

IN THE MATTER between **MTN and KON**, Applicants, and **EL**, 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 **Hal Logsdon**, Rental Officer,

BETWEEN:

**MTN and KON**

Applicants/Landlords

-and-

**EL**

Respondent/Tenant

**REASONS FOR DECISION**

<b><u>Date of the Hearing:</u></b>	<b>November 2, 2021</b>
<b><u>Place of the Hearing:</u></b>	<b>Yellowknife, Northwest Territories</b>
<b><u>Appearances at Hearing:</u></b>	<b>MTN, Applicant KON, Applicant AP, witness for the Applicants</b>
<b><u>Date of Decision:</u></b>	<b>November 5, 2021</b>

### **REASONS FOR DECISION**

The Respondent was personally served with a notice of attendance but failed to appear at the hearing. The hearing was held in his absence.

The Applicants alleged that the Respondent had breached the tenancy agreement by failing to pay the full amount of the rent and failing to pay for utilities. The Applicants also stated that they required the rental premises for a residence for themselves and their children. The Applicants sought an order requiring the Respondent to pay the alleged rent arrears and utility costs, terminating the tenancy agreement, and evicting the Respondent.

#### **Rental premises**

The rental premises consist of a single story detached bungalow. The basement is finished and contains two bedrooms, a bathroom, and a kitchen. There is a separate entrance. The main floor contains three bedrooms, a bathroom, kitchen, and living room, and also has a separate entrance.

#### **Tenancy agreement**

There is a single, monthly joint tenancy agreement for the rental premises. The tenants are EL, the Respondent, and AP, stepson of MTN. The monthly tenancy agreement was made in writing and commenced on July 15, 2018. The monthly rent for the premises was \$1,900 but sets out that the main floor occupant shall pay \$1,000 per month and the basement occupant shall pay \$900 per month. Furthermore, the agreement obligates the main floor occupant to pay 50 percent of the total utility costs while the basement occupant is not required to pay any utility costs. A rental increase of \$150 per month was effective on October 1, 2020, but only applied to the Respondent, who occupied the main floor.

Article 14 of the tenancy agreement appears to give both occupants possession of the entire house, leaving it up to the tenants to work out “privacy issues”. In reality, the Respondent enjoys exclusive possession of the main floor while AP enjoys exclusive possession of the basement. Clearly, there should be two tenancy agreements, one for the main floor and one for the basement.

The Applicants stated that they had written a single, joint tenancy agreement because the municipal fire chief had advised that two rental premises would not be appropriate. However, simply constructing the tenancy agreement as a joint tenancy does not change the fact that the house is rented as two rental premises or remove any concerns the fire chief may have had.

For the purposes of this application, I shall assume there are two tenancy agreements and shall only deal with the agreement between the Applicants and EL, the Respondent, contained within the joint agreement.

*Termination of the tenancy agreement - section 58*

Section 58 permits a landlord to apply for an order terminating a tenancy agreement if the landlord requires possession for their own residence. The Applicants testified that they intend to use the upstairs currently occupied by the Respondent as their own residence. They own and were occupying a mobile home in the community but have recently moved in with AP, permitting two of their daughters and a grandchild to occupy the mobile home. I find no reason to doubt that the application is made in good faith. In my opinion, termination of the tenancy agreement is reasonable.

Termination of a monthly tenancy agreement pursuant to section 58 may only be considered on the last day of a month at least 90 days after the application is made. Presumably, this provision was incorporated into the *Residential Tenancies Act* (the Act) to provide the tenant with adequate time to arrange for other accommodation, particularly as this is a “no-fault” remedy. This application was filed on September 24, 2021, but was not served on the Respondent until October 15, 2021. In my opinion a termination date of January 31, 2022, is appropriate.

An order shall issue terminating the tenancy agreement on January 31, 2022. An eviction order shall become effective on February 1, 2022.

*Arrears of rent and termination - section 41*

The Applicants provided a statement dated September 29, 2021, signed by the Respondent acknowledging a debt of \$3,504.79 and a partial itemization of the amount. The Applicants provided additional explanation as to the origin of each amount, rent or utilities, and testified further that the November 2021 rent had come due, August utilities had been charged, and payments totalling \$2,150 had been made, bringing the balance of rent and utilities owing to \$2,638.30.

The Applicants also provided a monthly summary of rent and utility amounts without any monthly or balance owing.

After reconstructing both documents in ledger style, I was able to reconcile the documents and confirm a balance of rent owing of \$2,100 and a balance of utilities owing of \$538.30 for a total of \$2,638.30. Despite the rather haphazard record keeping, in my opinion the balance alleged owing is accurate. I find the Respondent in breach of his obligation to pay the full amount of rent and his obligation to pay 50 percent of the utility costs during the term. In my opinion there are sufficient grounds to terminate the tenancy agreement earlier than January 31, 2022, unless the rent and utility arrears are promptly paid.

Orders shall issue requiring the Respondent to pay the Applicants rent arrears and utility costs totalling \$2,638.30. The tenancy agreement shall be terminated by order on December 31, 2021, unless the rent and utility arrears and the rent for December 2021 in the total amount of \$3,788.30 are paid in full. An eviction order shall become effective on January 1, 2022, unless the rent arrears, the utility arrears, and the rent for December 2021 in the total amount of \$3,788.30 are paid in full on or before December 31, 2021.

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Hal Logsdon  
Rental Officer