

IN THE MATTER between **NTHC**, Applicant, and **PM and WM**, 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-

PM and WM

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: August 5, 2021

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: PS, representing the Applicant
PM, Respondent
WM, Respondent

Date of Decision: August 5, 2021

REASONS FOR DECISION

An application to a rental officer made by YHA on behalf of the NTHC as the Applicant/Landlord against PM and WM as the Respondents/Tenants was filed by the Rental Office June 23, 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 deemed served July 7, 2021, pursuant to subsection 71(5) of the *Residential Tenancies Act* (the Act).

The Applicant alleged the Respondents had repeatedly failed to pay rent in full when due and had accumulated rental arrears. An order was sought for payment of the rental arrears, payment of future rent on time, termination of the tenancy, and eviction.

A hearing was held August 5, 2021, by three-way teleconference. PS appeared representing the Applicant. PM and WM appeared as the Respondents.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them for subsidized public housing commencing September 10, 2018. I am satisfied a valid tenancy agreement is in place in accordance with the Act.

Household income

Subsection 45(1) of the Act requires the Tenants to comply with additional obligations that are included in a written tenancy agreement.

Section 6 of the written tenancy agreement specifies the Tenants' obligation to report their total household income "at such times and in such forms as may be specified by the Landlord from time to time." The Landlord requires that the total household income for all adult occupants be reported for the previous calendar year with the filing of their CRA income tax returns before the end of June of the current year. The rent subsidies are calculated based on the reported income, with the re-assessed monthly rents taking effect July 1st in the current year.

The Respondent's did not dispute that they had failed to provide their 2020 income tax returns to the Landlord before the end of June 2021. They testified that both returns were provided on July 28, 2021. The current rent subsidy has yet to be calculated.

The Applicant's representative testified that the Landlord notified him in early July that the Respondent PM had been flagged as having a business and they requested that he produce his T2125 Business Tax return for 2020. The Respondent told the Applicant that the business in question was just opened in April 2021, and therefore he does not have a T2125 form for 2020. The Applicant's representative was told by the Landlord that the Respondents' subsidies could not be calculated without proof of when the business was started. The Respondent agreed to provide the necessary documents after the hearing.

I find the Respondents have failed to comply with their obligation to report their household income in accordance with section 6 of the written tenancy agreement.

Rental arrears

The lease balance statement and statements of account (statements) entered into evidence represent the Landlord's accounting of monthly rent and payments received against the Respondent's rent account. All rents up to and including June 2021 were subsidized and assessed at \$890 per month. The rents for July and August 2021 were charged at the unsubsidized amount of \$1,625 per month due to the Respondents' failure to report their household income for 2020. Either insufficient payments or no payments were made in 8 of the last 12 months of this tenancy.

The Respondents did not dispute that they had failed to pay their rent in full when due, and they did not dispute that they had accumulated rental arrears. They admitted to struggling throughout 2020 to pay their debts, including attempting to consolidate with a loan which ended up making it difficult to pay the rent with any consistency. The Respondents testified that they have finished dealing with the loan, PM has started a new job (other than the new business, which is not in fact generating any income yet), and they have applied to the YWCA for financial assistance. Approval of the YWCA application has not yet been granted, but the Respondents are hopeful and should it be approved they anticipate a substantial amount to put towards their rental arrears.

The Respondents testified that they could not afford the maximum monthly rent of \$1,625, but were committed to paying between \$300 and \$400 bi-weekly towards their arrears and in addition to the monthly subsidized rent. They expressed concern with the amount of subsidized rent that has been assessed previously, questioning why it has been calculated so much higher than previously. The 2019-2020 monthly subsidized rent had been assessed at \$160. It was explained to the Respondents that the rent subsidy was calculated based on the previous calendar year's household income, and that they should direct their questions about how the calculations are done to the NTHC.

The Respondents have recently reported their household income for the 2020 calendar year and the Landlord has not yet calculated the rent subsidy for 2021-2022. There will be an assessment done and it is more likely than not that the Respondents will be eligible for a subsidy. In my opinion, that likelihood should be accounted for in the finding of rental arrears that have accumulated and to consider issuing an order to pay. At the hearing, the Respondents testified that there was no substantial difference in their household income in 2020 compared to 2019. On the premise that their estimation is correct, I calculated the rental arrears based on the continuation of the last subsidized rent assessed at \$890 per month for July and August, and adjusted the statements accordingly. It was explained to the Respondents that this determination on my part was only for the purposes of assessing a more likely balance of rental arrears and was not a direction to the Landlord on how to calculate the rent subsidy. The Respondents were cautioned that the Landlord's calculation of the rent subsidy may be different from the amount I was using today and they should be prepared for that.

I am satisfied the adjusted statements represent a fair assessment of the current status of the Respondents' rent account. I find the Respondents have repeatedly failed to pay the rent in full when due, and that they have accumulated rental arrears in the amount of \$4,780. That amount represents approximately four months' subsidized rent.

Termination of the tenancy and eviction

In light of the Respondents' repeated failure to pay the rent in full when due and the amount of subsidized rental arrears that have accumulated, I am satisfied termination of the tenancy is justified. After much discussion between the parties, the Respondents' agreed to pay the estimated subsidized rent of \$890 for August plus \$500 by the end of August, and to pay \$500 per month over the following seven months towards the remaining balance of the rental

arrears. They also committed to paying the subsidized monthly rent on time each month. The Applicant's representative agreed to a lengthy termination order dependent on those commitments being met. I am satisfied the proposed conditional termination order is appropriate in the circumstances, with a termination date of April 30, 2022. Given the lengthy period, I am not satisfied an eviction order is necessary.

Orders

An order will issue:

- Requiring the Respondents to pay rental arrears in the amount of \$4,780 (p. 41(4)(a));
- Requiring the Respondents to pay their rent on time in the future (p. 41(4)(b));
- Requiring the Respondents to comply with their obligation to report their household income as required (p. 45(4)(a)); and
- Terminating the tenancy April 30, 2022, unless:
 - (a) at least \$1,390.00 (one thousand three hundred ninety dollars) is paid towards the rental arrears by August 31, 2021;
 - (b) at least \$500.00 (five hundred dollars) is paid each month towards the rental arrears, starting in September 2021; and
 - (c) the monthly subsidized rents for September to April are paid in full and on time.

Adelle Guigon
Rental Officer