

IN THE MATTER between **YMH**, Applicant, and **YWCA**, 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:

**YMH**

Applicant/Tenant

-and-

**YWCA**

Respondent/Landlord

**REASONS FOR DECISION**

**Date of the Hearing:** October 29, 2019

**Place of the Hearing:** Yellowknife, Northwest Territories

**Appearances at Hearing:** YMH, Applicant/Tenant

KW, representing YWCA

SP, representing YWCA

MP, representing YWCA

BL, representing Northview

**Date of Decision:** November 25, 2019

## **REASONS FOR DECISION**

### **Background**

[1.] An application to a rental officer made by YMH as the Tenant against YWCA and Northview as the Landlords was filed by the Rental Office September 18, 2019. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories.

[2.] The Tenant alleged the Landlords had improperly evicted him from the rental premises. An order was sought for compensation for losses suffered by the Tenant.

[3.] A hearing was held October 29, 2019, in Yellowknife.

### **Preliminary matters**

#### **Style of cause amendment**

[4.] The application to a rental officer referred to the Landlords as YWCA and Northview. It was clarified at the hearing that Northview is not a party to the tenancy agreement between YWCA and the Tenant and therefore should not be a party to the application to a rental officer. The rental premises is owned by Northview, but it was rented under a commercial contract to YWCA to provide housing to its clients. It was agreed to withdraw Northview as a party to the application. The style of cause going forward will be YMH v. YWCA.

#### **Exemption from the Residential Tenancies Act**

[5.] The question of whether transitional housing is exempt from the *Residential Tenancies Act* (the Act) was raised by the Landlord. The Landlord made submissions arguing that its transitional housing program is exempt from the Act. The Landlord's arguments are based on the rehabilitative nature of the program, the temporary nature of the housing provided, and the assertion that should a finding be made that they are not exempt from the Act they would no longer be able to provide transitional housing services, which would be a disservice to the clients who benefit from them. The Landlord further relied on a legal opinion received from its legal counsel.

### *Transitional Housing Program*

[6.] The YWCA Transitional Housing Program (the Program) is described on the Landlord's website<sup>1</sup> and clarified in its legal opinion as housing provided for families who are experiencing homelessness in the Yellowknife area with the support of a family support worker. Help is provided to deal with issues that have destabilized the family's housing in the past, and to learn new life skills, geared towards the family securing their own stable housing outside of the Program. The Program is recognized by both parties as short-term housing in self-contained living accommodations (i.e. apartments in residential complexes) lasting anywhere from three months to one year, and sometimes longer. Participants in the Program agree to pay rent on time and to participate in the programming, acknowledging that they may be asked to leave the Program in extreme circumstances.

### *Purpose of the Act*

[7.] The purpose of the Act is to set out the rights and obligations of both landlords and tenants in residential tenancies and to provide procedures for the enforcement of those rights and obligations.

### *Relevant definitions under the Act*

[8.] The Act provides the following definitions under section 1:

““rent” includes the amount of any consideration paid or required to be paid by a tenant to a landlord ... for the right to occupy rental premises...”

““rental premises” means a living accommodation ... used or intended for use as rental premises ...”

““tenancy agreement” means an agreement between a landlord and a tenant for the right to occupy rental premises, whether written, oral or implied, including renewals of such an agreement;”

““landlord” includes the owner, or other person permitting occupancy of rental premises, ... and a person ... who is entitled to possession of a residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent;”

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<sup>1</sup>[www.ywcanwt.ca/transitional-housing](http://www.ywcanwt.ca/transitional-housing)

“tenant” means a person who pays rent in return for the right to occupy rental premises.”

*Other relevant sections of the Act*

[9.] Under section 2, the Act recognizes the residential tenancy agreement entered into between a landlord and tenant as a contract without interest in land in favour of the tenant.

[10.] Subsection 6(1) of the Act reinforces its applicability to residential tenancy agreements for rental premises in all circumstances except those listed under subsection 6(2). In this case, the relevant paragraphs are 6(2)(d) and (e), which say:

“6. (2) This Act does not apply to

...

