

IN THE MATTER between **NPRLP**, Applicant, and **VB**, 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 **Janice Laycock**, Rental Officer,

BETWEEN:

NPRLP

Applicant/Landlord

-and-

VB

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: March 11, 2020

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: IA representing the Applicant
VB, Respondent

Date of Decision: March 12, 2020

REASONS FOR DECISION

An application to a rental officer made by NPRLP as the Applicant/Landlord against VB as the Respondent/Tenant was filed by the Rental Office on January 27, 2020. The application was made regarding a residential tenancy agreement for a rental premises located in Inuvik, Northwest Territories. The filed application was served on the Respondent by personal service on February 14, 2020.

The Applicant claimed the Respondent had rental arrears and an order was sought for payment of the rental arrears, termination of the tenancy agreement, and eviction.

A hearing was held March 11, 2020. The hearing proceeded by three-way teleconference. On the call were Janice Laycock, Rental Officer; IA, representative for the Applicant; and VB, the Respondent.

Tenancy agreement

Evidence was presented establishing a tenancy agreement for the term of June 1, 2016, to May 31, 2017. Also provided was a copy of the "Renewal of the Tenancy Agreement" for the term beginning on January 1, 2018, and ending December 31, 2018. The Applicant testified that the tenancy agreement had continued month to month from April 1, 2017, to the renewal on January 1, 2018, and had also continued month to month after the end of the renewal period (December 31, 2018). I am satisfied that a valid tenancy agreement is in place in accordance with the *Residential Tenancies Act* (the Act).

Rental arrears

The lease ledger entered into evidence provides information on charges and payments on the rental account. An updated ledger dated March 9, 2020, was provided by the Applicant to the Rental Office and the Respondent prior to the hearing. According to this ledger, the Respondent's rent is currently \$1,520 per month and their current rental arrears were \$5,455.

The ledger provided by the Applicant included information on charges and payments from October 1, 2012, to March 9, 2019. However, my review of the rent and arrears focussed on the period from April 21, 2017, when the balance was zero, until the most recent charges and payment in March 2020. It was assumed that all charges prior to the zero balance had been agreed to and were not in dispute.

A number of issues were raised with the calculation of the current rental arrears in the statement:

1. **Rent charged not consistent with tenancy agreement or renewal** - during the period of my review the rent was:

- charged at \$1,504 per month from May 1, 2017, to January 1, 2018;
- charged at \$1,500 per month from February 1, 2018, to March 2, 2019;
- charged at \$1,520 from April 1, 2019, to current date;

This is despite the tenancy agreement from June 1, 2016, to May 31, 2017, setting out the rent at \$1,500 per month for this period, and the later renewal of the tenancy agreement for the period January 1, 2018, to December 31, 2018, again setting out the rent at \$1,500 per month.

Under paragraph 47(1)(a) and subsection 47(2) of the *Residential Tenancies Act* a landlord can increase the rent in a rental premises 12 months after the last increase, but must give the tenant notice of the rent increase in writing at least three months before the date the rent increases.

At the hearing, I initially raised the issue of rent to clarify why the tenancy agreement, including the renewal, continued to set out the rent at \$1,500. I wanted to understand how the increase had been set and aside from the agreements how the increase was communicated to the tenant. At the hearing the Respondent testified that they had not received notice of the increases in writing from the Applicant. The Applicant was not able to testify otherwise.

Based on the evidence and testimony of both the Respondent and the Applicant, I find that the rental increases were not implemented in accordance with the *Residential Tenancies Act*. Once these increases totalling \$280.50 are deducted from the rental arrears of \$5,455, the revised total of arrears is **\$5,174.50**.

2. **Charges for parking are not part of rent arrears** - there are a number of charges for parking totalling \$1,000 for the period under review. Under section 1 of the *Residential Tenancies Act* the definition of rent includes the amount paid for the "right to occupy rental premises and for any services and facilities...that the landlord provides for the tenant...whether or not a separate charge is made for the services and facilities".

