

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

BETWEEN:

HNWT

Applicant/Landlord

-and-

EA

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing:

**November 15, 2022
March 8, 2023
April 18, 2023**

Place of the Hearing:

Yellowknife, Northwest Territories

Appearances at Hearing:

**SC, Programs Advisor, representing the Applicant
RL, Manager, representing the Applicant
AA, Tenant Relations Officer, representing the Applicant**

**EA, the Respondent
MN, support person for the Respondent
RA, witness for the Respondent**

Date of Decision:

April 18, 2023

REASONS FOR DECISION

An application to a rental officer made by FSHA on behalf of HNWT as the Applicant/Landlord against EA as the Respondent/Tenant was filed by the Rental Office August 23, 2022. The application was made regarding a residential tenancy agreement for a rental premises located in Fort Simpson, Northwest Territories. The filed application was sent to the Respondent by registered mail deemed served November 3, 2022, pursuant to subsection 71(5) of the *Residential Tenancies Act* (the Act), and by email deemed received October 31, 2022, pursuant to subsection 4(4) of the *Residential Tenancies Regulations* (the Regulations).

The Applicant alleged the Respondent had repeatedly failed to pay rent in full when due, had accumulated rental arrears, had failed to comply with Rental Officer orders to pay rental arrears and to pay future rent on time, and had failed to maintain the ordinary cleanliness of the rental premises. No evidence was included in the application regarding the claims of uncleanness, so that issue was not heard. An order was sought for payment of the rental arrears, termination of the tenancy, and eviction.

A hearing scheduled for October 25, 2022, was cancelled due to the unsuccessful service of the filed application and notices of the hearing on the Respondent by that date. The hearing was rescheduled and commenced on November 15, 2022, by three-way teleconference. RL, Manager of the FSHA, AA, Tenant Relations Officer of the FSHA, and SC, Programs Advisor of HNWT's NDO, all appeared representing the Applicant. EA appeared as the Respondent with MN appearing to support the Respondent. The hearing was adjourned *sine die* pending receipt of supplementary documents, including any historical tenancy agreements that may be available and an updated and complete statement of rent account going as far back to the beginning of the tenancy as possible. The parties were encouraged to take this adjournment opportunity to meet to go through the historical data together to identify and clarify the nature of the tenancy and calculation of rent subsidies.

The hearing was scheduled to reconvene February 23, 2023, but was postponed at the request of the Respondent with the Applicant's agreement. The hearing was rescheduled and reconvened on March 8, 2023, by three-way teleconference. SC appeared representing the Applicant. EA appeared as the Respondent with MN appearing to support the Respondent and with RA, the Respondent's husband, appearing as a witness. The hearing was again adjourned to April 18, 2023, pending supplementary documents and tasks which were to be provided and completed by April 11th. Confirmation of the adjournment and the required documents and tasks were emailed to all parties March 9, 2023.

The hearing was reconvened for the final time April 18, 2023, by three-way teleconference as scheduled. SC and RL appeared representing the Applicant. EA appeared as Respondent with MN appearing to support the Respondent.

Tenancy agreement

Evidence was presented and the parties agreed that a residential tenancy agreement between the parties for subsidized public housing began in August 1996. According to testimony provided at the hearings, the tenancy agreement has always been a sole tenancy with the Respondent. I am satisfied a valid tenancy agreement is in place for subsidized public housing in accordance with the Act.

Previous orders

The Respondent appeared at the hearing held January 19, 2012, from which Rental Officer Order #10-12548 was issued. The Respondent was ordered to pay rental arrears of \$12,237 in minimum monthly installments of \$50 starting in January 2012, and the Respondent was ordered to pay her future rent on time. The Applicant confirmed that this order had been filed at the Supreme Court and has not been certified as being satisfied.

The Respondent appeared at the hearing held April 4, 2018, from which Rental Officer Order #15897 was issued. No evidence regarding the rental arrears identified under Rental Officer Order #10-12548 was provided or referenced at this hearing and therefore the order that was issued did not account for Rental Officer Order #10-12548. The Respondent was ordered under Rental Officer Order #15897 to pay rental arrears in the amount of \$13,067, and to pay her future rent on time. The Applicant confirmed that this order had been filed at the Supreme Court and has not been certified as being satisfied.

