

IN THE MATTER between **NTHC**, Applicant, and **CK and ML**, 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 **Adelle Guigon**, Rental Officer;

BETWEEN:

NTHC

Applicant/Landlord

-and-

CK and ML

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	January 15, 2020
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	DH, representing the Applicant CK, Respondent ML, Respondent
<u>Date of Decision:</u>	January 15, 2020

REASONS FOR DECISION

An application to a rental officer made by FSHA on behalf of the NTHC as the Applicant/Landlord against CK and ML as the Respondents/Tenants was filed by the Rental Office November 20, 2019. The application was made regarding a residential tenancy agreement for a rental premises located in Fort Smith, Northwest Territories. The filed application was served on the Respondents by registered mail signed for December 16, 2019.

The Applicant alleged the Respondents had repeatedly failed to pay rent in full when due, had accumulated rental arrears, and had failed to comply with a rental officer order to pay future rent on time. An order was sought for payment of the rental arrears, termination of the tenancy agreement, and eviction.

A hearing was held January 15, 2020, by three-way teleconference. DH appeared representing the Applicant. CK and ML appeared as the Respondents.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement for subsidized public housing commencing November 1, 2011. I am satisfied a valid tenancy agreement is in place in accordance with the *Residential Tenancies Act* (the Act).

Previous order

Rental Officer Order Number 16023 issued June 14, 2018, required the Respondents to pay rental arrears in the amount of \$8,530, terminated the tenancy agreement September 30, 2018, unless the rental arrears were paid in full, and evicted the Respondents from the rental premises September 30, 2018, if the termination of the tenancy agreement became effective. Despite the Respondents failure to comply with the monetary order, the Applicant did not have the termination and eviction orders enforced. I find the tenancy agreement was effectively reinstated as of October 1, 2018.

Rental arrears

The lease balance statement entered into evidence represents the Landlord's accounting of monthly assessed rents and payments received against the Respondents' rent account. All rents prior to July 2019 were subsidized and last assessed at \$890 per month.

As of July 2019, the Respondents' total household income met or exceeded the maximum CNIT threshold, resulting in the base market rent being charged to date. The base market rent charged by the Landlord for July 2019 to January 2020 was \$1,625 per month. However, Schedule A to the written tenancy agreement identified the base market rent as of April 1, 2012, as \$1,212 per month. There was no evidence available to establish that the Tenants had been notified of an increase to the base market rent prior to October 2019. The Landlord sent a notice to the Respondents dated October 2, 2019, in which the base market rent was referenced as being \$1,626 per month. At hearing, the Applicant's representative confirmed that the correct amount should be as it is reflected in the lease balance statement, which is \$1,625 per month.

At the hearing I referenced section 47 of the Act respecting rent increases, which says that a Landlord may only increase the rent once in a 12-month period by giving the Tenant at least three months' written notice. Based on this section, I determined that the October 2, 2019, letter was the first notice the Tenants had received of the base market rent increase and that the increase could not take effect until February 1, 2020, and then I adjusted the lease balance statement accordingly. This was an error on my part because subsection 47(6) of the Act exempts subsidized public housing from the section 47 provisions. However, section 7 of the written tenancy agreement stipulates that the Landlord agrees to provide notice of any increase to the amount shown in Schedule "A" at least one month in advance. My finding still stands with respect to the October 2, 2019, notice being the first time the Tenants were notified of the increase to the base market rent, but rather than it not taking effect until February 1, 2020, I find that it takes effect January 1, 2020. I have adjusted the lease balance statement to charge \$1,212 per month for each of July to December 2019 and \$1,625 for January 2020.

Despite the referenced amendments, the lease balance statement still indicates that there have been either insufficient payments or no payments received in nine of the last 12 months of the tenancy.

The Respondents did not dispute the accuracy of the adjusted lease balance statement, acknowledging the debt and accepting responsibility for it. They have made arrangements to secure a loan to resolve the debt, and once that is in effect they expect to be able to meet their monthly rent obligations. The Respondents acknowledged that their household income has increased as reported, and accept the resulting rent increase.

I am satisfied the adjusted lease balance statement accurately reflects the current status of the Respondents' rent account. I find the Respondents have repeatedly failed to pay their rent in full when due. The Applicant claimed that the Respondents had failed to comply with a rental officer order to pay future rent on time, however, Rental Officer Order Number 16023 does not in fact include an order to pay future rent on time. I find the Respondents have not failed to comply with a rental officer order to pay future rent on time. I find the Respondents have accumulated rental arrears in the amount of \$6,684.50. That amount represents approximately 5 months' rent.

Termination of the tenancy agreement and eviction

In light of the Respondents' repeated failure to pay the rent in full when due and the amount of rental arrears that have accumulated, I am satisfied termination of the tenancy agreement and eviction are justified. By agreement with the Applicant's representative, the termination and eviction orders will be conditional on the Respondents paying the rental arrears in full and paying future rent on time.

Orders

An order will issue:

- requiring the Respondents to pay rental arrears in the amount of \$6,684.50 (p. 41(4)(a));
- requiring the Respondents to pay their rent on time in the future (p. 41(4)(b));
- terminating the tenancy agreement April 30, 2020, unless the rental arrears are paid in full and the monthly subsidized rents for February, March, and April are paid on time (p. 41(4)(c), ss. 83(2)); and
- evicting the Respondents from the rental premises May 1, 2020, if the termination of the tenancy agreement becomes effective (p. 63(4)(a), ss. 83(2)).

Adelle Guigon
Rental Officer