(d) living accommodation occupied by a person for penal, correctional, rehabilitative or therapeutic purposes or for the purposes of receiving care;

(e) living accommodation established to temporarily shelter persons in need;

...”

[11.] Sections 9 through 24 of the Act further define the characteristics of residential tenancy agreements, including additional rights and obligations incorporated into a written tenancy agreement.

[12.] Sections 25 through 46.1 of the Act identify the general rights and obligations of both the landlord and tenant, setting the minimum standards which are inherent in all residential tenancy agreements.

[13.] The sections referencing additional rights and obligations (12, 39, and 45) all require the rights and obligations be included in a written tenancy agreement, are not inconsistent with the Act, and are reasonable in all circumstances.

### *Legislative context*

[14.] The Act was written and discussed by the Legislative Assembly between 1985 and 1987, and then enacted in 1988<sup>2</sup>. During the preliminary consultations<sup>3</sup>, committee reviews<sup>4</sup>, and legislative debate<sup>5</sup>, there were no public discussions regarding the exemption from the Act of what is known today as transitional housing. It is clear that transitional housing was not a program that existed when the Act was written.

[15.] The legislators of the day agreed to exclude several specific scenarios which included living accommodations. None of the exemptions under subsection 6(2) of the Act have been amended, despite several opportunities to do so over the years. Two of those exemptions are referenced above in paragraphs 6(2)(d) and (e) as directly relevant to the matter before me.

#### **Paragraph 6(2)(d)**

[16.] In crafting the wording of paragraph 6(2)(d) of the Act the legislators listed different types of programs where living accommodation might be provided: penal, correctional, rehabilitative, therapeutic, and receiving care. There is a commonality to each of the listed items which makes them relevant to each other. A program that does not fit the common feature should have been referenced in its own section to have any independent relevance.

[17.] None of the listed programs are defined in the Act. “Penal”, “correction”, and “rehabilitation” are defined (in context) in Black’s Law Dictionary<sup>7</sup> as:

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<sup>2</sup>*Residential Tenancies Act*, R.S.N.W.T 1988, c.R-5

<sup>3</sup>Legislative Assembly of the Northwest Territories, 10<sup>th</sup> Assembly, 6<sup>th</sup> Session - Tabled Document No. 10-85(3) - Tabled on October 21, 1985

<sup>4</sup>Legislative Assembly of the Northwest Territories, 10<sup>th</sup> Assembly, 9<sup>th</sup> Session - Tabled Document 82-87(1) - Tabled on June 16, 1987

<sup>5</sup>Legislative Assembly of the Northwest Territories - Hansard - October 28, 1986 - Minister’s Statement 17-86(2): Residential Tenancies Act

<sup>6</sup>Legislative Assembly of the Northwest Territories - Hansard - June 15, 1987 - Bill 19-87(1): Residential Tenancies Act

<sup>7</sup>Black’s Law Dictionary, Ninth Edition, 2009 Thomson Reuters

- penal: Of, relating to, or being a penalty or punishment, esp. for a crime.
- correction: The punishment and treatment of a criminal offender through a program of imprisonment, parole, and probation.
- rehabilitation: (Criminal law) The process of seeking to improve a criminal's character and outlook so that he or she can function in a society without committing other crimes.

[18.] "Rehabilitate" is further defined (in context) in the Canadian Oxford Dictionary<sup>8</sup> as:

- rehabilitate: Restore (a person) to effectiveness or normal life by training etc. esp. after imprisonment, injury, addiction, or illness.

[19.] Therapeutic and care are defined (in context) in the Canadian Oxford Dictionary as:

- therapeutic: 1. Of, for, or contributing to the cure of disease. 2. Contributing to general, esp. mental, well-being.
- care: The process of looking after or providing for someone or something; the provision of what is needed for health or protection.

[20.] Reading the list under paragraph 6(2)(d) of the Act together as written, it is clear the legislators were referring to institutional environments, places where the living accommodation is being provided incidental to the organization's purpose and mandate.

