

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, **Hal Logsdon**, Rental Officer, regarding a rental premises located within the **city of Yellowknife in the Northwest Territories**.

BETWEEN:

FT

Applicant/Landlord

- and -

SB and RP

Respondents/Tenants

ORDER and EVICTION ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the Respondents shall pay to the Applicant rent arrears in the amount of two thousand one hundred dollars (\$2,100.00).
2. Pursuant to sections 41(4)(a) and 83(2) of the *Residential Tenancies Act*, the Respondents shall pay the Applicant the balance of the October 2019 rent in the amount of one thousand eight hundred dollars (\$1,800.00). The Respondents may pay the October 2019 rent in monthly installments of one hundred fifty dollars (\$150.00) payable on the last day of every month until the October 2019 rent is paid in full. The first payment shall be due on February 29, 2020.
3. Pursuant to section 58(1.1)(a)(i) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as 540 Catalina Drive, Yellowknife, Northwest Territories, shall be terminated on February 29, 2020, and the Respondents shall vacate the premises on that date.

4. Pursuant to section 63(4)(a) of the *Residential Tenancies Act*, the Respondents shall be evicted from the premises known as 540 Catalina Drive, Yellowknife, Northwest Territories, on March 1, 2020.

DATED at the city of Yellowknife in the Northwest Territories this 27th day of January 2020.

Hal Logsdon
Rental Officer

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 **Hal Logsdon**, Rental Officer,

BETWEEN:

FT

Applicant/Landlord

-and-

SB and RP

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: December 19, 2019

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: FT, Applicant
SB, Respondent
RP, Respondent

Date of Decision: January 26, 2020

REASONS FOR DECISION

The application was filed on October 24, 2019. The Applicant alleged that the Respondents had breached the tenancy agreement by failing to pay the full amount of rent. The Applicant also stated that he required possession of the rental premises to use as his personal residence. The Applicant sought an order requiring the Respondents to pay the alleged rent arrears, terminating the tenancy agreement, and evicting the Respondents.

The written tenancy agreement, provided by the Applicant in evidence, commenced on October 1, 2014, and was made for a one-year term. The monthly rent was \$2,200. A security deposit of \$2,200 was required and the Applicant testified it was paid in full. The Applicant testified that the tenancy was renewed on a monthly basis. He stated that the rent had been changed on several occasions since the first tenancy agreement and was now set at \$2,100 per month. The Applicant did not provide any documentary evidence with regard to tenancy agreements other than the October 2014 written term agreement.

The Applicant testified that the December 2019 rent (\$2,100) and a portion of the October 2019 rent (\$1,800) had not been paid, leaving a balance of rent owing of \$3,900. The Applicant stated that the October 2019 rent had been deposited to the Respondents' account by the *Income Assistance Program* in error and he was permitting the Respondents to pay him the October 2019 rent in installments of \$150 per month. The Applicant provided a copy of his bank statements in evidence.

The Applicant is currently living in Hay River and working shift work at a mining site. He stated that he is moving to Yellowknife because the location was better suited to the transportation schedule supplied by his employer to and from the work site.

The Respondents stated that there had been written term tenancy agreements executed after the initial October 2014 agreement but they were unable to produce any evidence at the hearing. The Respondents sought an adjournment in order to provide an opportunity to produce any additional tenancy agreements. The Respondents were permitted to submit evidence of any additional written tenancy agreements provided such evidence was submitted on or before January 24, 2020. On January 24, 2020, the Respondents filed two written tenancy agreements. One was for the same term as the October 2014 agreement but not signed by the Respondents. The other was for the same term as the October 2014 agreement but contained different telephone numbers and a different email address for the landlord than the unsigned agreement. There was no evidence of any other written term agreement other than the original October 2014 agreement.

The Respondents did not dispute the allegations pertaining to rent. I find the rent arrears to be \$3,900. Given that the rent is paid through the *Income Security Program* and the rent arrears appear, in part, to be caused by the administration of that system, it is not reasonable, in my opinion, to terminate the tenancy agreement based solely on the rent arrears. There is no evidence of chronic non-payment of rent.

Section 58 of the *Residential Tenancies Act* provides for termination of a tenancy agreement when a landlord requires possession for their own residence. However the Act requires a rental officer to consider the type of tenancy agreement between the parties when considering a termination date.

58. (1) *A landlord may apply to a rental officer to terminate a tenancy if the landlord*
- (a) requires possession of the rental premises for use as a residence by*
 - (i) the landlord,*
 - (ii) the spouse, child or parent of the landlord, or*
 - (iii) a child or parent of the spouse of the landlord; or*
 - (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.*
- (1.1) *A rental officer who determines that a landlord, in good faith, requires the rental premises for a reason referred to in subsection (1), may make an order*
- (a) terminating the tenancy,*
 - (i) in the case of a periodic tenancy, on the last day of a period of the tenancy that is not earlier than 90 days after the application is made, or*
 - (ii) in the case of a tenancy agreement that specifies a date for the termination of the tenancy agreement, on a day that is not earlier than the date specified; and*
 - (b) ordering the tenant to vacate the rental premises on that date.*

In my opinion, the Applicant, in good faith, intends to use the premises as their own residence. His testimony concerning the need to commute to work from Yellowknife rather than Hay River appears entirely reasonable. Clearly, the existence or absence of a current term tenancy agreement is of significant importance in the determination of a termination date. The Respondents were provided with a reasonable period of time to produce such a tenancy agreement but has not been able to do so. The agreements produced are substantially duplicates of the original October 2014 term agreement. Therefore, on the evidence, I must assume that the original term agreement reverted to a monthly agreement on its expiry date pursuant to section 49 of the Act.

In my opinion there are sufficient grounds to terminate the tenancy agreement pursuant to section 58(1.1)(a)(I).

An order shall issue requiring the Respondents to pay the Applicant rent arrears in the amount of \$2,100 and terminating the tenancy agreement on February 29, 2020. An eviction order will become effective on March 1, 2020, if the Respondents have not vacated the premises. An order shall issue requiring the Respondents to pay the Applicant the balance of the October rent of \$1,800 payable in installments of at least \$150 payable on the last day of every month until the order is fully satisfied. The first payment shall be due on February 29, 2020.

Hal Logsdon
Rental Officer