

IN THE MATTER between **NTHC**, Applicant, and **TT**, 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:

NTHC

Applicant/Landlord

-and-

TT

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: February 19, 2020

Place of the Hearing: Hay River, Northwest Territories

Appearances at Hearing: AS, representing the Applicant

Date of Decision: February 19, 2020

REASONS FOR DECISION

An application to a rental officer made by HRHA on behalf of the NTHC as the Applicant/Landlord against TT as the Respondent/Tenant was filed by the Rental Office January 8, 2020. The application was made regarding a residential tenancy agreement for a rental premises located in Hay River, Northwest Territories. The filed application was sent to the Respondent by registered mail to her last known address and deemed served February 5, 2020, pursuant to subsection 71(5) of the *Residential Tenancies Act* (the Act).

The Applicant alleged the Respondent had accumulated rental arrears, had caused damages to the rental premises, and had left the rental premises in an unclean condition. An order was sought for payment of the rental arrears and payment of costs for repairs and cleaning.

A hearing was held February 19, 2020, in Hay River. The Rental Officer appeared by telephone. AS appeared representing the Applicant. TT was sent notice of the hearing by registered mail deemed served February 5, 2020. The Respondent did not appear at the hearing, nor did anyone appear on the Respondent's behalf. The hearing proceeded in the Respondent's absence pursuant to subsection 80(2) of the Act.

Tenancy agreement

Evidence was presented establishing a residential tenancy agreement between the parties for subsidized public housing commencing December 1, 2016. The Respondent vacated the rental premises, ending the tenancy effective September 12, 2019. I am satisfied a valid tenancy agreement was in place in accordance with the Act.

Previous order

Rental Officer Order Number 16433 issued April 9, 2019, ordered the Respondent to pay future rent on time; the Respondent to comply with her obligation not to cause disturbances and not breach that obligation again; terminated the tenancy agreement August 31, 2019, unless the monthly subsidized rents for May to August were paid on time and no further disturbances were reported; and evicted the Respondent from the rental premises September 1, 2019, if the termination of the tenancy agreement became effective.

The Respondent had failed to comply with the terms of the order and was notified by the Applicant that they would be enforcing the termination and eviction orders. The Respondent voluntarily vacated and notified the Applicant of that on September 12, 2019, at which time the Applicant reclaimed possession of the rental premises.

Rental arrears

The lease balance statement entered into evidence represents the Landlord's accounting of monthly assessed rents and payments received against the Respondent's rent account. All rents up to and including for June 2019 were subsidized and assessed at \$80 per month.

The rents for July and August 2019 were assessed the unsubsidized rents of \$1,625 per month. The evidence indicates the reason for the unsubsidized rent was because the Respondent's 19-year-old daughter had not filed her 2018 income taxes or otherwise reported her income. The subsidized rent is calculated based on the reported household income in accordance with the Applicant's Public Housing Rent Scale.

Section 6 of the written tenancy agreement obligates the Tenant to report the income for all authorized adult occupants of the household in the manner specified by the Landlord. The Applicant's current practice is to require the Tenant to report the household income on an annual basis in the form of their CRA income tax returns for the previous calendar year.

In this case, the Respondent did file her 2018 income tax return and the Applicant did receive the necessary information from that return. The Respondent's daughter just turned 19 years old in October 2018 and would not have been required to report her income to the Applicant before then. It seems unlikely that the daughter would have earned sufficient income to greatly affect the amount of the subsidized rent for this tenancy.

While the Respondent could be found in breach of her obligation to report the total household income as required under section 6 of the written tenancy agreement, it is not reasonable to impose the maximum unsubsidized rent in circumstances where only a portion of the household income has not been reported; doing so would constitute the imposition of a penalty, which is prohibited under section 13 of the Act.

In this case, it would certainly be appropriate to assess some amount of subsidy accounting for the daughter's income. Given that there is no information available to determine the daughter's income it would be more appropriate to assess the minimum subsidized rent against the daughter's income rather than the maximum unsubsidized rent. Then if and when the daughter reports her income the subsidy could be re-assessed based on the actual household income. The minimum subsidized rent is \$75 per month. The Respondent's subsidized rent was assessed just above that at \$80 per month. Without specific information regarding the daughter's income, it seems reasonable to me to assess the same amount of subsidized rent against the daughter's income as was assessed against the Respondent's income. The subsidized rents for July and August were adjusted in the lease balance statement to \$160 each.

I would refer the Applicant to the Supreme Court decision regarding Inuvik Housing Authority v. Gary Harley (SC CV 04815) which discusses the issue of subsidized rent versus unsubsidized rent.

The assessment of the maximum unsubsidized rent for 12 days in September 2019 was appropriate because the tenancy agreement was terminated in accordance with the Act on August 31, 2019, and the Respondent was an overholding tenant from September 1st to 12th. With the tenancy terminated, the Respondent was no longer eligible for the rent subsidies.

According to the lease balance statement, the last payment received against the rent account was recorded April 10, 2019, in the amount of \$60.

I am satisfied the adjusted lease balance statement accurately reflects the current status of the Respondent's rent account. I find the Respondent had accumulated rental arrears in the amount of \$1,130, which represents approximately five months' rent. The Applicant retained the security deposit of \$1,201.62 against the accumulated rental arrears, leaving a security deposit credit of \$71.62.

Repairs and cleaning

The Applicant tendered the entry and exit inspection reports, work orders, invoices, and receipts in support of their claim for the following:

Cleaning throughout interior and exterior	\$1,846.39
Changing locks	\$32.55
Repairing window screens	\$201.92
Replacing weather stripping	\$74.29
Repairing holes in walls	\$409.49
Replacing oven door seal	\$55.65
Replacing one interior door	\$135.96
Re-installing one interior door	\$55.65
Replacing HRV piping insulation	\$186.67
Total	\$2,998.57
Less remaining security deposit credit	\$71.62
Balance owing	\$2,926.95

I am satisfied the Respondent's responsibility for the above tabled damages and uncleanliness is made out. I am satisfied the amounts claimed for the referenced repairs and cleaning are reasonable. I find the Respondent liable to the Applicant for the costs of repairs and cleaning in the amount of \$2,926.95.

Orders

An order will issue requiring the Respondent to pay the costs for repairs and cleaning in the amount of \$2,926.95.

Adelle Guigon
Rental Officer