

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

**DU**

Respondent/Respondent

**REASONS FOR DECISION**

**Date of the Hearing:** September 23, 2021

**Place of the Hearing:** Yellowknife, Northwest Territories

**Appearances at Hearing:** AS, representing the Applicant  
DU, Respondent

**Date of Decision:** September 23, 2021

## **REASONS FOR DECISION**

An application to a rental officer made by HRHA on behalf of the NTHC as the Applicant/Landlord against DU as the Respondent/Tenant was filed by the Rental Office April 30, 2021. The application was made regarding a residential tenancy agreement for a rental premises located in Hay River, Northwest Territories. The filed application was personally served on the Respondent May 12, 2021.

The Applicant alleged the Respondent had failed to comply with the obligation to transfer to reallocated premises at the discretion of the Landlord. An order was sought for the Respondent to comply with the obligation to transfer to the reallocated premises.

A hearing scheduled for June 2, 2021, was postponed at the Applicant's request. The Respondent appeared but the Applicant did not appear at a hearing scheduled for July 28, 2021. The hearing was re-scheduled to September 14, 2021, but was then postponed at the Respondent's request. The hearing was held September 23, 2021, by three-way teleconference. AS appeared representing the Applicant. DU appeared as Respondent.

### *Tenancy agreement*

The parties agreed and evidence was presented establishing a residential tenancy agreement between them for subsidized public housing commencing April 1, 2014. I am satisfied a valid tenancy agreement is in place in accordance with the *Residential Tenancies Act* (the Act).

### *Reallocation of rental premises*

At the commencement of the tenancy the Respondent was the sole occupant of the rental premises. Despite being an Elder, but because she lived alone, the Respondent was allocated a bachelor suite at the residential complex known as "The Singles". This assignment was appropriate and in accordance with the Landlord's guidelines for allocation of suitable accommodations under the Subsidized Public Housing (SPH) Program.

In 2016 and 2017 the Respondent had requested transfers to larger rental premises, but because she remained the sole occupant her requests were denied. Those denials were appropriate in the circumstances at the time and in accordance with the Landlord's guidelines for allocation of suitable accommodations under the SPH Program.

In early October 2020 The Singles residential complex experienced a major flood which directly impacted the Respondent's rental premises. As a result, the Respondent was transferred to alternate accommodations in a 2-bedroom unit in the residential complex known as "Hay River Suites".

On January 4, 2021, the Respondent appealed to the local housing organization's Board of Directors to remain at the 2-bedroom rental premises. The Respondent cited several reasons for wanting to remain at the 2-bedroom rental premises, however she remained the sole occupant. On January 21, 2021, the Board denied the request on the basis that the Respondent would be over-accommodated at the 2-bedroom rental premises given that she continued to be the sole occupant. The repairs to the bachelor suite were complete by this time and the Board insisted that the Respondent return to that premises as it remained suitable accommodations under the SPH Program.

On February 15, 2021, the Respondent filed a second-level appeal to the Landlord's District Director again requesting to remain at the 2-bedroom rental premises. In addition to the previously referenced reasons, she explained that her family had decided to have one of the Respondent's young grandchildren live with her and she expected him to arrive by the middle of April. The District Director was informed by the Respondent on March 1, 2021, that her grandson's arrival had been delayed until August.

The District Director denied the Respondent's request citing policy requirements that tenants must make an application to transfer and that transferring tenants should not be allocated accommodations over new applicants where doing so would result in the new applicant not being allocated a suitable accommodation. The District Director reiterated that the Respondent's status at the time as a sole occupant meant the Respondent was adequately housed at The Singles, and that if the Respondent's situation changed and the Respondent could provide confirmation that her grandchild would be permanently in her care then the Respondent could apply for a transfer. The Respondent was further cautioned that the transfer application would be included in an existing transfer wait list and likely would not be considered until the new applicant wait list was reviewed.

The Respondent refused to move back to The Singles and continued trying to make her case to the Applicant to remain at the 2-bedroom premises. The Board of Directors continued denying the Respondent's request, insisting the Respondent return to The Singles, and directed the local housing organization to make the application to a rental officer to force the Respondent's compliance.

The Respondent notified the Applicant's representative in early May that, due to a pandemic outbreak in Yellowknife, her grandson had arrived to reside with her on May 3<sup>rd</sup>, four months earlier than expected. The Applicant's representative notified the Board of Directors of the change of occupancy. Despite the tenancy now having two occupants and meeting the occupancy requirements for a 2-bedroom premises, the Board of Directors still refused to authorize the permanent transfer of the Respondent and demanded the Respondent return to The Singles residence. The application to a rental officer remained active at the direction of the Board of Directors.

At the hearing, the Respondent testified that her grandson had been living with her at the 2-bedroom premises since May 3<sup>rd</sup> and would continue to be living with her indefinitely. She provided a letter from her grandson's mother (her daughter) confirming that her grandson has been, and would continue to be, living with the Respondent since May 3<sup>rd</sup>. The Respondent's daughter further confirmed in the letter that she has been residing with her mother and son since September 6<sup>th</sup> due to health concerns and having nowhere else to live. The Respondent indicated at the hearing that her daughter would be leaving to attend a treatment program within the next week or two.

The Respondent further reiterated that the Hay River Suites is a far less stressful and far safer residence for her and her grandson than The Singles were; issues that she had previously identified to the Landlord both before and after she transferred to the Hay River Suites.

### *Findings*

Prior to May 3<sup>rd</sup> there technically was a failure on the part of the Respondent to comply with the obligation to transfer back to the allocated premises at The Singles. At the time she was a sole occupant and the allocation of the bachelor suite was appropriate in the circumstances and in consideration of the requirements and purpose of the SPH Program. The Respondent appropriately exercised her right to appeal the Board of Directors' decision not to authorize the permanent transfer to the 2-bedroom premises.

The suggestion that the Tenant cannot apply for a transfer to a more suitable premises until after they have additional occupants residing with them to justify the larger accommodations is absurd, particularly where the additional occupants are children. In this case not only were they talking about a child moving in with the Respondent, but the Respondent was already occupying a premises that would adequately accommodate them both. I can accept the denial of the transfer request prior to the Respondent's grandchild moving in, but not after.

While I can certainly appreciate the needs of the families on the new applicant waiting list, particularly given the lack of housing available in Hay River, the Respondent's situation resulted in her eligibility for the 2-bedroom premises she had been transferred to and does not change anything for those new applicants. The 2-bedroom premises was clearly available when needed to accommodate the Respondent due to the flooding at The Singles, and now it is appropriately allocated for the Respondent's current circumstances.

The Board of Directors' refusal to acknowledge the Respondent's changed eligibility for the 2-bedroom premises and withdraw the application to a rental officer is obstinate, in my opinion, and unreasonable. The Respondent was not even aware that an application had been filed against her when she notified the Landlord that her grandson had moved in with her. The pursuit of this application unnecessarily aggravated an already stressful situation for the Respondent.

This application is dismissed pursuant to paragraph 76(2)(e) of the Act because the matter raised is vexatious in nature. The tenancy agreement for subsidized public housing continues uninterrupted with the transfer to the reallocated premises located at the Hay River Suites retroactively taking effect October 5, 2020, in accordance with paragraph 3 of the written tenancy agreement.

Dated at the city of Yellowknife in the Northwest Territories this 1<sup>st</sup> day of October 2021.

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Adelle Guigon  
Rental Officer