

IN THE MATTER between **MM**, Applicant, and **LL and ED**, 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, regarding a rental premises located within the **town of Inuvik in the Northwest Territories**.

BETWEEN:

MM

Applicant/Landlord

-and-

LL and ED

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	November 2, 2022
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	MM and SC, representing the Applicant LL, representing the Respondents
<u>Date of Decision:</u>	November 2, 2022

REASONS FOR DECISION

An application to a rental officer made by MM as the Applicant/Landlord against LL and ED as the Respondents/Tenants was filed by the Rental Office August 5, 2022. The application was made regarding a residential tenancy agreement for a rental premises located in Inuvik, Northwest Territories. The filed application was served on the Respondent, by registered mail, on August 18, 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.

In filing this application, the Applicant made a number of complaints about delays by the Rental Office in hearing this and a previous application. The following is provided as information on the process followed and the reasons for delays.

A previous application #17485, was made by MM as the Applicant/Landlord against LL and ED as the Respondents/Tenants and filed by the Rental Office on February 15, 2022. A hearing was scheduled for March 16, 2022, by teleconference and notice of the hearing provided to the parties. This hearing was cancelled because the Applicant did not provide proof of service on the Respondents at least five days before the hearing. Another hearing was scheduled for May 18, 2022 by teleconference. At this hearing, although the Rental Officer waited 15 minutes, neither the Applicant nor the Respondent appeared. At the request of the Applicant, another hearing was scheduled for July 6, 2022 and notices of the hearing were provided to the parties. The Applicant was warned that if they failed to appear again, the application would be dismissed. However, although the Respondent appeared for this hearing, and despite waiting 15 minutes, the Applicant did not appear and the application was dismissed.

A new application #17742 was filed by the Applicant on August 5, 2022, and a hearing was scheduled for October 19, 2022. The hearing was held by three-way teleconference. SC appeared representing the Applicant. LL appeared representing the Respondents.

At this hearing, the Respondent raised issues about the condition of the rental premises and that they had raised these issues previously with the Landlord. Under subsection 68(2) of the *Residential Tenancies Act* (the Act) "At a hearing of an application to terminate a tenancy or to evict a tenant, a rental officer may permit a tenant to raise any issue that could be the subject of an application under this Act, and the rental officer, may, if he or she considers it appropriate in the circumstances, make an order on that issue."

In order to allow the Respondents an opportunity to provide evidence of their allegations, I adjourned the hearing until November 2, 2022. The hearing resumed November 2, 2022 by three-way teleconference. SC and MM appeared representing the Applicant and LL appeared representing the Respondents.

Tenancy agreement

Evidence was provided establishing a tenancy agreement between the parties for a 12-month period starting on December 1, 2021. The tenancy agreement provided as evidence was not signed but the parties agreed that it was valid. LL testified she had been a tenant since 2009, and had requested a new tenancy agreement be written adding her father, ED. At the time of the hearing, the monthly rent was \$1,600.

The filed application provides the address of the rental premises as 61K, Inuvik, Northwest Territories. According to the tenancy agreement, the address of the rental premises is 61KR, Inuvik, Northwest Territories. The address on the application has been amended accordingly. I am satisfied a valid tenancy agreement is in place in accordance with the Act.

Rental arrears

A statement titled "LL Rent Log" was provided as evidence. This statement has a beginning balance of \$5,950 owing and covered the period January to July 2022. According to the statement, the Respondents had paid off their outstanding arrears in March 2022 and owed \$1,050 for March rent. In the following four months, April to July 2022, they only paid \$1500 in rent and their arrears at the end of that period were \$5,950. At the hearing on October 19, 2022, the Applicant testified that no rent had been paid for August, September, and October and the Respondents owed \$10,750. When the hearing resumed on November 2, 2022, the Applicant testified that no payments had been made and the Respondents now owed a total of \$12,350.

At the hearing on October 19, 2022, the Respondent confirmed the amounts owing and at the hearing on November 2, 2022, they did not dispute the amount owing of \$12,350, which included November's rent.

Respondents' allegation - Landlord in breach of obligation to maintain the rental premises

Under subsection 30(1) of the Act the landlord shall provide and maintain the rental premises in a good state of repair and fit for habitation during the tenancy and ensure the rental premises comply with all health, safety and maintenance and occupancy standards. Under subsection 30(5) of the Act the tenant is required to give reasonable notice to the landlord of any breach and under subsection 30(6) the landlord shall, within 10 days remedy any breach.

Prior to the resumption of the hearing, the Respondent provided to the Rental Office, and the Applicant, a copy of recent photos of the rental premises, an email dated January 21, 2022 to the Landlord saying that the Respondent had misplaced her phone, and other emails concerning the rent payments and rental arrears. As the rental arrears owing had already been agreed to, and most of these emails repeated information already provided, this information is not relevant to the discussion of the condition of the rental premises and possible compensation.

At the hearing, the Respondent testified that they were unable to provide evidence of text messages that they had sent to the Landlord about the condition of the rental premises, as they misplaced their phone. We also walked through the photos provided showing the condition of the rental premises:

- photo showing temporary cover for fan in ceiling of bathroom - Respondent testified that the fan has been broken for five years;
- photo showing caulking that needs replacement along the base of the bathtub and missing drywall at the end of the bathtub;
- photo showing the filter from the furnace partially out - Respondent testified the filter needs to be replaced; and
- photos showing red "tuck" tape at the bottom of the kitchen cabinets between the flooring and the cabinets - Respondent testified that they had placed this tape to cover a gap/hole to outside that was allowing cold air into the unit.

The Applicant testified they had not received complaints in the form of texts or emails from the Respondent about these issues with the rental premises. If they had, they would have dealt with these issues quickly. The Applicant did acknowledge that work was needed on the house and they had notified the Respondent before summer that they would need to move out in order to do these repairs.

Under paragraph 30(4)(d) of the Act, a rental officer may order the landlord to compensate the tenant if there is a breach of their responsibility to maintain the rental premises. Based on the limited evidence and testimony of the parties, I am not convinced that the Applicant was notified of the issues raised by the Respondent and provided an opportunity to complete repairs, nor am I convinced that the Respondent suffered a loss that would merit compensation. As a result, at the hearing, I denied the Respondents' claim for compensation.

Termination of the tenancy agreement and eviction

Based on the evidence and testimony, the Respondents have repeatedly not paid their rent when due and in the period from June to November 2, 2022, they did not pay any rent at all and accumulated significant arrears.

At the hearing on November 2, 2022, the Respondent testified they now have employment and could make biweekly payments against the arrears. The Applicant refused to consider giving the Respondents another chance, they felt their relationship had broken down, they didn't trust the Respondents to pay, and they had already suffered losses as a result of the Respondents' failure to pay.

I am satisfied the Respondents have repeatedly breached their obligation under subsection 41(1) of the Act to pay their rent when due, and termination of the tenancy agreement and eviction are justified. An order will issue for termination on November 30, 2022, with eviction on or after December 1, 2022.

An order will issue:

- requiring the Respondents to pay rental arrears in the amount of \$12,350 (p. 41(4)(a));
- terminating the tenancy agreement on November 30, 2022 (p. 41(4)(c));
- evicting the Respondents from the rental premises on or after December 1, 2022 (p. 63(4)(a)).

Janice Laycock
Rental Officer