

IN THE MATTER between **NTHC**, Applicant, and **MR**, 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 **Janice Laycock**, Deputy Rental Officer,

BETWEEN:

NTHC

Applicant/Landlord

-and-

MR

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: April 3, 2019

Place of the Hearing: Inuvik, NT

Appearances at Hearing: DD, representing the Applicant

Date of Decision: April 3, 2019

REASONS FOR DECISION

An application to a rental officer made by RV as the Applicant/Landlord against MR as the Respondent/Tenant was filed by the Rental Office on February 28, 2019. The application was made regarding a residential tenancy agreement for a rental premises located in Inuvik, Northwest Territories. The filed application was personally served on the Respondent on March 26, 2019.

The Applicant claimed that the Respondent had failed to pay their rent on time, had accumulated rental arrears and an order was sought for payment of rental arrears, compensation for use and occupation, termination and eviction.

A hearing was scheduled for April 3, 2019, in Inuvik. Janice Laycock, Deputy Rental Officer appeared by telephone. DD, appeared representing the Applicant. MR was served notice of the hearing by personal service on March 26, 2019 but did not appear at the hearing, nor did anyone appear representing him. The hearing proceeded in the absence of MR as provided for in subsection 80(2) of the *Residential Tenancies Act* (the Act).

Tenancy Agreement - Fixed Term

The Applicant's representative testified and evidence was presented establishing a tenancy agreement between the parties for subsidized public housing commencing on October 1, 2018 and ending 31 days later on October 31, 2018. Included as evidence was a "Fixed Term Lease" signed by both parties that requires the tenant to "vacate the unit unless the Authority, at its discretion, enters into a new Fixed Term or an Indeterminate Lease..." The Applicant testified that this was not the first such agreement that they had entered into with this tenant, although previous agreements were not provided as evidence.

Also included as evidence was a letter from the Applicant to the Respondent titled "Termination Notice of Fixed Term Tenancy Agreement" dated November 28th, 2018. In this letter the Respondent is given notice that the lease is not being renewed due to failure to pay rent for November and they must vacate the unit on or before November 30 2018.

Under subsection 49(1) of the Act *“where a tenancy agreement ends on a specific date, the landlord and tenant are deemed to renew the tenancy agreement on that date as a monthly tenancy with the same rights and obligations as existed under the former tenancy agreement...”* However, under Paragraph 49(2)(b)(a), this does not apply *“where the tenancy has been terminated in accordance with the Act”*.

In this case the Applicant did not enforce the fixed term and charged the Respondent rent for November. The Applicant only proceeded with termination after the Respondent had failed to pay November's rent suggesting that the reason for the termination was the Respondent's failure to pay rent and not as a result of the end of the fixed term. Based on the information provided, I find that the tenancy was not terminated in accordance with the Act and as a result continued as a monthly tenancy.

I am satisfied that a fixed term tenancy agreement was in place for the month of October 2018 and that the tenancy was deemed renewed on October 31, 2018 as a monthly tenancy.

Tenancy Agreement - notice of termination

Under subsection 54(1) of the Act, *“a landlord may, at any time, give a tenant a notice of termination of at least 10 days, where (g) the tenant has repeatedly failed to pay the full amount of the rent or to pay the rent on the dates specified in the tenancy agreement.”*

In the letter from the Applicant entitled “Termination Notice of Fixed Term Tenancy Agreement”, notice of only two days was provided to the tenant and this was based on one failure to pay rent. As previously stated a tenant must receive notice of at least 10 days. Lack of notice is reason enough to find that the tenancy was not terminated in November in accordance with the Act, however, even if proper notice had been provided, evidence was not provided to support a claim that the tenant *“repeatedly failed”* to pay the rent. The Applicant stated in their testimony that there was a past history with this tenant of rental arrears, but information supporting that claim was not provided as evidence.

For these reasons - both lack of notice and of a repeated breach - I find that the tenancy was not terminated in November 2018 in accordance with the Act.

