

IN THE MATTER between **NTHC**, Applicant, and **DM**, 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-

DM

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: September 10, 2020

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: DH, representing the Applicant

Date of Decision: September 14, 2020

REASONS FOR DECISION

An application to a rental officer made by FSHA on behalf of the NTHC as the Applicant/Landlord against DM as the Respondent/Tenant was filed by the Rental Office March 6, 2020. The application was made regarding a residential tenancy agreement for a rental premises located in Fort Smith, Northwest Territories.

This file had not yet been scheduled for a hearing date when the Rental Office closed due to the COVID-19 pandemic. The Chief Rental Officer and the Applicant agreed at that time to hold the application until the Applicant confirmed that they were in a position to proceed with the matter. That confirmation was received July 31, 2020. The matter was scheduled for a hearing and the filed application packages were sent to the Applicant by registered mail delivered August 26, 2020. The Applicant then served the filed application and notice of attendance on the Respondent by registered mail signed for September 4, 2020.

A hearing was held September 10, 2020, by three-way teleconference. DH appeared representing the Applicant. DM 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 *Residential Tenancies Act* (the Act).

Application

In the application, the Applicant alleged the Respondent had repeatedly failed to pay rent in full when due, had accumulated rental arrears, had caused damages to the rental premises, and had failed to pay costs associated with repairing the damages. An order was sought for payment of the rental arrears, payment of future rent on time, payment of the costs for repairs, termination of the tenancy agreement, and eviction.

At the hearing, the Applicant withdrew the requests for payment of rental arrears, termination of the tenancy agreement, and eviction. Instead they requested an order for payment of future rent on time, payment of outstanding costs of repairs, and for the Respondent to report her household income.

Tenancy agreement

Evidence was presented establishing a residential tenancy agreement between the parties for subsidized public housing commencing July 1, 2015. I am satisfied a valid tenancy agreement is in place in accordance with the Act.

Reporting of household income

Given the application made no mention of reporting household income and no addendum was received in the Rental Office and served on the Respondent adding reference to household income reporting requirements and consequences, I could not be satisfied that the Respondent was aware that the issue of reporting household income would be raised at this hearing.

I deemed it would be unfair to the Respondent for me to hear such arguments without ensuring the Respondent had an opportunity to respond to the allegation. I denied the Applicant's request to include the issue at this hearing. The Applicant may make a new application regarding the issue if they wish.

Rental arrears

The lease balance statement represents the Landlord's accounting of monthly subsidized rents and payments received against the Respondent's rent account. The lease balance statement included in the application package reported the status of the rent account as of February 19, 2020. An updated lease balance statement was provided after the hearing reporting the status of the rent account as of September 14, 2020.

All rents were subsidized and assessed at \$80 per month up to and including for June 2020. All rents since July 2020 have been unsubsidized and charged at the maximum monthly rent of \$1,625. The Applicant explained that because the Respondent had not filed her 2019 income tax returns that she had in effect not reported her household income from which her rent subsidy would be assessed. This is why the maximum rent has been charged for July through September 2020. Given my previous denial to consider the issue of reporting household income at this hearing, I also found it unreasonable to consider the maximum unsubsidized rent. Consequently, I adjusted the lease balance statement to reflect the historical subsidized rent amount of \$80 for each of July through September 2020.

All subsidized rents have been paid by ECE on the Respondent's behalf, having been received either in advance or within the month that it is due, throughout the entire tenancy. This includes the period of July through September 2020.

I am satisfied the adjusted lease balance statement accurately reflects the current status of the Respondent's rent account. I am not satisfied that the Respondent has either been repeatedly late paying rent or has accumulated rental arrears. The Applicant's request for an order to pay future rent on time is denied.

Damages

The Applicant claimed costs for repairs of damages sustained to the front exterior door casing. The provided work orders opened November 6, 2019, referred to the door as “kicked in and does not work properly”. The Respondent was charged \$185.76 for the associated repairs.

Clarification was requested at the hearing as to who kicked the door in and when the door was actually kicked in. The Applicant testified that she did not know the answer to either question, and there were no specific notes on the file further describing the incident. The Applicant also noted that there was no indication on the file that the Respondent had reported the incident to the police. She indicated that the Landlord’s policy is to hold the Tenant responsible for damages unless they provide a police file number showing they have reported the incident causing the damage to the police.

Subsection 42(1) of the Act holds the Tenant responsible for damages “caused by the wilful or negligent conduct of the tenant or persons who are permitted on the premises by the tenant.”

Paragraph 12(b) of the written tenancy agreement reinforces subsection 42(1) of the Act by requiring the Tenant to pay costs of repairs of “any damage to the Premises caused by the willful or negligent conduct of the Tenant, other authorized occupants of the Premises or of any persons who are permitted on the Premises by the Tenant.”

The key requirement to holding the Tenant responsible for damages is that the Tenant or their invited guest must have caused the damages. Reporting an incident causing damages to the police does not change who is responsible for the damages under the Act.

It is unlikely that the Tenant or someone they invited would kick their way into the premises and it would be unreasonable to presume they did. The Respondent in this case has made no statements on the matter, nor does the Applicant have any record or log of the Respondent communicating an admission or acknowledgement of responsibility for kicking the door in.

While I am satisfied that damages were caused to the front exterior door casing of the rental premises, I am not satisfied that the Respondent is responsible for causing those damages. The Applicant’s claim for costs of repairs is denied.

Adelle Guigon
Rental Officer