

IN THE MATTER between **NCSC**, Applicant, and **SC**, 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:

**NCSC**

Applicant/Landlord

-and-

**SC**

Respondent/Tenant

**REASONS FOR DECISION**

<b><u>Date of the Hearing:</u></b>	<b>December 11, 2018</b>
<b><u>Place of the Hearing:</u></b>	<b>Yellowknife, Northwest Territories</b>
<b><u>Appearances at Hearing:</u></b>	<b>GL, representing the Applicant SC, Respondent EK, advocate for the Respondent</b>
<b><u>Date of Decision:</u></b>	<b>December 11, 2018</b>

**REASONS FOR DECISION**

An application to a rental officer made by NCSC as the Applicant/Landlord against SC as the Respondent/Tenant was filed by the Rental Office October 12, 2018. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was personally served on the Respondent October 25, 2018.

The Applicant alleged the Respondent had repeatedly failed to pay rent, had failed to comply with a rental officer order to pay minimum monthly installments towards rental arrears, and had accumulated additional rental arrears. An order was sought for payment of the rental arrears or for termination of the tenancy agreement and eviction.

A hearing was scheduled for December 11, 2018, in Yellowknife. GL appeared representing the Applicant. SC appeared as Respondent with EK appearing as the Respondent's advocate.

*Tenancy agreement*

The parties agreed and evidence was presented establishing a residential tenancy agreement between them for subsidized housing commencing some time before November 2012. I am satisfied a valid tenancy agreement is in place in accordance with the *Residential Tenancies Act* (the Act).

*Previous order*

Rental Officer Order number 10-13293 issued February 13, 2013, required the Respondent to pay rental arrears of \$3,689.91 in minimum monthly installments of \$20 starting in March 2013, and required the Respondent to pay future rent on time.

### *Rental arrears*

The customer balance details (CBD) entered into evidence represent the Landlord's accounting of monthly rents and payments received against the Respondent's rent account since November 1, 2012. All the rents except for July 2013 and July 2014 were subsidized, and are currently assessed at \$650 per month.

The maximum rent of \$1,155 was charged for July 2013 and July 2014. The Respondent had failed to report his annual household income for the 2012 and 2013 calendar years as required by June 30<sup>th</sup> of 2013 and 2014. Although the rents for August 2013 to June 2014 and August 2014 to June 2015 were assessed for subsidies once the respective annual household income was reported, the Applicant continued to apply the unsubsidized rent for July 2013 and July 2014 as a penalty for failing to report the household income when required.

The requirement of the Tenant to report household income is an additional obligation under the written tenancy agreement pursuant to subsection 45(1) of the Act. The requirement of the Landlord to apply rent subsidies based on reported household income is an additional obligation under the written tenancy agreement pursuant to subsection 39(1) of the Act. Penalties of any sort for failing to comply with any obligations under the Act or a written tenancy agreement are prohibited under section 13 of the Act, excepting for late payment of rent as provided for under subsection 41(2) of the Act and section 3 of the *Residential Tenancies Regulations* (the Regulations).

Effectively, the Applicant is not entitled to the maximum rent for July 2013 and July 2014 because the Respondent did eventually report his household income for the 2012 and 2013 calendar years. The Respondent was entitled to rent subsidies for all months, in which case he should have been charged \$650 each for July 2013 and July 2014. The CBD was adjusted by deducting the difference of \$1,010 from the balance.

The CBD does not support the Applicant's allegation that the Respondent had failed to comply with the order to pay minimum monthly installments towards rental arrears under Rental Officer Order Number 10-13293. The CBD shows that all the minimum monthly installments were paid on time, and that the rental arrears ordered paid under Rental Officer Order Number 10-13293 were paid in full by October 2016. It appears that the Respondent was led to believe that he had to keep paying the minimum monthly installments, and he did so in January, February, May, July and September 2017, and in February and June 2018.

The CBD also does not support the Applicant's allegation that the Respondent had repeatedly failed to pay the rent when due. A thorough review of the CBD shows that the subsidized rent was paid in full and on time each and every month, except for January 2017 which my understanding from the Respondent is an oversight even he was not aware of. It is worthy to note that the Respondent's rent has been and continues to be paid by Income Support, which suggests that the Respondent is diligent about his reporting requirements with Income Support and explains why he was unaware of the missed payment in January 2017. He believed the old rental arrears had been paid off as ordered when they in fact were, and was understandably confused when he was told there were more rental arrears.

I am not satisfied that the Respondent failed to comply with Rental Officer Order Number 10-13293 with respect to the requirement to pay minimum monthly installments towards rental arrears. Despite the one missed month's rent payment, I am not satisfied the Respondent failed to comply with Rental Officer Order Number 10-13293 with respect to the requirement to pay future rent on time.

The consequence of the deduction of overcharged rent from the CBD balance is a rent credit to the Respondent of \$610.09. At hearing, the Respondent was offered the option to either carry the credit on his rent account to be applied against future rent or to have the credit refunded to him. Given the Respondent's rent is paid through Income Support, the Respondent requested the credit be refunded to him.

*Termination of the tenancy agreement and eviction*

Under the circumstances, the Applicant's representative agreed with my determination that termination of the tenancy agreement and eviction are not justified.

*Order*

An order will issue requiring the Landlord to refund the rent credit of \$610.09 to the Tenant.

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Adelle Guigon  
Rental Officer