

IN THE MATTER between **TPMHL**, Applicant, and **TB**, 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 **Janice Laycock**, Rental Officer, regarding a rental premises located within the **community of Behchoko in the Northwest Territories**.

BETWEEN:

TPMHL

Applicant/Landlord

-and-

TB

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: September 7, 2022

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: RM, representing the Applicant

Date of Decision: September 15, 2022

REASONS FOR DECISION

An application to a rental officer made by TPMHL as the Applicant/Landlord against TB as the Respondent/Tenant was filed by the Rental Office June 30, 2022. The application was made regarding a residential tenancy agreement for a rental premises located in Behchoko, Northwest Territories. The filed application was personally served on the Respondent on August 8, 2022.

The Applicant claimed the Respondent had failed to pay rent when due and had accumulated rental arrears. An order was sought for payment of arrears owing, termination of the tenancy agreement and eviction.

A hearing was held on September 7, 2022 by three-way teleconference. RM appeared on behalf of the Applicant. The Respondent did not appear, nor did anyone appear on their behalf. As the Respondent failed to appear at the hearing after receiving sufficient notice, the hearing continued in their absence as provided for in subsection 80(2) of the *Residential Tenancies Act* (the Act).

Tenancy agreement

Evidence was provided establishing a tenancy agreement for the term April 1, 2020 to March 31, 2021 and then continuing month to month. At the time of the hearing, the monthly rent was \$1,200. I am satisfied a valid tenancy agreement is in place in accordance with the Act.

Rental arrears

At the hearing, the representative for the Applicant testified about the rental arrears owing and referred to "Schedule "A", however, although the application references this document, no such document was provided with the application. I also found that the testimony provided by the Applicant was not consistent with the information that had been included. I reserved my decision pending receipt of "Schedule A", as well as an updated statement. I also provided the Respondent this information and an opportunity to explain or refute the additional information as provided for under section 82 of the Act.

The requested information was provided to the Rental Office and the Respondent on September 8, 2022. The Respondent provided a response to the information; they did not refute the Applicant's information, but provided some reasons to explain why they had ended up in arrears and that they were pursuing steps to pay off the arrears with assistance from "Jordan's principals".

In reviewing the Applicant's information provided on September 8, 2022, and the information provided as part of the filed application, I found some unexplained discrepancies:

- January - According to "Schedule A" the balance of the rent owing is \$30, while on the updated statement dated 2022-09-07, rent owing is \$1265;
- February - "Schedule A" shows \$1,265 owing, while Invoice TPMH-00488 dated 2022-01-01 and provided with the application, shows \$1265 charged, \$1,235 paid and \$30 owing; while the updated statement dated 2022-09-07 shows \$1,265 owing; and
- April - "Schedule A" shows \$1,265 owing, while the updated statement dated 2022-09-07, rent charged was \$1265 and \$2500 paid.

The Applicant has also charged the Applicant \$65 for each month as a "late fee". Under subsection 41(2) of the Act and section 3 of the *Residential Tenancies Regulations*, a late payment penalty respecting rent due under a tenancy agreement must not exceed \$5, plus \$1 for each day after the due date that the rent is late. The charge of \$65 is greater than any charge allowed for a month.

Based on the information provided by the Applicant, I calculated the rental arrears owing:

- \$0 - January - \$30 owing from \$65 late payment penalty - maximum allowed \$35 = \$5 +30;
- (\$3) - February - \$1,235 paid, late payment penalty should have been \$32 not \$65;
- \$1,235 - March, no rent paid, late payment penalty should have been \$35 not \$65;
- (\$1,288)- April, \$1200 rent + \$12 late payment penalty charged to April 8 - \$2,500 paid;
- \$1,235 - May, \$1,200 rent + \$35 late payment penalty - \$0 rent paid;
- \$1,234 - June, \$1,200 rent + \$34 late payment penalty - \$0 rent paid;
- \$1,235 - July, \$1,200 rent + \$35 late payment penalty - \$0 rent paid;
- \$1,235 - August, \$1,200 rent + \$35 late payment penalty - \$0 rent paid;
- \$1,235 - September, \$1,200 rent + \$12 late payment penalty (Sept 7, 2022) - \$0 rent paid;

\$6,118.00 - TOTAL RENTAL ARREARS (including late payment penalties)

Termination of the tenancy agreement and eviction

Based on the evidence provided by the Applicant, the Respondent has not paid any rent for the last five months and has accumulated significant arrears. The Respondent testified, that prior to making the application to the Rental Office, they had made numerous attempts to contact the Respondent, by phone and email. Copies of emails sent in March and April 2022, were provided as evidence. The Applicant testified that they had received no response from the Respondent.

It is clear from the evidence that the Respondent has repeatedly breached their obligation under subsection 41(1) of the Act to pay their rent when due and has accumulated significant arrears. I appreciate that the Respondent has been struggling to pay rent and arrears, but this does not explain the lack of communication with the landlord about the mounting arrears. Based on the evidence, I believe that termination of the tenancy agreement and eviction are justified and will issue an order.

Orders

An order will issue:

- requiring the Respondent to pay rental arrears in the amount of \$6,118 (p. 41(4)(a));
- terminating the tenancy agreement on September 30, 2022 (p. 41(4)(c)); and
- evicting the Respondent from the rental premises on October 15, 2022 (p. 63(4)(a)).

Janice Laycock
Rental Officer