The Respondent appeared at the hearing held May 22, 2019, from which Rental Officer Order #16331 was issued. Again, no evidence regarding the rental arrears identified under Rental Officer Order #10-12548 was provided or referenced at this hearing, and therefore the order that was issued did not account for Rental Officer Order #10-12548. The Respondent was ordered to pay the rental arrears that had accumulated since Rental Officer Order #15897 was issued in the amount of \$2,355. The Respondent was also ordered to pay her future rent on time, and the tenancy was ordered terminated June 30, 2019, with an eviction order issued for July 1, 2019. The termination and eviction orders were not enforced by the Landlord, therefore, the tenancy agreement was effectively reinstated as of July 1, 2019. The Applicant confirmed that the monetary order was filed at the Supreme Court and has not been certified as being satisfied.

Rental arrears

The statement of account and lease balance statements provided by the Applicant represents the Landlord's accounting of monthly rents and payments received against the Respondent's rent account since May 2000. All rents were subsidized except for the period from July 2016 to June 2017 when the unsubsidized rent of \$1,625 per month was charged. The subsidized rent is currently assessed at \$890 per month.

The Respondent challenged the accuracy of the calculated rent subsidies throughout her tenancy. She was given repeated opportunities throughout the years, including during the course of the current application, to work directly with the Applicant's representatives to understand how the rent subsidies were calculated and how to initiate a formal reassessment.

The actual calculation of the rent subsidies is a process internal to HNWT. Prior to 2012, the rent subsidies were calculated on a monthly basis based on reported household income provided by the Tenant to the FSHA. Since 2012, the rent subsidies have been calculated on an annual basis for the July to June period based on the reported household income for the previous calendar year as reported to CRA through the Tenant's and adult occupants' tax filings.

The Rental Officer has no jurisdiction to evaluate the accuracy of the rent subsidy calculations. The Rental Officer's purview extends only to confirming that the terms of the tenancy agreement have been complied with. In the context of the rent subsidies, paragraph 6 of the written tenancy agreement requires the Tenant to provide an accurate report of the total household income for all the adult occupants of the rental premises in the form and at the time specified by the Landlord. Paragraph 7 of the written tenancy agreement specifies that as long as the Tenant is complying with the terms of the tenancy agreement they will be eligible for a rent subsidy to be calculated according to the Landlord's Public Housing Rent Scale.

In each of the previous Rental Officer hearings, the presiding Rental Officer was satisfied that the Respondent had reported the total household income as required and that as a result all rents had been assessed for rent subsidies accordingly. My review of the rent statements confirms this, and the amounts of rental arrears previously ordered are consistent with the historical rent statements.

.../5

The Applicant provided evidence confirming that the unsubsidized rent for the period from July 2016 to June 2017 was charged due to the Tenant's adult son and adult daughter failing to file their 2015 tax returns at the time. Despite being notified repeatedly since then, that those documents would need to be provided in order to recalculate the rent subsidy for that period, the Respondent did not take steps to provide the documents. The Respondent argued that her children had signed the consent for access forms back then, that she was confident they had since filed their 2015 tax returns, and that she didn't understand why the Applicant couldn't get the information directly from the CRA using the old consent forms. The Applicant's representative clarified that the consent forms are only valid for one or two years from when they're signed. Therefore, the only way the Applicant is going to get the adult children's 2015 tax filings information is if the adult children provide it themselves or sign new consent forms granting the CRA permission to disclose their 2015 filings to the Landlord. Until either of those things occur, the rent subsidy for the 2016-2017 period cannot be assessed for rent subsidies.

The rent statements do show a consistent pattern of payments being made against the rent account. Between April 2012 and June 2016 the Respondent, for the most part, complied with the order to pay minimum monthly installments towards the rental arrears. During that period, there were five months where no payments were received and five months where not enough was paid to cover the subsidized rent. Between July 2016 and May 2019 the opposite is true: while the Respondent did make consistent payments during this period, there were three months where no payments were received and 26 months where not enough was paid to cover the rent. It is during this period that the rental arrears jumped from about \$12,000 to about \$31,000. Between June 2019 and June 2022, the Respondent consistently made payments each month of an amount to cover the subsidized rent plus \$50 towards the rental arrears. During that period, there was only one month when not enough was paid to cover the rent. During that period, the Respondent's efforts reduced the total rental arrears from about \$31,000 to about \$28,000.

