

IN THE MATTER between **NTHC**, Applicant, and **TE and LK**, 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 **Adelle Guigon**, Rental Officer, regarding a
rental premises located within the **village of Fort Simpson in the Northwest Territories**;

BETWEEN:

NTHC

Applicant/Landlord

-and-

TE and LK

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: March 9, 2023

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: RL, representing the Applicant

Date of Decision: March 10, 2023

REASONS FOR DECISION

An application to a rental officer made by FSHA on behalf of the NTHC as the Applicant/Landlord against TE and LK as the Respondents/Tenants was filed by the Rental Office July 19, 2022. The application was made regarding a residential tenancy agreement for a rental premises located in Fort Simpson, Northwest Territories. The filed application was served on the Respondents by registered mail, signed for August 10, 2022.

The Applicant alleged the Respondents had repeatedly failed to pay rent in full when due, had accumulated rental arrears, and had failed to comply with a rental officer order to pay future rent on time. An order was sought for payment of the rental arrears, termination of the tenancy agreement, and eviction.

Due to technical difficulties with the teleconference lines, hearings scheduled for October 4, 2022, and October 20, 2022, were cancelled. The hearing was rescheduled and commenced on November 29, 2022, by three-way teleconference. RL appeared representing the Applicant. TE and LK both appeared as the Respondents.

The November 29th hearing was adjourned *sine die* pending confirmation of the status of the Respondents' tax returns and any resulting rent subsidy reassessments. The hearing was reconvened on March 9, 2023, by three-way teleconference. RL appeared representing the Applicant. TE and LK were served with notices of the reconvened hearing date by email, deemed received February 4, 2023, pursuant to subsection 4(4) of the *Residential Tenancies Regulations* (the Regulations). The reconvened hearing proceeded in the Respondents' 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 parties for subsidized public housing commencing April 1, 2012. I am satisfied a valid tenancy agreement is in place in accordance with the Act.

Previous orders

Rental Officer Order #10-12553 was issued January 18, 2012, ordering the Respondents to pay rental arrears of \$9,651 in minimum monthly installments of \$217 starting in January 2012 and ordering the Respondents to pay their rent on time in the future. The monetary order was satisfied.

Rental Officer Order #10-14769 was issued July 29, 2015, ordering the Respondents to pay rental arrears of \$13,427.24 in minimum monthly installments of \$375 starting in August 2015, ordering the Respondents to pay their rent on time in the future, ordering the conditional termination of the tenancy January 31, 2016, unless the rental arrears and the minimum monthly installments for August to January were paid on time, and ordering eviction February 1, 2016, if the termination of the tenancy agreement became effective. The monetary order was satisfied and the termination and eviction orders were not enforced.

Rental Officer Order #16755 was issued December 12, 2019, ordering the Respondents to pay rental arrears of \$7,554.96, ordering the Respondents to pay their rent on time in the future, ordering the conditional termination of the tenancy March 31, 2020, unless at least \$915 was paid towards to the rental arrears and the monthly subsidized rents for January, February, and March were paid on time, and ordering eviction April 1, 2020, if the termination of the tenancy agreement became effective. The monetary order was satisfied by a CRA remittance garnished November 30, 2022. The termination and eviction orders would have been enforceable, but the pandemic having been declared at the time the Landlord chose not to execute the eviction. In effect, the tenancy was reinstated as of March 31, 2020.

Rental arrears

The lease balance statements were entered into evidence represent the Landlord's accounting of monthly rents and payments received against the Respondents' rent account. At the November 29th hearing the lease balance statement reflected the maximum monthly rent of \$1,625 had been imposed since July 2021. Despite having recently made notable efforts to pay the monthly rent and to pay down the rental arrears, there is a clear historical pattern throughout the tenancy of the Respondents failing to pay the rent in the month it is due or not paying enough in a given month to cover the full amount of the rent.

