

IN THE MATTER between **The Estate of SJW**, Applicant, and **CB, AS and ITA**,
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 **Janice Laycock**, Rental Officer,

BETWEEN:

THE ESTATE OF SJW

Applicant/Landlord

-and-

CB, AS and ITA

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: June 1, 2022

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: DL, LW and KB, representing the Applicant
CB, a Respondent

Date of Decision: June 6, 2022

REASONS FOR DECISION

An application to a rental officer made by The Estate of SJW (W) as the Applicant/Landlord against CB (G), AS (S) and ITA (A) as the Respondents/Tenants was filed by the Rental Office on May 2, 2022. The application was made regarding a residential tenancy agreement for a rental premises located in Fort Smith, Northwest Territories. The filed application was personally served on the Respondents on May 17, 2022, with a notice of attendance for the hearing.

The representatives for the Applicant claimed the Respondents had breached the tenancy agreement by failing to pay any rent since August 2020 and had failed to deliver vacant possession of the rental premises after receiving a notice to vacate on February 18, 2022. The Applicant sought an order for termination of the tenancy agreement, for non-payment of rent, and eviction.

A hearing was held on June 2, 2022 by three-way teleconference. LW, DL and KB appeared representing the Applicant. CB, one of the Respondents, appeared at the hearing. The other Respondents, AS and ITA, did not appear, nor did anyone appear on their behalf. As they failed to appear after receiving sufficient notice of the hearing under subsection 80(2) of the *Residential Tenancies Act* (the Act), the hearing proceeded in their absence.

At the hearing, I reserved my decision to consider the evidence and to allow the Applicant to provide to the Rental Office, and the Respondents, a copy of Exhibit "E" which is the February 18, 2022 notice to provide vacant possession of the Rental Premises. This evidence was missing from the documents filed with the Application.

Tenancy Agreement

According to the Applicant, and confirmed by the Respondent at the hearing, on October 1, 2018, G alone entered into an oral tenancy agreement with W for the rental premises at 32 Tamarac Crescent, legally described as Lot 872, Plan 837, Fort Smith, Northwest Territories. On August 15, 2019, W died. After W's death, G was contacted by DL on behalf of the estate to let her know about W's death, where rental payments should be made, and who to contact if there were any issues.

During her tenancy, the Respondent allowed others to live in the rental premises, including her son and the other Respondents - S and A. These individuals were not included on the tenancy agreement, and under the Act are defined as subtenants "a person who has been given the right to occupy rental premises by a tenant", but are not tenants.

At the hearing, G testified she vacated the rental premises on, or about, August 12, 2020, and thought that S and A would continue to pay the rent. She confirmed that she did not notify the representative for the estate that she wished to terminate her tenancy agreement, nor did she arrange to sublet or assign her tenancy to S and A.

The representative for the Applicant testified when rent was not paid, they eventually became aware that G had vacated the rental premises but others were still living there. They did not know the whereabouts of G and despite repeated attempts were unable to enter into an agreement with the occupants or collect any rent from them. Since August 2020, no rent (currently \$1,400 per month), was paid by either G, S or A for the right to occupy the rental premises and according to the Applicant, they owe \$28,000.

The representative for the Applicant testified that due to the amount of rental arrears that had accrued, on February 18, 2022 a Notice to Vacate the Rental Premises by February 28, 2022, was personally served on the occupants of the rental premises. At this time, the server was able to identify the occupants as S and A. Despite the notice, according to the local RCMP, S and A continue to occupy the rental premises and were involved in a serious incident involving a shooting, police file number 2022270330. The representative for the Applicant testified that considering the persons involved and the lack of income for the estate, they were anxious to obtain vacant possession of the rental premises as soon as possible.

Under sections 50 and 51 of the Act, a tenant may terminate their tenancy by agreement or by notice to the landlord. Under section 55 of the Act, the notice needs to be in writing, signed, identify the rental premises and the date on which the tenancy is terminated. In this case, G did not provide notice of any kind and vacated the rental premises leaving S and A as occupants.

Under subsection 1(3) of the Act, “a tenant has abandoned the rental premises where the tenancy has not been terminated in accordance with the Act and (a) the landlord has reasonable grounds to believe that the tenant has left the rental premises; or (b) the tenant does not ordinarily live in the rental premises, has not expressed an intention to resume living in the rental premises, and the rent the tenant has paid is no longer sufficient to meet the tenant’s obligation to pay the rent.”

In this case, initially the agent for the Landlord was not aware that G had vacated the rental premises, just that she was not paying rent. At some point, they became aware that she had vacated the rental premises but did not know her whereabouts, her wishes relating to the tenancy, and were not aware of the identity of the occupants. They did take steps to mitigate their losses on February 18, 2022, when a Notice to Vacate was personally served on the occupants to vacate the rental premises and provide vacant possession.

It would seem to me at some point in the 20-month period, when no rent was paid, especially after the Applicant became aware that G had vacated the rental premises, they should have been able to determine that the tenancy agreement had been abandoned. However, I appreciate the lack of communication from G and the continued occupancy by G's subtenants, S and A, made this difficult to confirm. Also, as the Applicant is not claiming payment of rental arrears, as they are primarily interested in obtaining vacant possession of the rental premises, I do not think it is critical to make a finding on this point.

Based on the evidence and testimony, I am satisfied there was a valid tenancy agreement with the Respondent, CG alone, commencing on October 1, 2018 and continuing month to month. This agreement was not terminated in accordance with the Act, as G vacated the rental premises but did not provide notice of any kind or vacant possession to the landlord, allowing S and A to occupy the rental premises and the Landlord to assume her tenancy continued.

I find there was no tenancy agreement either oral or implied with S and A and that the tenancy agreement with G was not terminated in accordance with the Act. Considering the circumstances and the lack of clear evidence of a date that G abandoned the rental premises prior to the hearing, I find the tenancy with G continued month to month and for greater clarity will order it terminated.

Termination and eviction

Under subsection 41(1) "A tenant shall pay to the landlord the rent lawfully required by the tenancy agreement on the dates specified by the tenancy agreement." According to the evidence and testimony of the representatives for the Applicant, the Respondents did not pay their rent of \$1,400 a month for the period from August 2020 to May 2022 and currently owed \$28,000.

Under subsection 41(4) on the application of a landlord a rental officer determines that a tenant has failed to pay rent in accordance with (1), the rental office may make an order (a) requiring the tenant to pay the rent owing and any penalty for late payment; (b) requiring the tenant to pay his or her rent on time in the future; or (c) terminating the tenancy on the date specified in the order and ordering the tenant to vacate the rental premises on that date.

Considering the rental arrears that have accrued and clear evidence at the hearing that G does not live in the rental premises or plan to live in the rental premises, I believe that termination of the tenancy agreement is justified and will so order.

Under subsection 63(4) a rental officer who terminates a tenancy and determines an eviction is justified may make an order (a) “evicting the tenant on the date specified for the termination of the tenancy in the agreement, notice or order, or on the earliest reasonable date after the date of termination of the tenancy”.

Although G is no longer living in the rental premises, S and A continue to reside there despite the notice to vacate. I believe that an eviction order is necessary to allow the landlord to obtain vacant possession of the rental premises and will so order.

Order

An order shall issue:

- terminating the tenancy agreement on June 7th, 2022 (p. 41(4)(c); and
- evicting the Respondents from the rental premises on or after June 14th, 2022 (p. 63(4)(a)).

Janice Laycock
Rental Officer