

IN THE MATTER between **FT**, Applicant, and **SB and RP**, 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 **Janice Laycock**, Deputy Rental Officer,

BETWEEN:

**FT**

Applicant/Landlord

-and-

**SB AND RP**

Respondents/Tenants

**REASONS FOR DECISION**

**Date of the Hearing:** April 10, 2019

**Place of the Hearing:** Yellowknife, NT

**Appearances at Hearing:** FT for the Applicant  
RP on behalf of the Respondents.

**Date of Decision:** April 10, 2019

### **REASONS FOR DECISION**

An application to a rental officer made by FT as the Applicant/Landlord against SB and RP as the Respondents/Tenants was filed by the Rental Office on March 1, 2019. 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 on April 2, 2019.

The Applicant claimed that rent was owing, rent was not paid on time and on the date specified in the agreement, tenants are smoking inside of the house. As the Applicant is planning to sell the property the tenants would need to move out so repairs to the damages they have caused can be made. The Applicant asked for termination of the tenancy agreement and eviction of the tenants. At the hearing the Applicant also claimed that the lease specified that only two people were allowed to occupy the premises and three or more were living there.

#### *Tenancy Agreement*

The Applicant testified and evidence was presented establishing a tenancy agreement between the parties starting on October 2014 and ending on October 2015. The Applicant testified that this agreement was continued as a monthly agreement after October 2015. Under section 4 of the Agreement the rent is \$2,200 and it is due on the first of the month, under section 7. the tenant is obligated to not smoke inside of the house, and section 10. stipulates only 2 persons are allowed to occupy the rental premises.

I am satisfied that a valid tenancy agreement between the parties is in place.

#### *Rental Arrears*

The Applicant provided as evidence a copy of the "Transaction History" from their bank account from May 30, 2016 to April 27, 2018, with a starting balance of \$7,384.06. The Applicant testified that this was a record of rental payments received during this period. The payments from "GNWT-INCOMEASST ISB/PSR" vary in amount from \$2,200.00 to \$2,700.00, \$1,800.00 and \$1,725.00.

The Applicant testified that the rent had been increased from \$2,200.00 to \$2,700.00 in September 2016 to include the cost of fuel, however, no documentation of this was provided. Nor was there any record of payments prior to May 2016 or after April 2018, or of the balance owing during this period. This lack of information made it very difficult to assess rental arrears.

The Respondent who was present at the hearing brought records that they had of rental payments during their tenancy. The materials were put together by the absent Respondent and the attending Respondent was not able to speak to them. They requested an adjournment so that the records could be considered.

An adjournment to the hearing was considered and discussed amongst the parties in order to give the Applicant time to produce a complete record of rental payments and arrears and for all parties to consider the new information produced by the Respondent. However, in further review of the materials it appears that the Applicant was claiming arrears from a four month period in 2017 when the GNWT Income Support program refused to pay the cost of the fuel as well as the rent. The Applicant was informed that more information would be required to support their claim of arrears and this would require an adjournment. The Applicant stated that they were willing to drop the claim of arrears in order to proceed with this application and the hearing at this time.

#### *Tenants Obligations - Smoking*

Under the Tenancy Agreement provided as evidence, the Respondents are not to smoke in the rental premises. The Applicant testified that the tenants had been reminded of this requirement repeatedly. The Respondent testified that they had been smoking in the unit, were not aware of this requirement, and would smoke outside in the future. I reminded the Respondent that they had agreed to the obligations in the Act and it was their responsibility to not to breach them.

The Applicant did not provide any specific details of the damages to the unit as a result of smoking or any estimate of the cost to repair the unit, such as cleaning or painting. Nor did the applicant provide any evidence (in writing) that they had repeatedly warned the tenants of their obligation not to smoke.

For these reasons and considering the Respondent's promise not to smoke, I find that the Respondent was in breach of their obligation to not smoke in the rental premises, they must comply with their obligation (paragraph 45(4)(a) of the *Residential Tenancies Act* (the Act)) and not breach this obligation again (paragraph 45(4)(b) of the Act).

#### *Tenants Obligations - Overcrowding*

Under the Tenancy Agreement provided as evidence, the Respondents are not to permit more than two persons to occupy the rental premises on a continuing basis. The Applicant claimed that they had 3 or more living there. The Respondent testified that they were not aware of this obligation, and that they only had their daughter living with them.

The Applicant did not raise this as an issue in their application to the Rental Office and did not provide any evidence that this breach had been raised with the Respondent in the past. Nor was it clear after this exchange at the hearing that this breach remains an issue.

I find that the Respondent was in breach of their obligation to not have more than two persons in the rental premises. I encourage the parties to discuss this breach to determine if the landlord wishes to enforce this obligation.

#### *Termination and Eviction*

Under the *Residential Tenancies Act* (the Act) on an application of a landlord, if a rental officer determines that a breach of an obligation did occur, they can order termination of the tenancy agreement (paragraph 45(4)(e)). This kind of decision and order would require proof from the landlord that they had taken repeated steps to address the breach with the tenant, had been unsuccessful and their only recourse was to make an application to the Rental Office. In this case I saw no such proof in either breach of obligation.

In the application, and during the hearing, the Applicant made it very clear that their central reason for requesting termination of the tenancy agreement and eviction was because they wanted to sell the property and needed the tenants out so that repairs could be made to the damages that had been caused. The Applicant did not provide any evidence to support their claim of damages, including damages that might have been caused by smoking.

At the hearing the Applicant was provided with the relevant sections of the *Residential Tenancies Act* that apply when there are damages that would require the tenants to vacate the rental premises or when a landlord is selling their rental property.

*59. (1) A landlord may apply to a rental officer to terminate a tenancy if the landlord*  
*(a) requires possession of the rental premises for the purposes of*  
*(i) demolition,*  
*(ii) changing the use of the rental premises to a use other than that of rental premises, or*  
*(iii) making repairs or renovations so extensive as to require a building permit and vacant possession of the rental premises; and*  
*(b) has obtained all necessary permits or other authorizations that may be required.*

*58. (1) A landlord may apply to a rental officer to terminate a tenancy if the landlord*  
*(b) has entered into an agreement of sale of a rental premises, and*  
*(i) is required by the agreement of sale to deliver vacant possession of the rental premises to the purchaser, and*  
*(ii) the purchaser requires possession of the rental premises for use by (A) the purchaser, (B) the spouse, child or parent of the purchaser, or (C) a child or parent of the spouse of the purchaser.*

I am not satisfied based on the testimony and the evidence provided to me that the termination of the tenancy is justified.

#### *Orders*

An order will be issued:

- requiring the Respondents to comply with their obligation to not smoke in the rental premises (p. 45(4)(a)); and
- requiring the Respondents to not breach their obligation again (p. 45(4)(b)).

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Janice Laycock  
Deputy Rental Officer