

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

**FA**

Respondent/Tenant

**REASONS FOR DECISION**

<b><u>Date of the Hearing:</u></b>	<b>March 7, 2018</b>
<b><u>Place of the Hearing:</u></b>	<b>Aklavik, Northwest Territories</b>
<b><u>Appearances at Hearing:</u></b>	<b>FE, representing the applicant MRM, representing the applicant FA, respondent</b>
<b><u>Date of Decision:</u></b>	<b>March 7, 2018, and April 9, 2018</b>

**REASONS FOR DECISION**

An application to a rental officer made by AHA on behalf of the NTHC as the applicant/landlord against FA as the respondent/tenant was filed by the Rental Office November 20, 2017. The application was made regarding a residential tenancy agreement for a rental premises located in Aklavik, Northwest Territories. The filed application was served on the respondent by registered mail signed for December 6, 2017.

The applicant alleged the respondent had repeatedly failed to pay rent, had accumulated rental arrears, had caused disturbances, and had caused damages to the rental premises. An order was sought for payment of the rental arrears, payment of future rent on time, payment of costs for repairs, termination of the tenancy agreement, and eviction.

A hearing was scheduled for March 7, 2018, in Aklavik. The Rental Officer appeared by telephone. FE and MRM appeared representing the applicant. FA appeared as respondent.

*Tenancy agreement*

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

*Rental arrears*

The statements of account entered into evidence represent the landlord's accounting of monthly assessed rents and payments received against the respondent's rent account. All rents up to and including June 2017 have been subsidized at an assessed rate of \$790. All rents since July 2017 have been assessed for the maximum monthly rent of \$1,445 as a result of the respondent failing to complete his 2016 income tax return, which is the form of reporting household income required by the applicant pursuant to paragraph 6 of the written tenancy agreement. The last payment apparently received against the respondent's rent account was recorded May 11, 2017, in the amount of \$1,309.99.

The respondent did not dispute the accuracy of the landlord's accounting, acknowledging the debt and accepting responsibility for it. He admitted to not completing his 2016 income tax return, and made a commitment to have both the 2016 and the 2017 returns completed as soon as possible. It is expected that once the returns are completed that the monthly rent since July 2017 will be re-assessed for eligible subsidies to be applied retroactively.

I am satisfied the statements of account accurately reflect the current status of the respondent's rent account. I find the respondent has failed to comply with his obligation to report his household income in accordance with paragraph 6 of the written tenancy agreement, and as a result I am satisfied that the application of the maximum rent for the periods since July 2017 is appropriate. I find the respondent has repeatedly failed to pay his rent and has accumulated rental arrears in the amount of \$15,440.01, which effectively represents approximately 12 months' rent.

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

In light of the respondent's repeated failure to pay his rent, his failure to report household income as required, and the substantial amount of rental arrears accumulated, I am satisfied termination of the tenancy agreement and eviction are justified. By agreement between the parties, the termination and eviction orders will be conditional on the respondent reporting his household income for the 2016 and 2017 calendar years, and paying his future rents on time.

The above decisions were rendered at hearing. The hearing was adjourned *sine die* pending additional written submissions with respect to the following issues.

#### *Damages*

In January 2017 the respondent left the community to attend a 5.5-week treatment program. While he was away the boiler in the rental premises failed resulting in the plumbing systems freezing. The applicant effected the necessary repairs and claimed the costs of \$919.93 against the respondent.

The respondent disputed his responsibility for the damages, claiming that he believed the applicant would be keeping an eye on the rental premises for him during his absence. The applicant's representatives denied assuming responsibility for the premises in the respondent's absence, and were adamant that tenants remain responsible for making their own arrangements to have their premises looked after when they travel.

