

IN THE MATTER between **SDM(HBY)**, Applicant, and **NL**, 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:

**SDM(HBY)**

Applicant/Landlord

-and-

**NL**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:** March 17, 2022

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

**Appearances at Hearing:** KJ, representing the Applicant  
TMS, representing the Applicant

**Date of Decision:** March 17, 2022

### **REASONS FOR DECISION**

An application to a rental officer made by SDM(HBY) as the Applicant/Landlord against NL as the Respondent/Tenant was filed by the Rental Office February 16, 2022. 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 Respondent by registered mail signed for February 24, 2022.

The Applicant alleged the Respondent had repeatedly failed to pay rent, had accumulated rental arrears. The Applicant further applied for vacant possession of the rental premises because they intend to change the use of the premises to something other than a rental premises. An order was sought for payment of the rental arrears, termination of the tenancy, and eviction.

A hearing was held March 17, 2022, by three-way teleconference. KJ and TMS appeared representing the Applicant. NL was served with notice of the hearing by registered mail signed for February 24, 2022. The Respondent did not appear at the hearing, nor did anyone appear on the Respondent's behalf. The hearing proceeded in the Respondent's 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 Respondent and YA commencing August 1, 2021, on a month-to-month basis. The Respondent was given notice of the change of landlord to SDM(HBY) on October 16, 2021. I am satisfied a valid tenancy agreement is in place in accordance with the Act.

#### *Rental arrears*

The written tenancy agreement establishes the monthly rent at \$1,000. The Applicant testified that the last payment received from the Respondent was in December for that month's rent. The Applicant testified that the Respondent has failed to make any further payments towards their rent account since and has accumulated arrears totalling \$3,000 for January, February, and March rents.

The Applicant confirmed that their efforts to remind the Respondent of the debt have gone unanswered and without any indication of the Respondent's intentions.

I am satisfied the Landlord's accounting of rental arrears is accurate. I find the Respondent has repeatedly failed to pay the rent and has accumulated rental arrears in the amount of \$3,000.

*Change of use*

Subparagraph 59(1)(a)(ii) of the Act provides for the Landlord to apply to terminate the tenancy where they require the rental premises for the purposes of changing the use of the rental premises to something other than rental premises.

The Applicant testified that they purchased the property with the specific intent of using the residential complex to provide housing to homeless and at-risk youth under their housing program. The program was described as being similar to transitional housing in that it was designed to provide housing to young people with guidance, teaching them how to be good tenants, and helping them understand their responsibilities, with the goal of transitioning them into other types of housing that might be available in the community. To my mind, this sounds very much like transitional housing or, as described in paragraph 6(2)(e) of the Act, "living accommodation established to temporarily shelter persons in need", and I accept that the intended housing falls into this category.

The Supreme Court has recently confirmed that transitional housing is exempt from the Act under paragraph 6(2)(e). Therefore, changing the use of the rental premises to transitional or temporary shelter for homeless and at-risk youth is a change of use to something other than a rental premises and is a justified reason to terminate the Respondent's residential tenancy agreement.

*Termination of the tenancy and eviction*

The Respondent was notified of the Landlord's intention to transition the rental premises to transitional housing for homeless and at-risk youth in October 2021. The Respondent was asked to vacate the rental premises by January 31, 2022. The Respondent did not agree to terminate the tenancy and has not vacated the rental premises. While the Respondent's tenancy was not terminated in accordance with the Act, and therefore the Respondent was not obligated to vacate the rental premises, I am satisfied that they were well aware of the new Landlord's intention for the property.

Section 59 of the Act provides for the Rental Officer to terminate the tenancy for the last day of a month no earlier than 90 days from the day the application to a rental officer is made. The Applicant did not make the application to a rental officer until February 16, 2022, making May 31, 2022, the earliest the tenancy could be ordered terminated under section 59. If this application were only about the section 59 change of use issue, May 31<sup>st</sup> would be when I would order the termination of the tenancy. But it is not just about the section 59 application.

This application was also made regarding rental arrears, for which I have already found the Respondent has repeatedly failed to pay the rent. To my mind this is an aggravating factor: The Respondent was given more than three months' written notice to vacate, including an explanation for why the new Landlord wanted to end the Respondent's tenancy, and then instead of agreeing to vacate the Respondent stopped paying rent. The repeated failure to pay the rent is justification enough for ending the tenancy, and allowing the tenancy to continue until the May 31<sup>st</sup> section 59 termination date would likely result in further accumulated debt.

As a result, I am not only satisfied that termination of the tenancy and eviction are justified, I am also satisfied that the termination order should be for March 31<sup>st</sup>. The eviction order will be extended to April 15<sup>th</sup> to ensure the Respondent is made aware of the order with enough time to voluntarily vacate the rental premises. An order will also issue granting the Applicant compensation for any overholding rental arrears that accumulate after the termination date.

### *Orders*

An order will issue:

- requiring the Respondent to pay rental arrears in the amount of \$3,000 (p. 41(4)(a));
- terminating the tenancy March 31, 2022 (p. 41(4)(c));
- evicting the Respondent from the rental premises April 15, 2022 (p. 63(4)(a)); and
- requiring the Respondent to pay compensation for use and occupation of the rental premises at a rate of \$32.88 for each day they remain in the rental premises after March 31, 2022, to a maximum of \$1,000 per month (p. 63(4)(b)).

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Adelle Guigon  
Rental Officer