Rental Arrears

The Lease Balance statements provided by the Applicant and entered into evidence represents the accounting of monthly assessed rents and payments received. The statements show that the market rent for this unit was \$1,625.00 per month, that the Respondent's income had been assessed resulting in a subsidy of \$1,545.00 and resulting in monthly rent of \$80.00.

In November 2018, after the Respondent did not pay their rent, the subsidy was removed and full market rent was charged. Subsequent charges for full market rent were also applied for the months December 2018 through to April, 2019, resulting in total arrears of \$9450.00.

In the application to the Rental Office, the Applicant explained that the "Respondent owes economic rent for November, December ... with no lease or rent payment and being on a one month fixed terms lease we did not give subsidy." According to testimony from the Applicant, the Respondent has made no attempt to pay any part of their rent, even after a number of attempts by the Applicant to get them to do so.

I am satisfied that Lease Balance statements accurately reflects the current status of payments made and that the Respondent owes rent for the period November 2018 to April 2019.

However, based on the information provided, I question the Applicant's reasons for charging the Respondent market rent for these months. I find that it was not reasonable to remove the subsidy based on the Applicant's reasons for doing so:

- 1). There is no lease - A valid monthly tenancy agreement was in place with the same rights and obligations that existed in the previous agreement.
- 2). There was no Rent Payment - The Respondent paid their subsidized rent for October 2018. After not paying rent when due in November the rent was revised from \$80.00 to \$1625.00. There is no evidence that the revised rent was based on a lack of income information, or a change in income information and a corresponding reassessment of their rent for subsidized public housing.

In the Supreme Court of the Northwest Territories appeal of a decision by the rental officer *Inuvik Housing Authority v. Gary Harley* (September 1993), Justice J. E. Richard provides some guidance on when it might be appropriate to charge public housing tenants full economic rent. In his reasons Justice Richard cited an earlier decision of the Court in *Inuvik Housing Authority v. Koe* (November 1991) that said:

*“to charge full economic rent instead of rent based on actual income, because of the tenant’s breach in providing false information, **“would be tantamount to enforcing a penalty”**. The Court pointed out that s. 13 of the Act prohibits penalties of that nature.”*

Although this case and “Harley” dealt with income information, and Justice Richard warned that “it is incorrect to state that the landlord is always prohibited from charging full economic rent as a result of the tenancy agreement.”, I believe that in the current application the Respondent was charged full market rent as a penalty for not paying rent. As the Court has previously pointed out, such a penalty is prohibited under section 13 of the *Residential Tenancies Act*.

I find that the Respondent has failed to pay their rent when due, and have accumulated rental arrears for the six-month period from November 2018 to April 2019. I find that rent during this period should have been based on the subsidized rent of \$80.00 a month resulting in total arrears of \$480.00.

Compensation for Use and Occupation

The Applicant had requested compensation for “use and occupation, \$1625.00 per month or \$52.41 per day”. Under subsection 67(1) of the Act “A landlord is entitled to compensation for a former tenant’s use and occupation of the rental premises after the tenancy has been terminated”. As previously discussed, the tenancy was not terminated under the Act, so no compensation for use and occupation is owing.

Termination of the tenancy agreement and eviction

In light of the Respondent’s repeated failure to pay any portion of their rent over the last 6 months, I am satisfied that termination of the tenancy agreement and eviction are justified. The termination and eviction orders will be conditional on the Respondent paying their rental arrears of \$480.00, and paying rent for May and June 2019 on time.

Orders

An order will be issued:

- requiring the Respondent to pay to the Applicant rental arrears in the amount of \$480.00 (p. 41(4)(a));
- requiring the Respondent to pay their rent on time in the future (p. 41(4)(b));
- terminating the tenancy agreement on June 30, 2019, unless the Respondent pays their rental arrears and rent for May and June on time. (p. 41(4)(c), p. 42(3)(e), and ss. 83(2)); and
- evicting the Respondent from the rental premises July 1, 2019, if the termination of the tenancy agreement becomes effective (p. 63(4)(a) and ss. 83(2)).

Janice Laycock
Deputy Rental Officer