

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

SL

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: May 20, 2020, and October 13, 2020

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: TM, representing the Applicant
LE, representing the Applicant
RM, representing the Applicant (May 20, 2020)

Date of Decision: October 13, 2020

REASONS FOR DECISION

An application to a rental officer made by BKGK on behalf of the NTHC as the Applicant/Landlord against SL as the Respondent/Tenant was filed by the Rental Office February 13, 2020. The application was made regarding a residential tenancy agreement for a rental premises located in Behchoko, Northwest Territories. The filed application was personally served on the Respondent February 26, 2020.

The Applicant alleged the Respondent had repeatedly failed to pay rent when due, had accumulated rental arrears, had failed to report household income as required, and had failed to comply with a Rental Officer order requiring the Respondent to report household income as required and 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 scheduled for April 14, 2020, was re-scheduled to April 15, 2020, at the request of the Applicant. The hearing scheduled for April 15, 2020, was then cancelled due to the COVID-19 pandemic restrictions. The hearing was started on May 20, 2020, by three-way teleconference and then adjourned *sine die* pending receipt of additional documents and the Applicant's confirmation that they were ready to continue the hearing. The hearing continued on October 13, 2020, by three-way teleconference.

TM and LE appeared at both hearings as the Applicant's representatives; RM appeared at the May 20th hearing as an additional representative of the Applicant. The Respondent was served with notice of the May 20th hearing by registered mail signed for May 7, 2020, and then served with the notice of the October 13th hearing by registered mail deemed served September 9, 2020, pursuant to subsection 71(5) of the *Residential Tenancies Act* (the Act). The Respondent did not appear at either 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 under the Homeownership Entry Level Program (HELP) commencing March 13, 2009. I am satisfied a valid tenancy agreement is in place in accordance with the Act.

Previous order

Rental Officer Order Number 10-14566 was issued April 30, 2015. It ordered the Respondent to pay future rent on time, and it order the Respondent to comply with her obligation to report household income in accordance with section 6 of the written tenancy agreement and not to breach that obligation again. The Applicant's request for an order to pay rental arrears was denied because the correct amount of rental arrears could not be confirmed. The Applicant had changed the way the subsidized rent was calculated without the written agreement of the Respondent to amend the HELP agreement accordingly. Additionally, the Respondent had failed to report the household income as required by both the written tenancy agreement and the written HELP agreement. Consequently, not only was the Applicant using the incorrect formula to calculate the rent subsidy, but the Applicant did not have the income information required to accurately calculate the rent subsidy. Hence the denial of an order to pay rental arrears.

Reporting of household income

The evidence presented at the May 20th hearing included the written tenancy agreement, the written HELP agreement, and the lease balance statements.

The HELP agreement states at section 5 that the subsidized rent will be calculated based on a percentage of the household income. The written tenancy agreement states at section 6 that the Tenant must provide verification of income annually.

On May 20th, the Applicant's representative testified that they had not received income information for either the Respondent or her now-adult child. They did not have information at the hearing confirming when the last time the Applicant received any income information.

The Applicant was tasked with returning to their files to seek confirmation of the last income information reported by the Respondent, and to attempt to communicate with the Respondent to secure all outstanding income information for both the Respondent and her adult child.

At the October 13th hearing, the Applicant provided the Respondent's tax consent form and income tax return information for the 2014 to 2018 tax years. Those reports were provided by the Canada Revenue Agency on August 1, 2020. The 2019 tax year information remains outstanding, and was due by June 30, 2020.

A tax consent form for the Respondent's adult child was also provided, but it was not signed by the adult child and therefore the Applicant has not received the adult child's income information. The adult child turned 19 years old in August 2018, therefore the Applicant requires the adult child's income information from August 2018 to December 2019.

I am satisfied the Respondent is fully aware of her obligation to report household income. I find the Respondent has repeatedly failed to report the household income as required and has failed to comply with a Rental Officer Order to comply with her obligation to report household income and not to breach that obligation again.

Rental arrears

The HELP agreement at paragraph 5(a) states that the rent during the first two years of the tenancy will be calculated at 20% of the Respondent's total income, minus the Applicant's approved shelter costs, but not more than the maximum unit rent. As of April 2008 the maximum monthly rent was \$1,416. In January 2014 the maximum monthly rent was reduced to \$980.

The HELP agreement at paragraph 5(b) states that after the first two years of the tenancy, the rent will be calculated at 20% of the total household income (that of all adults residing at the premises), minus the Applicant's approved shelter costs, but not more than the maximum unit rent.

