

IN THE MATTER between **SD and JV**, Applicants, and **SNL and GT**, 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 **Hal Logsdon**, Rental Officer,

BETWEEN:

SD and JV

Applicants/Landlords

-and-

SNL and GT

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: May 18, 2021

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: SD, Applicant
JV, Applicant
SNL, Respondent

Date of Decision: May 19, 2021

REASONS FOR DECISION

The tenancy agreement between the parties was made for a term of three years ending on May 31, 2020. The agreement was renewed as a monthly tenancy on expiry. The rent for the premises is \$2,700 per month to be paid on or before the first day of each month.

The Applicants alleged that the Respondents had breached the tenancy agreement by failing to pay the full amount of rent on the days it is due. The Applicants also allege that the Respondents kept a cat on the premises without the permission of the Landlords and rented out a room without notifying the Landlord.

The Applicants testified that they required possession of the rental premises for use as accommodation for their employees. The Applicants sought an order requiring the Respondents to pay the alleged rent arrears, terminating the tenancy agreement, and evicting the Respondents.

The Applicants served an "eviction notice" on the Respondents dated March 24, 2021, stating that the lease had expired and that the premises would no longer be used as a rental property. The Applicants gave "at least 36 days notice to vacate" and sought vacant possession on April 30, 2021. The Applicants issued a similar notice on March 31, 2021, adding a reference to section 54(1)(g) of the *Residential Tenancies Act* (the Act). The Respondents did not vacate the premises.

An application was filed on April 1, 2021, and personally served on the Respondents with a notice of attendance on April 6, 2021.

The parties agreed that the Respondents replied to the "eviction notices" by email with reference to loss of income due to COVID-19 but neither party produced the notice(s) as evidence. It is clear, however that the notices were served after January 31, 2021.

Rent

The Applicants provided a copy of the rent ledger in evidence which indicated a balance of rent owing as at April 1, 2021, in the amount of \$7,300. The Applicants testified that since that date the May rent of \$2,700 had come due and one payment of \$1,200 had been made, bringing the balance owing to \$8,800.

The Respondent disputed the balance, stating that they believed the balance should be \$8,100, but she was unable to provide evidence of additional payments made. The Respondent stated that they would be able to pay the monthly rent plus an additional \$2,700 each month until the rent arrears were paid in full. I find the ledger in order and I find the Respondents in breach of their obligation to pay rent. I find rent arrears in the amount of \$8,800.

Since any notice given by the Respondents regarding loss of income due to COVID-19 was after January 31, 2021, the provisions of the COVID-19 regulations do not apply. I note also that the rent arrears that accrued within the specified period of the regulations were only \$2,700 while the majority of the arrears accrued after January 31, 2021.

Change of use of the premises

The Applicants are business owners who provide living accommodation to employees. They stated that one of the premises they are currently renting is on the market and is expected to be sold quickly. The Applicants stated that they plan to provide the rental premises to their employee and will not be charging any rent.

The Respondent stated that they owned an apartment and were due to gain possession of those premises on July 31, 2021. The Respondent requested the continuation of the tenancy agreement until that date.

If no rent is charged, the provisions of the Act would not apply and those premises would not be considered “rental premises”. The tenancy agreement between the Applicants and the Respondents could be terminated pursuant to the change of use provisions contained in subparagraphs 59(1)(ii) and 59(1.1)(a)(i).

59. (1) A Landlord may apply to a rental officer to terminate a tenancy if the Landlord

(a) requires possession of the rental premises for the purposes of

(i) demolition,

(ii) changing the use of the rental premises to a use other than that of rental premises, or

*(iii) making repairs or renovations so extensive as to require a building permit and vacant possession of the rental premises;
and*

(b) has obtained all necessary permits or other authorizations that may be required.

...

(1.1) *A rental officer who determines that a Landlord, in good faith, requires the rental premises for a reason referred to in subsection (1), may make an order*

(a) *terminating the tenancy,*

(i) *in the case of a periodic tenancy, on the last day of a period of the tenancy that is not earlier than 90 days after the application is made, or*

(ii) *in the case of a tenancy agreement that specifies a date for the termination of the tenancy agreement, on a day that is not earlier than the date specified; and*

(b) *ordering the Tenant to vacate the rental premises on that date.*

This tenancy agreement is now monthly and the application was filed on April 1, 2021. Taking into account subsection 22(1) of the *Interpretation Act*, the earliest termination date that can be considered would be July 31, 2021.

22. (1) *A period of time between two events that is described by a reference to a minimum number of days between those events is calculated by excluding the days on which the initial and concluding events occur.*

Other alleged breaches

I find no provision in the tenancy agreement prohibiting the Tenant from renting a room in the rental premises or any requirement to report such a rental to the Landlord. Article 31 of the tenancy agreement permits the renting of a room in the premises and does not require reporting. Any obligations to the condominium corporation are those of the Applicants, not the Tenants.

The evidence appears to support that a cat was kept on the premises without permission. This is contrary to article 2 of the tenancy agreement. It is not clear if the cat is still a resident or if the Landlord would now provide permission. In my opinion, given the circumstances, this breach does not warrant termination of this tenancy agreement.

Termination of the tenancy agreement and eviction

In my opinion, the Applicants in good faith intend to use the rental premises to accommodate their employees and do not intend to charge any rent. While I am aware of the Applicants' desire for earlier possession, the Act imposes reasonable time limitations to permit a Tenant to find other accommodation and I find no grounds to reduce these limitations.

In my opinion, the Applicants are entitled to an order terminating the tenancy agreement on July 31, 2021. An order terminating the tenancy agreement on July 31, 2021, shall issue.

The Respondent's failure to pay rent is a significant and ongoing breach which has become more serious in the past four months. The Applicants have tolerated late payment of the rent throughout the term of the agreement but the arrears now exceed three months' rent. The COVID-19 pandemic has no doubt hindered the Respondent's ability to pay the rent on a timely basis but, in my opinion, there are sufficient grounds to terminate the tenancy agreement before July 31, 2021, if the rent arrears are not significantly reduced in an orderly manner.

Orders

An order shall issue requiring the Respondents to pay the Applicants rent arrears in the amount of \$8,800. The tenancy agreement shall be terminated on June 15, 2021, unless the June 2021 rent plus additional payments of at least \$2,700 have been paid since May 18, 2021. The tenancy agreement shall also be terminated on July 15, 2021, unless the June and July rents and additional payments of at least \$5,400 have been paid since May 18, 2021. The tenancy agreement shall be unconditionally terminated on July 31, 2021.

Hal Logsdon
Rental Officer