleged breach of the tenancy agreement but on the alleged misrepresentation of information provided by the respondent on her initial application for housing. Although the respondent took no steps to amend the information on her application after the tenancy agreement was formed, it was not information required by the tenancy agreement and any failure to provide or update the asset information was not a breach of the tenancy agreement.

Conclusion

A Rental Officer's authority is limited by the application of the *Residential Tenancies Act* which deals only with tenancy agreements and rental premises. While a Rental Officer may consider terminating a tenancy agreement between a social housing landlord and a social housing

tenant on the grounds that the tenant has ceased to be eligible for subsidized public housing (s. 57), there is no justification for the application of the full unsubsidized rent unless a breach of the tenancy agreement is found. The alleged misrepresentation is not a breach of the tenancy agreement.

There is insufficient evidence to conclude that the income reported by the applicant was incorrect or incomplete. I can find no breach of the tenancy agreement that would justify the application of the full unsubsidized rent. As a Rental Officer I have no jurisdiction to deal with an alleged misrepresentation on an application. Accordingly, the application is dismissed.

I make no finding concerning the Brampton property ownership. Any remedy would be moot since the tenancy agreement has already been terminated.

Hal Logsdon

Rental Officer