[21.] While the transitional housing being provided by the Landlord has required participation in rehabilitative programs, the primary focus of the transitional housing is to provide living accommodation. The rehabilitative programs are incidental to the living accommodation, not the other way around.

### **Paragraph 6(2)(e)**

[22.] Paragraph 6(2)(e) of the Act exempts "living accommodation established to temporarily shelter persons in need". The Act does not define "temporarily", nor does it define either "shelter" or "need". They are defined (in context) in Black's Law Dictionary as:

- temporary: Lasting for a time only; existing or continuing for a limited (usu. short) time; transitory.

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<sup>8</sup>Canadian Oxford Dictionary, Second Edition, Oxford University Press Canada 2004

shelter: A place of refuge providing safety from danger, attack, or observation.

need: The lack of something important; a requirement

[23.] While I can certainly accept that the tenants in YWCA's Transitional Housing Program are persons in need, the use of the word "temporarily" creates the turning point in determining whether the transitional housing provided by YWCA is exempt under this paragraph. In no less than three different sections – 14, 14.1, and 52 – the Act recognizes and speaks to periodic tenancy agreements as short as week-to-week. That being the case, it stands to reason that the implied definition of temporary in context with the Act is a matter of days.

*Legislative intent*

[24.] The purpose of the Act is to protect the rights and obligations of landlords and tenants respecting agreements for living accommodations provided in exchange for rent.

[25.] There is no evidence of legislative intent to exempt transitional housing from the Act. Particular attention was given by the Minister of Justice when the legislation was being drafted to security of tenure and the principles of fair play. When presenting the bill to Committee of the Whole he emphasized that as long as both parties were following the rules – the rent was getting paid, the rental premises was being taken care of, the parties were behaving themselves – then the tenant should not have to worry about having a place to live. Residential premises were recognized as a vital need, particularly in the North, and not as something that could easily be taken away for no apparent reason. The legislation was drafted not only to set out the minimum rights and obligations for both landlords and tenants, but also to provide a means of resolving disputes in a reasonable and fair way.

[26.] Transitional housing as we know it today was not a type of accommodation that was contemplated or recognized in the 1980s. Even today, it cannot be said that all types of housing calling itself transitional are the same.

[27.] The issue of transitional housing and its exemption from the Act was discussed in the legislature in 2012, 2013, and 2015<sup>910</sup> when amendments to the Act were being debated. It was determined that “any amendments pertaining to transitional housing were outside the principle, or scope, of the bill”, and therefore they could not be considered at that time. As previously mentioned, no legislative amendments have been made to the Act to date to specifically clarify the status of transitional housing. The Department of Justice’s recommendation to leave section 6 of the Act as originally written to maintain the “status quo” leaves the matter open to interpretation. While it is clear the legislators of the day believed the status quo was that transitional housing was exempt from the Act with the provisions as they are currently written, I am in disagreement with that interpretation and maintain that if there is a desire to exempt any type of transitional housing there should be legislative change to clarify it.

[28.] I am not satisfied that housing such as the transitional housing provided by YWCA was contemplated by the legislators when they were writing the *Residential Tenancies Act*, and I do not believe they intended to exempt this type of housing. It is clear to me that they intended to govern the rights and obligations of landlords and tenants in rental premises provided for residential purposes, of which the transitional housing provided by YWCA today is included.

#### *YWCA legal opinion*

[29.] The legal opinion provided by YWCA at hearing referred to a decision from the Ontario Landlord and Tenant Board<sup>11</sup> in which the transitional housing provided by YWCA Hamilton Branch was characterized as “rehabilitative accommodation” under the Ontario *Residential Tenancies Act*. In short, the presiding adjudicator found that YWCA was providing a rehabilitative program “to transition women into independent, sustainable housing in the community”, and consequently fell within the exemption for “living accommodation occupied by a person for the purposes of receiving rehabilitative or therapeutic services...”.