In January 2014, the Applicant sent the Respondent a notice not only informing them of the reduction of the maximum monthly rent, but also indicating that they would be arbitrarily applying a minimum monthly rent amount of \$375 for at least the next four years.

The HELP agreement at section 13 states that any amendment to the HELP agreement must be in writing and be properly executed by both parties. This practice is consistent with contract common law. While the January 2014 notice was in writing, it was not properly executed by both parties. Consequently, the arbitrary change to the monthly subsidized rent amount was invalid and is unenforceable.

The lease balance statements provided at the May 20th hearing continued to apply the \$375 monthly subsidized rent amount since April 2014, despite my findings at the hearing regarding Rental Office File #10-14566. No evidence was presented to suggest the parties had since executed an amendment to the HELP agreement respecting the calculation of the rent subsidy.

The Applicant was tasked with returning to their files to confirm whether an amending agreement had been executed and to re-calculate the rent subsidy accordingly.

At the October 13th hearing, an updated lease balance statement was provided, as was a statement of account. The lease balance statement is the Landlord NTHC's accounting of monthly subsidized rents and payments received against the rent account. The statement of account is the Landlord's Agent BKGK's accounting of the monthly subsidized rents and payments received against the rent account.

The lease balance statement included entries on September 28, 2020, of four credits of \$4,500 against the rent charged for April 2014 to March 2020 and one credit of \$2,250 against rent charged for April to September 2020. The monthly rent still appears at \$375, including for October 2020, which means that the Landlord has not yet re-calculated the rent subsidy in accordance with the HELP agreement. The credits result in a credit balance to the Respondent's rent account in the amount of \$3,540.

The Applicant's representative at hearing pointed out that the credits equal all the subsidized rents charged for the referenced months, meaning effectively that no rent was charged by the Landlord for the period. The Agent's statement of account does not include those credits, but neither does it include a re-calculation of the subsidized rents to comply with the HELP agreement formula. The statement of account reflects a balance owing on the Respondent's rent account in the amount of \$21,210.

The Applicant's representative effectively asked me to reconcile the Landlord's accounting with the Agent's accounting. I refused to do that for two reasons: it is not for me as the Rental Officer to reconcile their accounts, and even if I did re-calculate the subsidized rent I was not provided with the approved shelter costs which form a vital component to the formula. Additionally, I pointed out that given the credits were only just entered on September 28, 2020, that it was entirely possible (if not probable) that the Landlord had not yet re-calculated the subsidized rent amount to comply with the terms of the HELP agreement. Once that is done, it will change the balance of the rental arrears. I encouraged the Applicant's representatives to communicate directly with the Landlord to clarify their intentions and results so that the Agent could properly amend their accounts.

Regardless of the ultimate value of the monthly subsidized rents, the lease balance statement clearly reflects lengthy periods where the Respondent failed to make any payments towards the rent. No payments were received in 49 of the 66 months (5.5 years) since the last Rental Officer order was issued in April 2015; that is 74.2 percent of the time.

I am satisfied the lease balance statement accurately reflects the payments received against the Respondent's rent account. I find the Respondent has repeatedly failed to pay the rent when due and has failed to comply with a Rental Officer order to pay future rent on time.

Termination of the tenancy agreement and eviction

In light of the Respondent's repeated failure to report the household income as required, the Respondent's repeated failure to pay the rent on time, and the Respondent's failure to comply with Rental Officer orders to comply with both of those obligations, I am satisfied termination of the tenancy agreement and eviction are justified. With the Applicant's representatives' agreement, the termination and eviction orders will be conditional on the Respondent reporting the outstanding household income and paying future rent on time.

It was acknowledged that the Respondent may not actually make any payments for rent given the current credit balance on the rent account. The Applicant was reminded and encouraged to ensure the Respondent is immediately informed if and when the rent subsidies are re-calculated and of what the resulting rent account balance ends up being so that she knows when she actually has rent due.

Orders

An order will issue:

- requiring the Respondent to pay future rent on time;
- requiring the Respondent to comply with her obligation to report household income as required and not to breach that obligation again;
- terminating the tenancy agreement January 31, 2021, unless:
 - (a) the Respondent's income for the 2019 tax year is reported to the Landlord;
 - (b) the Respondent's adult child's income for August 2018 to December 2019 is reported to the Landlord; and
 - (c) the monthly subsidized rents for November, December, and January are paid on time.
- evicting the Respondent from the rental premises February 1, 2021, if the termination of the tenancy agreement becomes effective.

Adelle Guigon
Rental Officer