During the hearing the Applicant testified that parking is considered as utilities or services, however this is not reflected in the tenancy agreement. Section 4 "Rent" says "The following utilities are the obligation of the resident" and provides the opportunity to check off those that apply including: heat, water, electricity. None of these are checked. The agreement also says "The following Services and facilities are included in the rent" and "The following additional charges also apply", but nothing is listed in either of these sections.

I find that, although there may very well be an agreement with the tenant to pay the charges for parking, because they are not included in the tenancy agreement or renewal these charges cannot be considered as rent. When the charges for parking totalling \$1,000 are deducted from the revised rental arrears total of \$5,174.50, the rental arrears now owing are **\$4,174.50**.

3. **Late payment penalties calculated incorrectly** - at the hearing it was pointed out by the Respondent that the penalties for late payment of rent were not correct. Under their tenancy agreement they paid rent in two payments - half on the first of the month and half on the 15th of every month; The penalties had been calculated based on one payment per month. The Applicant said that their ledger system had a problem accounting for this agreement and there had been errors in the past in calculating late fees. The ledger provided as evidence confirms such an error where it includes a credit of \$204 on January 12, 2018, for "Late fee charged in error". At the hearing I reserved my decisions and agreed to further review the late fees.

In my review I looked at all of the late fees after January 12, 2018, and found further errors in calculations. Where I found charges that were greater than those provided for in section 3 of the *Residential Tenancies Regulations* (the Regulations) I reduced the charge and where the charges were less than or equal to the penalties allowed I used the amount charged by the Landlord.

As a result of my calculations I accepted charges during the period of January 29, 2018, to March 9, 2020, of \$304. When this amount is deducted from the total penalties charged in the ledger of \$409, this leaves a difference of \$105 to be deducted from the revised rental arrears (\$4,174.50), leaving rental arrears now owing by the Respondent to the Applicant of **\$4,069.50**.

I am satisfied based on the evidence, testimony, and my review of the late payment penalty charges that the Respondent currently owes rental arrears in the amount of **\$4,069.50**.

Termination of the tenancy agreement and eviction

The Respondent has a long history of not paying their rent on time, even with the agreement to pay rent in two payments. They have repeatedly failed to pay the full amount of rent owing, and more recently (December 2019 and January 2020) they didn't pay any rent at all. The last time that the Respondent was almost caught up on their rent (\$15.50 owing) was July 13, 2018.

The Respondent testified they had been struggling in recent months with a number of serious family issues, had to take unpaid time off from work, and recently had to rely on insurance for their expenses. However, this does not explain the lengthy history of rental arrears nor does it excuse the Respondent from repeatedly not meeting their obligations to pay rent as set out in the tenancy agreement and the Act.

Based on the evidence presented and the testimony of the Applicant I am satisfied that termination of the tenancy agreement and eviction are justified. However, considering the situation of the Respondent, the Applicant was asked if they would consider a conditional termination providing the Respondent with more time to pay off the arrears. The Respondent testified that they would make rent payments as well as an additional payment of \$1,000 each month on arrears until the rental arrears were paid in full. The Applicant testified that they had a responsibility to their owners and based on the Respondent's repeated history of arrears were not prepared to accept conditions. They again asked for immediate termination and eviction.

As I said earlier, I am satisfied that the termination and eviction are justified, and will order termination of the tenancy agreement on March 31, 2020, and eviction on or after April 15, 2020.

Orders

An order will be issued:

- requiring the Respondent to pay rental arrears of \$4,069.50 (p. 41(4)(a));
- terminating the tenancy agreement on March 31, 2020 (p. 41(4)(c));
- evicting the Respondent from the rental premises on or after April 15, 2020 (p. 63(4)(a)); and
- requiring the Respondent to pay compensation for the use and occupation of the rental premises in the amount of \$49.32 for each day the Respondent occupies the rental premises after March 31, 2020, to a maximum of \$1,500 per month (ss. 63(4)(b)).

Janice Laycock
Rental Officer