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<sup>9</sup>Legislative Assembly of the Northwest Territories - Hansard - March 10, 2015 - Committee Report 13-17(5): Report on the Review of Bill 42: an Act to Amend the Residential Tenancies Act

<sup>10</sup>Legislative Assembly of the Northwest Territories - Hansard - March 11, 2015 - Committee Motion 112-17(5): Comprehensive Response Within 120 Days, Carried

<sup>11</sup>SOL-45003-14 (Re), 2014 CanLII 52441 (ON LTB)



[30.] I researched the Ontario *Residential Tenancies Act*, both as it was written in 2014 and as it is now written. In the 2014 version of the Ontario legislation<sup>12</sup>, section 5 on exemptions from the Act included at paragraph 5(k) a requirement that the rehabilitative or therapeutic services must include an agreement between the parties that the period of occupancy will be of a specified duration or will “terminate when the objectives of the services have been met or will not be met”, and the living accommodation is intended for no more than one year.

[31.] What is interesting is that the Ontario legislation was amended in 2017<sup>13</sup> to add an entirely new section 5.1 titled “Other exemptions from Act” which provides a lengthy and very specific description of the conditions which must be met for a “living accommodation provided to a person as part of a program” to be exempt, including:

- the living accommodation is intended to be provided for no more than four years;
- rehabilitative services, therapeutic services, services intended to support employment, or services intended to support life skills development must be provided;
- the intent of the program must be to support the occupant subsequently obtaining and maintaining more permanent living accommodation; and
- all or part of the program must be provided by or funded under an agreement with the federal or provincial Crown, an agency of the federal or provincial Crown, a municipality, or a service manager under the *Housing Services Act*.

[32.] Section 5.1 of the Ontario legislation further provides for multiple and specific mandatory requirements in the agreement between the provider and the occupant of the living accommodation. Clearly the Ontario legislators recognized that not all transitional housing programs are created equal, recognized the gap in their legislation respecting transitional housing, and endeavoured to thoroughly and completely fill that gap. The Northwest Territories *Residential Tenancies Act* does not currently do that, nor does it provide parameters defining what types of rehabilitative or therapeutic programs providing housing are exempt.

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<sup>12</sup>Ontario *Residential Tenancies Act*, 2006, SO 2006, c 17, in force between June 1, 2014, and June 30, 2015 - Section 5, Pages 9-10

<sup>13</sup>Ontario *Residential Tenancies Act*, 2006, SO 2006, c 17, in force since July 1, 2019 - Sections 5 and 5.1, Pages 10-13

[33.] YWCA's legal opinion also referenced my predecessor's decision in *Murray v. Salvation Army Bailey House*<sup>14</sup> in which he found that the Bailey House Transitional Housing Program was "...intended to provide not only accommodation but also to impart life skills to enable the participant without stable accommodation the ability to transition to market rental housing or public housing". In making that finding, my predecessor determined that the Bailey House transitional housing program was exempt from the Act as a rehabilitative program under paragraph 6(2)(d). I have not seen the evidence provided to my predecessor from which he made that finding, so I cannot speak to whether or not the Bailey House Transitional Housing Program is institutional in nature. My considerations today are being made with respect to whether or not the YWCA Transitional Housing Program is exempt from the Act.

*Findings on the question of exemption*

[34.] I am satisfied that the legislative intent of the wording of paragraph 6(2)(d) of the Act was to exempt institutional facilities where the living accommodation is provided incidental to the program being provided. In this context the occupant must be attending a program – voluntarily or not – which requires them to remain at a facility where they do not normally reside (i.e. correctional facilities, treatment centres).

[35.] While I can accept that the YWCA Transitional Housing Program is intended to provide short-term housing to vulnerable persons and families who require various types of rehabilitative support, the key aspect and primary purpose of their program is to provide housing. A residential premises is provided in exchange for rent and the promise to participate in provided counselling and life skills programs. To reiterate, it is not temporary housing in the context of the Act; it is short-term housing.

[36.] I find the YWCA Transitional Housing Program is not exempt from the *Residential Tenancies Act*. In fact, despite the arguments suggesting otherwise, the Act provides protection and remedies for both the Landlord and their Tenants which to my mind should support the services the YWCA provides.

