

IN THE MATTER between **NTHC**, Applicant, and **DD and AT**, 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 Fort Smith in the Northwest Territories**.

BETWEEN:

NTHC

Applicant/Landlord

-and-

DD and AT

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	December 7, 2022
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	JG, representing the Applicant DD and AT, Respondents
<u>Date of Decision:</u>	December 7, 2022

REASONS FOR DECISION

An application to a rental officer made by FSHA on behalf of the NTHC as the Applicant/Landlord against DD and AT as the Respondents/Tenants was filed by the Rental Office September 19, 2022. The application was made regarding a residential tenancy agreement for a rental premises located in Fort Smith, Northwest Territories. The filed application was served on the Respondent by registered mail on November 8, 2022.

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

A hearing was scheduled for November 9, 2022 by teleconference. Due to an error in the Respondent's mailing address, the notice of hearing and filed application was returned to the Applicant and had to be re-sent. Proof was provided by the Applicant that the filed application and notice of the hearing was served on the Respondent by registered mail on November 8, 2022. Under paragraph 76(1)(b)(i) of the *Residential Tenancies Act* (the Act), the filed application shall be served on the other party at least five business days before the hearing. As it was served only one day before the hearing, the hearing was rescheduled to a later date and notices provided to the parties.

A hearing was held on December 7, 2022 by teleconference. JG appeared representing the Applicant. The Respondents, DD and AT, appeared at the hearing.

Previous order

Previous Rental Officer Order File #15564 issued July 13, 2017, NTHC v. DD and AT, ordered the Respondents to pay rental arrears \$1,197.50 in minimum monthly installments of \$100 starting in May 2017, and pay rent on time in the future.

Tenancy agreement

Evidence was provided establishing a residential tenancy agreement for subsidized public housing for the period November 23, 2021 to May 23, 2022, and continuing month to month. Their subsidized rent was \$325 until June 2022. Beginning in July 2022, their subsidized rent increased to \$610 per month based on household tax information for 2021.

The agreement provided as evidence is not signed by the parties. At the hearing, I confirmed with the parties that this is the current tenancy agreement. I am satisfied a valid tenancy agreement is in place in accordance with the Act, but encourage the parties to take an opportunity to sign the written tenancy agreement.

Rental arrears

The Applicant provided as evidence lease balance statements. These statements represent the Landlord's accounting of monthly rents and payments made against the Respondents' account. The Applicant provided to the Rental Office an updated statement, dated December 7, 2022, and at the hearing testified to its content - after rent for December of \$610 was charged the Respondents currently owe \$4,150. This amount includes \$500 owing on the security deposit, which is not part of this application. When that amount is deducted, the Respondents currently have rental arrears owing totalling \$3,650.

At the hearing, the Respondents disputed the amount owing, stating that this was not consistent with the statement that they had received for November 2022. However, when it was explained that this amount includes rent charged for December, they were satisfied that this was the amount currently owing.

Termination of the tenancy agreement and eviction

According to the lease balance statement, the Respondents have not had a zero balance since they commenced this tenancy in November 2021. In most months, they paid only partial rent, typically \$200, resulting in the current rental arrears owing. The Applicant testified and provided evidence of repeated notices to the Respondents about the rental arrears.

At the hearing, the Respondents testified that they did not receive the notices from the Applicant about the rental arrears or any notice about the increase in their rent in July 2022, from \$365 to \$610. They further testified that they had provided their current postal address to the Applicant, and despite doing that, the most recent lease balance statement for November was still sent in error to general delivery.

The Applicant testified that it was the responsibility of the tenant to provide any changes to their postal address. The Respondents stated they had done this, but mail continued to be sent to the wrong postal address and as a result they were not aware of the increase in their rent from \$365 to \$610 and the arrears that had accumulated. However, they did not dispute the amount owing based on the recent statement they had received and made an offer to come into the Landlord's office to make arrangements to pay off the rental arrears in monthly payments. They also offered to bring in income information to the Landlord's office to see if a reassessment of subsidized rent was possible. The Applicant repeated that the subsidized rent of \$610 was based on household income for 2021, and did not expect a change in the assessment.

I noted at the hearing that even if the rent remained at \$365 per month, the Respondents were still in breach of their obligation under subsection 41(1) of the Act to pay their rent when due and should have been aware that they had accumulated rental arrears. Based on my calculations, if the rent had remained at \$365 for the full period of their tenancy, they would still have accrued rental arrears totalling \$2,680. Considering the Respondents clearly had rental arrears, they had a responsibility to contact the Landlord to try to make arrangements to pay.

However, based on the evidence and testimony, I am not satisfied that termination of the tenancy agreement and eviction are justified at this time. The Respondents were not provided notice of their rent increase in July 2022, from \$365 to \$610, nor did they receive notices about their arrears. I believe that an order to pay rental arrears owing and to pay rent on time in the future is fair. At the hearing, I warned the Respondents that if they do not pay their rent on time and take steps to pay off their arrears, the Applicant may return to the Rental Office with another application seeking termination of the tenancy agreement and eviction.

Orders

An order will issue:

- requiring the Respondents to pay rental arrears in the amount of \$3,650 (p. 41(4)(a)); and
- requiring the Respondents to pay their rent on time in the future (p. 41(4)(b)).

Janice Laycock
Rental Officer