

IN THE MATTER between **NTHC**, Applicant, and **PD and JG**, 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-

PD and JG

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	January 24, 2019
<u>Place of the Hearing:</u>	Behchoko, Northwest Territories
<u>Appearances at Hearing:</u>	TM, representing the Applicant LE, representing the Applicant PD, Respondent
<u>Date of Decision:</u>	January 24, 2019

REASONS FOR DECISION

An application to a rental officer made by BKGK on behalf of the NTHC as the Applicant/Landlord against PD and JG as the Respondents/Tenants was filed by the Rental Office December 12, 2018. The application was made regarding a residential tenancy agreement for a rental premises located in Behchoko, Northwest Territories. The filed application was personally served on the Respondents December 20, 2018.

The Applicant alleged the Respondents had repeatedly failed to pay rent in full when due, had accumulated rental arrears, and had failed to report household income as required. An order was sought for payment of rental arrears, payment of future rent on time, reporting of household income as required, termination of the tenancy agreement, and eviction.

A hearing was scheduled for January 24, 2019, in Behchoko. TM and LE appeared representing the Applicant. PD appeared as Respondent and on behalf of JG.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them for subsidized public housing commencing March 10, 2014. I am satisfied a valid tenancy agreement is in place in accordance with the *Residential Tenancies Act* (the Act).

Household income

Section 6 of the written tenancy agreement requires tenants to report the total household income as and when required, and in the forms required, by the landlord. The Applicant requires household income to be reported annually by providing the income information for the previous calendar year before June 30th of the current year. The preferred form of reporting income is with the CRA notice of assessment, which requires the tenants to file their tax returns. There are alternative forms of reporting income that can be accepted by the Applicant. The subsequent July to June rents are then assessed for eligible subsidies based on the previous year's household income.

The parties agreed that although PD' income has been reported to date as required, JG has failed (or refuses) to file his tax returns for the 2016 and 2017 calendar years and has not been forthcoming in reporting his income in other forms. Once it was explained to PD what other forms would be accepted by the Applicant to prove JG's income for the outstanding periods, she indicated she could collect that information on JG's behalf and provide it to the Applicant. PD' understood the consequences for not reporting the total household income, and indicated that her efforts to make JG understand were unsuccessful to date.

I am satisfied the Respondents have failed to comply with their obligation to report the total household income for the 2016 and 2017 calendar years as required under section 6 of the written tenancy agreement.

Rental arrears

The lease balance statements entered into evidence represent the Landlord's accounting of monthly assessed rents and payments received against the Respondents' rent account. All rents up to and including June 2017 have been assessed subsidies based on reported household income and were last assessed at \$75 per month. All rents since July 2017 have been charged at the maximum monthly rent of \$1,545 due to JG's failure to report his income for the 2016 and 2017 calendar years. No payments have been received in 17 of the last 24 months of the tenancy.

The Respondent did not dispute the accuracy of the Landlord's accounting, acknowledging that payments against the rent account have not been consistent and accepting responsibility for the consequences.

Precedence has been set and confirmed by the Supreme Court of the Northwest Territories establishing that in subsidized housing tenancies the tenant is entitled to subsidies as long as any household income has been reported. For the purposes of establishing rental arrears, in situations such as in this case where some but not all of the household income has been reported, it is appropriate to either apply subsidies calculated based on the household income that has been reported or apply the last assessed rent amount rather than the maximum monthly rent. Only in circumstances where none of the household income was reported would it be appropriate to apply the maximum monthly rent.

In this case, some of the household income was reported but the Applicant charged the maximum monthly rent. It is not in the Rental Officer's purview or jurisdiction to calculate eligible subsidies under the various subsidized housing programs, so where the Applicant has not made those calculations in situations such as this my only reasonable recourse is to assume the last subsidized rent amount for the periods that require the outstanding household income report. It is accepted and acknowledged that the last assessed subsidy may not be the actual subsidy to be calculated if and when the outstanding income is reported, and it is understood that any such subsidy will be calculated retroactively by the Applicant. This retroactive calculation will likely dramatically affect the rent account balance. What any retroactive calculation will not affect is the pattern of payments – or lack thereof - received against the rent account.

The last rent assessed for subsidies was recorded for June 2017 in the amount of \$75. The lease balance statement was adjusted to apply that subsidized rent amount for July 2017 to January 2019 inclusive in place of the maximum monthly rent of \$1,545 that was applied by the Applicant. This adjustment resulted in a rent credit balance of \$270, however, all parties were reminded that this is not likely a true 'credit' given that rent subsidy calculations had yet to be made based on actual total household income. All the 'credit' means for the purposes of this hearing is that I cannot yet be satisfied that there are any rental arrears to order the payment of.

I am satisfied that the adjusted lease balance statement accurately reflects the payments received against the Respondents' rent account. I find the Respondents have repeatedly failed to pay rent when due.

Termination of the tenancy agreement and eviction

In light of the Respondents repeated failure to report the total household income and the Respondents repeated failure to pay rent when due, I am satisfied termination of the tenancy agreement and eviction are justified. By agreement with the parties, the termination and eviction orders will be conditional on JG's income for the 2016 and 2017 calendar years being reported to the Applicant and future subsidized rents being paid on time.

Orders

An order will issue:

- requiring the Respondents to pay future subsidized rents on time (p. 41(4)(b));
- requiring the Respondents to comply with their obligation to report the total household income in accordance with section 6 of the written tenancy agreement (p. 45(4)(a));
- terminating the tenancy agreement April 30, 2019, unless JG's income for the 2016 and 2017 calendar years is reported to the Applicant and the subsidized rents for February, March, and April are paid on time (p. 41(4)(c), p. 45(4)(e), ss. 83(2)); and
- evicting the Respondents from the rental premises May 1, 2019, if the termination of the tenancy agreement becomes effective (p. 63(4)(a), ss. 83(2)).

Adelle Guigon
Rental Officer