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<sup>14</sup>Rental Officer Order Number 10-12220 - *Murray v. Salvation Army Bailey House*, 2011 CanLII 94390 (NWT RO)

[37.] The Tenants in the transitional housing program have agreed to comply with the terms of the tenancy, including the requirements to participate in the programs offered, and they understand going in that the tenancy is for a short-term with the goal of leaving or graduating from the program to enter into market (or other subsidized) housing agreements on their own. The Tenants are also aware of their obligations respecting payment of rent, disturbances, damages, and illegal acts. They understand that their tenancy could be terminated – just like every other residential tenancy agreement – if they fail to comply with any of their obligations. The Landlord benefits from the ability to apply to a rental officer instead of the Supreme Court for an order to terminate the tenancy agreement and for an eviction order in those instances when the tenant does not voluntarily leave, or when a substantial breach has occurred justifying the early termination of the tenancy agreement. Making such an application to a rental officer is generally a faster process than applying to the Supreme Court, and the Rental Office does have policy provisions to consider expedited hearings where there are immediate and emergency issues creating a substantial risk of harm.

### **Improper eviction**

#### Tenancy agreement

[38.] A “Residential Service Agreement” (the RSA) dated November 5, 2018, was entered into evidence. The RSA identifies: the Landlord, the Tenant, the rental premises, the monthly rent, the fixed-term period, the security deposit, and the standard landlord and tenant rights and obligations respecting maintenance, damages, and cleaning. By definition, the RSA is a residential tenancy agreement made between the parties for a fixed-term from October 2, 2018, to March 31, 2019. Rent was established at \$1,800 per month. Despite a reminder of the expiration of the fixed-term tenancy sent to the Tenant February 19, 2019, the Tenant was permitted to remain in the rental premises beyond March 31, 2019. In effect, the tenancy was automatically renewed on a month-to-month basis with all the same terms and conditions on April 1, 2019, in accordance with paragraph 49(1) of the Act. I am satisfied a valid tenancy agreement was in place in accordance with the Act.

[39.] A “Supportive Housing Participation Agreement” (the SHPA) dated November 5, 2018, was entered into evidence. It describes the YWCA NWT Supportive Housing Program as “designed for Families who are experiencing homelessness, to help them gain stable housing.” They are “signed for a maximum of 1 year, with a review every three months” and residents “are expected to transfer their lease to their own names within that 1 year period.” The Tenant agreed to the terms of the SHPA, which included obligations to attend counselling and other support programs. This agreement to my mind constitutes “additional obligations” the Tenant agreed to comply with in order to secure the housing, including recognition of the intended short-term period.

#### Eviction

[40.] BL testified that Northview notified the Landlord some months previously the contract for the rental premises would not be renewed, although no evidence of written notice was provided. An email sent September 24, 2019, from BL to SP confirmed a previous discussion agreeing to terminate the contract “effective 23:59 hours on the 30<sup>th</sup> day of September 2019 the last date of the lease.”

[41.] The Landlord’s representatives testified the Tenant was repeatedly reminded over several months that his tenancy agreement would be coming to an end on September 30, 2019, and attempted to work with the Tenant to secure alternate independent housing outside the Landlord’s program. The Landlord’s representatives testified the reminders were both verbal and written, although no evidence of the written notices was provided. The Tenant disputed receiving notice that his tenancy would be ending. While there is no evidence of written notice to that effect, I find it unlikely that the Tenant was not aware that his tenancy with the Landlord would be ending September 30, 2019.

[42.] The Landlord’s representatives testified – and Northview’s representative confirmed – that throughout the Tenant’s tenancy substantial damages and disturbances had occurred, culminating in early September with an argument and threats by the Tenant’s former spouse to burn down the residential complex. This threat was heard by multiple neighbours in the residential complex and reported to Northview, who notified the Landlord. The threat was taken very seriously given other fires that had occurred recently at Northview apartment complexes as well as the fire that took the Landlord’s Rockhill Apartments last year.

