

IN THE MATTER between **NTHC**, Applicant, and **BK and BJAM**, 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-

BK and BJAM

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: May 4, 2021

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: PS, representing the Applicant

Date of Decision: May 4, 2021

REASONS FOR DECISION

An application to a rental officer made by YHA on behalf of the NTHC as the Applicant/Landlord against BK and BJAM as the Respondents/Tenants was filed by the Rental Office March 22, 2021. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was served on the Respondents by registered mail signed for April 8, 2021.

The Applicant alleged the Respondents had repeatedly failed to pay rent, had accumulated rental arrears, had failed to report household income as required, had caused damages to the rental premises, and had failed to pay the costs of repairs in a timely manner. An order was sought for payment of the rental arrears, payment of future rent on time, compliance with the obligation to report household income as required, payment of costs for repairs, conditional termination of the tenancy agreement, and eviction.

A hearing was held May 4, 2021, by three-way teleconference. PS appeared representing the Applicant. BK and BJAM were served notice of the hearing by registered mail signed for April 8, 2021. Neither of the Respondents appeared at the hearing, nor did anyone appear on their behalf. The hearing proceeded in the Respondents' absence pursuant to subsection 80(2) of the *Residential Tenancies Act* (the Act).

Tenancy agreement

Evidence was presented establishing a residential tenancy agreement between the parties for subsidized public housing commencing October 24, 2017. I am satisfied a valid tenancy agreement is in place in accordance with the Act.

Household income

Section 6 of the written tenancy agreement requires the Tenants to report their total household income as and when required by the Landlord. Subsidized public housing tenants are required to report their household income annually by submitting their CRA tax returns for the previous calendar year, due before June 30th. Rent subsidies are calculated based on the reported income, to take effect July 1st of each year for 12 months.

The Tenants were reminded by written notices in September, October, and November 2020 that their 2019 household income had not been fully reported and that as a result their monthly rent since July 2020 would continue to be charged at the maximum unsubsidized amount of \$1,625 until the necessary reports had been received.

At hearing, the Applicant's representative confirmed that since the application to a rental officer was filed all outstanding income had been reported. However, the reported income for 2019 exceeded the Core Net Income Threshold (CNIT) rendering the Tenants ineligible for rent subsidies. Consequently, the maximum unsubsidized rent of \$1,625 remains in effect since July 2020.

I am satisfied that the Respondents failed to report their total household income for the 2019 calendar year as required, that being by the due date of June 30, 2020.

Rental arrears

The least balance statement entered into evidence represents the Landlord's accounting of monthly rents and payments received against the Respondents' rent account as of March 5, 2021. At hearing, the Applicant's representative provided information on additional transactions that have occurred as of the hearing date and the lease balance statement was adjusted accordingly. All rents up to and including June 2020 were subsidized based on reported household income at a rate of \$890 per month. As previously discussed, all rents since July 2020 have been unsubsidized at a rate of \$1,625 per month due to the Respondents' total household income exceeding the CNIT. Either insufficient amounts or no payments have been made in 19 of the last 24 months of the tenancy.

On April 9, 2019, the Respondents entered into a last chance agreement acknowledging their arrears and agreeing to pay \$500 within five days and \$200 per month thereafter towards the arrears. The Respondents were not compliant with this agreement.

However, on January 26, 2021, the Respondents entered into another last chance agreement acknowledging their arrears and agreeing to pay \$300 within five days plus \$700 per month thereafter towards the arrears. The Respondents have so far been compliant with this agreement.

I am satisfied the adjusted lease balance statement accurately reflects the current status of the Respondent's rent account. I find the Respondents have repeatedly failed to pay rent in full when due and have accumulated rental arrears in the amount of \$16,565.99. That amount represents approximately 11 months' unsubsidized rent. Given the Respondent's success to date in complying with the most recent last chance agreement, and given that the last chance agreement is a signed document, the order to pay the rental arrears will include the payment plan established in the last chance agreement.

Repairs

Documentary evidence was provided establishing that the Respondents' repeated claims during the months of January and February 2020 that the furnace was not working properly was actually a result of the excessive fuel consumption due to the Respondents fabricating an extra room on the master bedroom balcony. The resulting fuel consumption emptied the fuel tank twice within a six-week period, which is why the furnace stopped working. Clearly this problem was caused by the Respondents' actions. The Applicant has opted to only charge the Respondents for the associated maintenance call outs in the total amount of \$291.06. The Respondents appear to have accepted responsibility for this claim given that they have acknowledged the arrears in both last chance agreements previously mentioned, and they have made a specific payment towards the maintenance costs of \$100 recorded June 19, 2020.

I am satisfied the Respondents caused the furnace to fail through excessive fuel consumption as a direct result of their wilful action in creating an extra room on the balcony. I find the Respondents liable for the remaining balance of the maintenance call out costs of \$191.06. Note: I believe I misspoke at the hearing, forgetting to acknowledge the \$100 payment that had been received. I am correcting that mathematical error in these reasons and the resulting order to pay will reflect the remaining balance owing.

Termination of the tenancy agreement and eviction

In light of the repeated pattern of failing to pay the rent in full when due and the substantial amount of rental arrears that have accumulated, I am satisfied termination of the tenancy agreement and eviction are justified. However, by agreement with the Applicant's representative and given the Respondent's success so far in complying with the most recent last chance agreement, the termination order will be issued for a six-month period conditional on the Respondents paying the minimum monthly installments and rents on time. An eviction order will not be issued at this time, but the Applicant has leave to re-apply for an eviction order in the event the Respondents fail to comply with this order and render the termination effective.

Orders

An order will issue:

- requiring the Respondents to pay rental arrears in the amount of \$16,565.99 in minimum monthly installments of \$700 starting in June 2021 (p. 41(4)(a), ss. 84(2));
- requiring the Respondents to pay their rent on time in the future (p. 41(4)(b));

- requiring the Respondents to report their household income as required by their written tenancy agreement, and not to breach that obligation again (p. 45(4)(a); p. 45(4)(b));
- requiring the Respondents to pay costs of repairs in the amount of \$191.06 (p. 42(3)(e)); and
- terminating the tenancy agreement November 30, 2021, unless the minimum monthly installments towards the rental arrears and the rents for June to November are paid on time (p. 41(4)(c), ss. 83(2)).

Adelle Guigon
Rental Officer