Paragraph 18(b) of the written tenancy agreement specifies the tenant's responsibility to notify the landlord in writing prior to leaving the premises unoccupied for more than 24 hours between October 1<sup>st</sup> and April 30<sup>th</sup>. Paragraph 18(c) of the written tenancy agreement goes on to establish that the landlord will not assume responsibility for checking on the rental premises unless the landlord agrees to, and that the tenant is responsible for any damages occurring during the period the rental premises in unoccupied.

A copy of the tenant leave form signed by the parties was entered into evidence. It is dated January 17, 2017, indicating the respondent's departure date of January 18, 2017, and return date of February 27, 2017. There is a note on the form including a sentence which says, "If you are not back by the return date mentioned above, you must phone the AHA or you will be held responsible for any damages that occur in your unit." That sentence seems to imply that the tenant will not be held responsible for damages occurring to the rental premises during the period that he is away, and that he will only be held responsible for damages occurring after his stated return date if he fails to notify the landlord that he will be away for longer than originally stated. In other words, there appears to be an implied assumption of responsibility for the rental premises by the landlord for the period the tenant is away.

Given the implied assumption of responsibility identified in the tenant leave form, I believe it more likely than not that the respondent was in fact led to believe that the applicant had agreed to take care of the rental premises during his absence. In which case it is the applicant who failed to take the necessary precautions to ensure the rental premises services and facilities were properly functioning so as to avoid damages such as the plumbing system freeze-up which occurred. I am not satisfied that the respondent can be held responsible for the costs of repairing the plumbing systems in this instance. The applicant's claim for costs of repairs is denied.

### *Disturbances*

The applicant claimed the respondent had caused disturbances or permitted disturbances to be caused by his guests.

The applicant received a complaint from the respondent's neighbour (also a tenant) on July 24, 2017, claiming that there had been daily parties at the respondent's premises and that people had kicked in the respondent's door to party there. The neighbour also indicated that the respondent did not appear to be staying at his premises, rather he appeared to be staying with a family friend. The respondent confirmed that during the month of July he had been spending a significant period of time with his sponsor family, but that his primary residence remained at his rental premises. The respondent denied having or permitting parties at his rental premises. He acknowledged that upon returning to his rental premises in July after visiting with his sponsor family he found the rental premises had been broken into and his furniture had been re-arranged into the kitchen area. The respondent did not report the incident to the RCMP, but he did report it to the applicant's representative.

The second incident reported to the applicant was made by the same complainant on September 27, 2017. The neighbour complained that on September 26<sup>th</sup> there had been a party at the respondent's rental premises, and that an individual had come banging and kicking on the neighbour's door looking for the respondent's premises. The respondent denied having a party that day because he had been out on the land for a cultural fishing program provided by the Aklavik Hunters and Trappers Committee. When he returned his neighbour informed him of the individual's attempt to gain access to her premises when looking for his. The respondent claimed to have no association with the individual in question and could not understand why that individual would want to go to his premises.

The applicant's representatives confirmed that there have been no further disturbances reported since the September incident.

While it does appear that there have been disturbances occurring, based on the information provided I cannot be satisfied that the respondent was either involved with or permitted the disturbances to occur. The respondent was not present at the rental premises in either instance and therefore could not have permitted anyone to enter the premises. It seems unlikely that he would have permitted others to party at his premises in his absence in July given the premises was broken into at that time.

Not being satisfied that the respondent failed to comply with his obligation not to cause disturbances and not to permit his guests to cause disturbances, the applicant's request for remedies associated with causing disturbances is denied.

#### *Orders*

An order will issue:

- requiring the respondent to pay rental arrears in the amount of \$15,440.01;
- requiring the respondent to pay his future rent on time;
- requiring the respondent to comply with his obligation to report his household income in accordance with paragraph 6 of the written tenancy agreement;
- terminating the tenancy agreement June 30, 2018, unless the respondent's 2016 and 2017 household income is reported to the applicant and the rents for April, May, and June are paid on time; and
- evicting the respondent from the rental premises July 1, 2018, if the termination of the tenancy agreement becomes effective.

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Adelle Guigon  
Rental Officer