[43.] I understand that Northview took action by giving the Landlord an eviction notice on September 10, 2019, ending the contract for the rental premises effective immediately and requiring the Landlord to have the premises vacated. The Landlord told the Tenant to vacate the premises, and then on September 12, 2019, Northview changed the locks to the premises, prohibiting the Tenant's return. Sometime over the next few days the Tenant was granted access to the premises during daytime hours only, and then started staying there again on September 18, 2019. The Tenant's children returned to the premises September 20, 2019. On October 2, 2019, the RCMP forcibly entered the premises and removed the Tenant and his children, returning possession to Northview. Under what authority the RCMP conducted this eviction was not established at hearing – no evidence was presented of either an eviction order or a writ of possession issued by the Supreme Court. Neither was an application to a rental officer made by the Landlord seeking termination of the tenancy agreement and eviction.

*Relevant sections of the Act*

[44.] There is provision under subsection 54(1) of the Act for a Landlord to give a Tenant at least 10 days written notice to terminate the tenancy under specific circumstances, including where:

(a) the tenant has repeatedly and unreasonably disturbed the landlord's or other tenant's possession or enjoyment of the residential complex;

...

(e) the tenancy agreement has been frustrated;

...

(f) the safety of the landlord or other tenants of the residential complex has been seriously impaired by an act or omission of the tenant or a person permitted in or on the rental premises or residential complex by the tenant;

[45.] Such a notice given under subsection 54(1) must be followed up with an application to a rental officer requesting termination of the tenancy agreement, and the Landlord may also apply for an order to reduce the period of the notice to terminate.

[46.] Paragraph 54(1)(a) could have been referenced in light of the allegations of the Tenant's former spouse repeatedly causing disturbances at the rental premises and residential complex.

[47.] Paragraph 54(1)(e) could have been referenced in light of the contract between Northview and YWCA coming to an end and effectively removing that housing unit from YWCA's inventory such that they would be unable to fulfill the residential tenancy agreement made with the Tenant.

[48.] Paragraph 54(1)(f) could have been referenced in light of the Tenant's spouse's threats to burn the building down.

[49.] The Landlord could have made an application to a rental officer to terminate the tenancy agreement under section 42 of the Act based on the alleged extent of damages to the rental premises. And the Landlord could have made an application to a rental officer to terminate the tenancy agreement under section 45 of the Act based on the additional obligations under the service agreement specifying that the tenancy would end upon either the Respondent's successful completion of the supportive housing program or in the event he refused to participate in the supportive housing program.

[50.] The Landlord did not take advantage of any of the above options provided for under the Act. Consequently, I am satisfied the tenancy agreement was not terminated in accordance with the Act and the Tenant was improperly evicted from the rental premises.

[51.] Subsection 25(1) of the Act prohibits the alteration of any locking system giving entry to the rental premises except by mutual consent. Subsection 34(1) of the Act prohibits the Landlord from disturbing a Tenant's possession of the rental premises.

## **Conclusion**

[52.] By improperly evicting the Tenant from the rental premises, I find the Landlord interfered with the Tenant's lawful possession of the rental premises under subsection 25(1) of the Act and, in effect, failed to comply with their obligation not to disturb the Tenant's possession of the rental premises under subsection 34(1) of the Act.

Requested compensation

[53.] The Tenant and his children have been living with friends since being evicted from the rental premises. He is seeking losses suffered as a direct result of the improper eviction. His rent had been paid regularly and on time throughout the tenancy, including the rent for September. No evidence was presented establishing whether the rent for October was paid. Despite being given an opportunity to do so, the Tenant did not provide any evidence of other demonstrable monetary losses suffered as a direct result of the improper eviction. Given that the Tenant paid for the full month's rent for September 2019 but only benefited from possession of the premises for 23 days of the month, I find the Tenant is entitled to the refund of one week's rent in the amount of \$420.

**Order**

[54.] An order will issue requiring the Landlord to compensate the Tenant for losses suffered as a direct result of being improperly evicted from the rental premises in the amount of \$420.

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Adelle Guigon  
Rental Officer