The parties agreed at the hearing that the reason the rent was not subsidized was because the Respondents had failed to file their taxes for the 2020 and 2021 calendar years. To clarify, rent subsidies are calculated for the period from July to June based on the reported household income for the prior calendar year. The household income is required by the Landlord to be reported in the form of the adult occupants' income tax returns; in other words, the adult occupants must file their taxes for the calendar year in order for the Landlord to calculate the rent subsidy for the next period. Because the Respondents did not file their 2020 income tax returns the Landlord could not calculate a rent subsidy for the July 2021 to June 2022 period and charged the maximum unsubsidized rent of \$1,625. The Respondents also did not file their 2021 income tax returns, resulting in the Landlord charging the maximum unsubsidized rent for the July 2022 to June 2023 period.

At the November 29th hearing, the Respondents made commitments to file the outstanding tax returns and the Applicant acknowledged that upon receipt of those filings the rent subsidy would be reassessed retroactively. It was agreed to adjourn the hearing *sine die* to give the Respondents an opportunity to fulfill their commitment and see what the revised lease balance statement would come out to. Subsequent attempts by me to get an update on the status of the Respondents' rent account were not responded to. Despite this, and in order to move the file along, the March 9th hearing date was set to reconvene the matter.

An updated lease balance statement was provided at the March 9th hearing which reflected no change to the maximum unsubsidized rent being charged. The Applicant's representative testified that because she had no information at the time to suggest otherwise she believed the Respondents had not filed their tax returns as they committed to do. Consequently, I made a finding that the Respondents had repeatedly failed to pay their rent in full when due and had accumulated substantial rental arrears in the amount of \$20,843.71. That amount represented approximately 13 months' unsubsidized rent.

However, before I could prepare the order to pay those rental arrears, the Applicant's representative contacted me the morning after the March 9th hearing. She had discovered upon refreshing the accounting system that the Respondents had apparently filed the outstanding tax returns and their rent subsidies had been reassessed retroactive to July 2021. The Applicant's representative forwarded another updated lease balance statement which reflects a subsidized rent amount of \$1,295 for the July 2021 to June 2022 period and a subsidized rent amount of \$365 for the July 2022 to June 2023 period. Those adjustments result in a substantial reduction of the rental arrears to \$4,943.71. This amount represents approximately 11 months' subsidized rent.

Given the dramatic change in the Respondent's rent account balance it only seemed fair to adjust my findings accordingly and issue an order for payment of the current balance of rental arrears. I am satisfied that the updated lease balance statement accurately reflects the current status of the rent account as of March 10, 2023. I find the Respondents have repeatedly failed to pay the rent in full when due, have failed to comply with rental officer orders to pay future rent on time, and have accumulated rental arrears in the amount of \$4,943.71.

Termination of the tenancy agreement and eviction

At the hearing on March 9th, it was determined that given the Respondents' repeated failure to pay the rent, the Respondents' repeated failure to comply with Rental Officer orders to pay future rent on time, and the substantial amount of unsubsidized rental arrears the Respondents had accumulated that termination of the tenancy and eviction were justified. An order was going to issue to terminate the tenancy March 31st with eviction for April 30th.

However, upon the Applicant's representative's discovery of the reassessment of the rent subsidies she retracted their request for termination and eviction given the substantial decrease in the amount of rental arrears. The Applicant's representative asked that the termination and eviction orders not be issued, and that only an order to pay the rental arrears and to pay future rent on time be issued. Given how the reassessments alter the perception of the degree of culpability on the Respondents, and in consideration of the fact that the Respondents did appear to have fulfilled their commitment to file their tax returns, I agreed to the Applicant's representative's respectful request and will not be issuing the termination and eviction orders.

I would like to take this opportunity, however, to emphasize to the Respondents the importance of complying with their obligations under their tenancy agreement. Just because they finally managed to get their taxes filed does not mean they were not in breach of their obligation to report their total household income as required under paragraph 6 of their written tenancy agreement. And while the reassessment of the rent subsidies resulting from the Respondents filing their tax returns does not change the fact that the Respondents failed to comply with their obligation to pay their rent every month. This pattern of behaviour is not limited to the last two years; it has been prevalent throughout the Respondents' tenancy. The risk to the Respondents' tenancy should this pattern of behaviour continue is very real, as has been indicated in these reasons for decision.

Orders

An order will issue requiring the Respondents to pay rental arrears in the amount of \$4,943.71 and requiring the Respondents to pay their rent on time in the future.

Adelle Guigon
Rental Officer