

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

**CD**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:** March 20, 2019

**Place of the Hearing:** Hay River, Northwest Territories

**Appearances at Hearing:** AS, representing the Applicant

**Date of Decision:** March 20, 2019

### **REASONS FOR DECISION**

An application to a rental officer made by HRHA on behalf of the NTHC as the Applicant/Landlord against CD as the Respondent/Tenant was filed by the Rental Office January 30, 2019. The application was made regarding a residential tenancy agreement for a rental premises located in Hay River, Northwest Territories. The filed application was sent to the Respondent by registered mail to his last known address and deemed served March 11, 2019, pursuant to subsection 71(5) of the *Residential Tenancies Act* (the Act).

The Applicant alleged the Respondent had failed to pay water bills during his tenancy and had accumulated utilities arrears. An order was sought for payment of the utilities arrears.

A hearing was scheduled for March 20, 2019, in Hay River. The Rental Officer appeared by telephone. AS appeared representing the Applicant. CD was sent notice of the hearing by registered mail to his last known address deemed served March 11, 2019. The Respondent did not appear at the hearing, nor did anyone appear on the Respondent's behalf. The hearing proceeded in the Respondent's absence pursuant to subsection 80(2) of the Act.

#### *Tenancy agreement*

The Applicant's representative confirmed that the Homeownership Entry Level Program (HELP) tenancy agreement between the parties commenced June 19, 2014, and ended March 2, 2016, after the Respondent abandoned the rental premises.

#### *Previous order*

Rental Officer Order Number 10-15078 issued April 20, 2016, confirmed the termination of the tenancy agreement effective March 2, 2016, due to the Respondent's abandonment, and ordered payment of rental arrears in the amount of \$1,600 and payment of costs of repairs in the amount of \$252.56.

*Time limitation for making an application*

Section 68 of the Act requires that an application to a rental officer be made within six months of the end of the tenancy and provides for the Rental Officer to grant an extension to that time period where the Rental Officer is of the opinion that it would not be unfair to do so.

This application was made nearly three years after the tenancy was abandoned. The Applicant learned the Respondent had abandoned the premises in part because they were initially made aware of the utilities arrears that the Respondent had accumulated at the time. The Town of Hay River did not actually transfer the Respondent's outstanding utilities arrears to the Applicant's property tax account until January 2019.

Section 8 of the written tenancy agreement held the Tenant responsible for all utilities, including water, during the tenancy.

Subsection 206(8) of the Town of Hay River Water and Sewer Bylaw (WSB) says that the Senior Administrative Officer may give prior written notice to the customer/owner when deemed practical to do so. The testimony given at the last hearing suggests that notice was in fact given, at least to the owner, in February 2016. The Applicant's representative confirmed this, and admitted that what the Applicant was not aware of was that the utilities arrears would be (or could be) transferred to the owner's property tax account.

Section 805 of the WSB specifies that the owner is liable for utilities arrears of more than two months, at which point the Town of Hay River has the option to transfer the utilities arrears to the property tax account. The Applicant was aware at the time that the tenancy was abandoned that the Respondent had accumulated utilities arrears, and the Applicant should have been aware that any such utilities could and likely would be transferred to their property tax account, which in turn would create a demonstrable monetary loss suffered by the Applicant as a direct result of the Respondent's breach of section 8 of the written tenancy agreement.

Given the responsibility of the Applicant to the Town of Hay River for the utility account established in the WSB, it would have been entirely appropriate and reasonable for the Applicant to exercise their due diligence by monitoring the status of the utility arrears in an effort to mitigate their potential losses. Had they made such efforts, they could have sent their own notices to the Respondent reminding him of his obligation to pay the utilities arrears, and they could have asked the Town to transfer the arrears to the property tax account in January 2017 so that they could make the necessary application to a rental officer within a reasonable time frame after the tenancy ended. Had that been done and the application been made in early 2017, there likely would have been no issue with granting the extension to the time for making the application to a rental officer.

As it stands, no efforts to mitigate this loss were made and no apparent efforts were made to communicate with the Respondent about the utilities arrears after the tenancy ended. As such, in my opinion it would not be fair to grant an extension to the time for making this application to a rental officer and, therefore, the application is dismissed.

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Adelle Guigon  
Rental Officer