

IN THE MATTER between **NTHC**, Applicant, and **AC and CC**, 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:

**NTHC**

Applicant/Landlord

-and-

**AC and CC**

Respondents/Tenants

**REASONS FOR DECISION**

**Date of the Hearing:** March 21, 2018

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

**Appearances at Hearing:** KL, counsel for the applicant  
AS, representing the applicant

AC, respondent  
CC, respondent

**Date of Decision:** March 21, 2018

**REASONS FOR DECISION**

An application to a rental officer made by HRHA on behalf of the NTHC as the applicant/landlord against AC and CC as the respondents/tenants was filed by the Rental Office December 15, 2017. The application was made regarding a residential tenancy agreement for a rental premise located on the Hay River Dene Reserve No. 1 near Hay River, Northwest Territories. The filed application was personally served on the respondents January 9, 2018.

The applicant alleged the respondents had repeatedly failed to pay the full amount of rent each month and had accumulated rental arrears. An order was sought for payment of the rental arrears, termination of the tenancy agreement, and eviction.

A hearing was scheduled for March 21, 2018, by three-way teleconference. KL appeared as counsel for the applicant and AS appeared representing the applicant. AC and CC appeared as respondents.

*Tenancy agreement*

The rental premises in question sits on a lot which forms part of a piece of land located within Lots 195-204, Plan 99076, in Hay River Dene Reserve No. 1. The KFN (KFN) consented to relinquish the lease for the lots so that the applicant could manage the property under its programs and services. The contract between Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian Affairs and Northern Development, and the NTHC (NTHC) establishes a lease for the lots for residential purposes only commencing May 1, 2016. I am satisfied that the applicant is the landlord for the rental premises under this application to a rental officer and has been since May 1, 2016.

The respondents have occupied the rental premises for some time prior to May 1, 2016, and continue to occupy the rental premises to date. AC testified that he is the sole tenant to the tenancy agreement. There is no written tenancy agreement between the respondent and the applicant. I am satisfied that there is an oral tenancy agreement in place between the parties in accordance with the *Residential Tenancies Act* (the Act), with AC as the sole tenant. References to the singular respondent will be referring to AC as the sole tenant going forward.

*Change of landlord*

Subsection 19(2) of the Act says:

19. (2) A tenant may continue, without prejudice, to pay rent to the landlord until the tenant has received a written notice that a new landlord has acquired the residential complex and is attempting to enforce any of the rights of the landlord under this Act or the tenancy agreement, including the right to collect rent.

Subsection 71(1) of the Act says:

71. (1) A notice or other document to be served on or given to a landlord, tenant or rental officer, must be served or given by
- (a) personal service;
  - (b) registered mail;
  - (c) fax, if a fax number is provided; or
  - (d) a method set out in the regulations.

The nine written notices the applicant sent to the respondents between October 2016 and January 2018 were noted as delivered to the KFN band office for personal delivery to the respondents. The respondent disputes receiving any of those notices. No submissions were offered swearing to the personal service of any of the notices. The respondent testified that the first and only documents he was served with was the filed application to a rental officer and notice of attendance for this hearing.

An email dated January 22, 2018, from JL, South Slave District Director for the applicant, referred to a verbal conversation she had with the respondent before the land transfer took effect regarding the process to apply for residential tenancy with the applicant. No evidence was presented to establish whether or not written notice of the change of landlord was sent to the respondent.

The respondent testified that KFN has his mailing address and he does not understand why that information was not shared with NTHC so that they could send any notices directly to him. Because he did not receive any formal notification either that there had been a change of landlord or where he should be sending his rent payments, the respondent kept paying his rent to the landlord he knows: KFN.

I am not satisfied that the respondent was served notice of the change of landlord in accordance with subsection 71(1) of the Act, and I am not satisfied the respondents were notified of the change of landlord in accordance with subsection 19(2) of the Act. Regardless of whether or not the respondent had been verbally told that there would be a change in landlord, it is clear that the respondent was not notified in accordance with the Act. As such, I find the respondent's continued payment of rent to KFN appropriate under the circumstances.

#### *Rental arrears*

Prior to the change in landlord, the rent had been established at \$500 per month.

Subsection 47(1) of the Act limits how often the rent for a rental premises can be increased to once in a 12-month period. Subsection 47(2) of the Act requires the landlord who wishes to increase the rent in accordance with subsection 47(1) to give the tenant at least three months' written notice of the rent increase. Subsection 47(6) of the Act exempts subsidized public housing from the requirements of section 47. However, there is nothing before me to establish the oral tenancy agreement as one for subsidized public housing. Therefore, the applicant is bound to comply with the requirements of section 47 respecting rent increases.

When the respondents failed to attend the applicant's Hay River office to apply for a tenancy agreement and/or provide household income information, the applicant used the applicant's market rent rate sheet to establish the maximum rent for the rental premises. The rental premises is characterized as a Zone B 2-bedroom unit, which is assessed a maximum rent amount of \$1,250 per month. The maximum rent has been applied for all months against the respondent's rent account since May 2016.

Receipts proving the respondent has paid \$500 per month since May 2016 to KFN were entered into evidence. It was confirmed both in testimony and with documents that all such payments were forwarded to the applicant by KFN.

The rental arrears of \$17,250 being claimed by the applicant against the respondent represents the difference between the maximum monthly rent of \$1,250 being claimed by the applicant and the established monthly rent of \$500 over 23 months (May 2016 to March 2018).

Eight of the previously mentioned nine notices sent by the applicant to the respondent included reference to the assessment of the maximum monthly rent of \$1,250. However, also as previously mentioned, I am not satisfied that the respondent has been served with any of the notices in accordance with the Act. As such, I am satisfied the monthly rent remains at \$500. I find the respondent has paid his rent in full when due and the respondent has not accumulated any rental arrears. The applicant's requests for termination of the tenancy agreement and eviction are not justified.

Given that there are no orders to issue, only these reasons for decision will be produced.

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Adelle Guigon  
Rental Officer