In July 2022, the subsidized rent increased from \$160 to \$890 per month for the 2022-2023 period. The amount and frequency of payments did not change, however, resulting in the subsidized rents not being paid in full each month since July 2022. The Respondent claimed that she had not been notified of the change in the subsidized rent, but the Applicant confirmed that lease balance statements were routinely delivered or mailed to the Applicant monthly. While I cannot be satisfied that the delivery or mailing methods used met the service of documents provisions in the Act, it seems unlikely that the Respondent would not have received any of the statements that were sent to her. Even if that were the case, the Respondent was made aware of the status of her rent account when she was served with the filed application package, as it included the lease balance statement.

The Respondent continued to pay \$210 per month even after becoming aware that her subsidized rent had increased to \$890. The Respondent argued that the subsidy needed to be reassessed because her son no longer lives with her and her husband had moved back in with her after a lengthy absence. The Respondent said she had been trying to get these changes to occupants done since last June without any response from the Landlord. The Applicant, however, provided evidence that they had in fact informed the Respondent repeatedly of what steps were necessary to make the changes she was requesting. They again clarified at the hearings that the Respondent's son must provide a sworn statement or other evidence that he maintains his own residence and no longer resides with his mother in order to be removed as an authorized occupant. Also, they again clarified that for the Respondent's husband to be added as an authorized occupant the Respondent's husband must personally attend the local housing office to complete the necessary forms, including providing consent for the CRA to disclose his tax filings. As I understand it, until those things are done, the Landlord cannot reassess the subsidized rents for the 2022-2023 period.

I am satisfied the statement of account and lease balance statement accurately reflect the current status of the Respondent's rent account. I find the Respondent has repeatedly failed to pay the full amount of the rent when due, has failed to comply with Rental Officer orders to pay future rent on time, has failed to comply with Rental Officer orders to pay rental arrears, and has accumulated rental arrears in the total amount of \$34,023.61. That amount represents approximately 77 months' subsidized rent (6.4 years).

Because Rental Officer Order #10-12548 included a minimum monthly payment plan in the order to pay rental arrears as provided for under subsection 84(2) of the Act, upon finding that the Respondent failed to comply with the installment plan, I have authority under subsection 84(3) to rescind that order and replace it with a new order to pay the rental arrears in a lump sum. Given that is in fact my finding in this case, I will be rescinding paragraph 1 of Rental Officer Order #10-12548.

Because Rental Officer Order #15897 and Rental Officer Order #16331 do not include minimum monthly payment plans, I do not have the authority to rescind either of them. Both of those orders do remain enforceable through the Supreme Court because they have been filed at the Supreme Court. As such, I will be deducting the rental arrears covered by those two orders amounting to \$15,422 from the total rental arrears of \$34,023.61 to issue an order under this file for the lump sum difference of \$18,601.61.

.../7

Purchasing the rental premises

Throughout the hearings, the Respondent argued that she has been trying to purchase the rental premises from the Landlord for many years without success. She claims she has received no communication or response to her requests, yet continues to be challenged on her tenancy. The Respondent referred to communications to the Minister of HNWT through her MLA about both the accumulated rental arrears and her efforts to purchase the property, but she did not provide evidence of those communications beyond her initial inquiries to her MLA. The Applicant's representative provided evidence that both the district office and the local housing office responded to the Respondent's inquiries. The Respondent was repeatedly informed over the years of what was needed to facilitate her request to purchase the premises. Those requirements were reiterated at these hearings.

I will not be speaking further on this issue given my jurisdiction as Rental Officer under the Act does not extend to purchasing property. Agreeing to sell property is a completely separate contract from residential tenancy agreements, and is entirely up to HNWT to choose whether or not to enter into one.

Termination of the tenancy and eviction

In light of the Respondent's repeated failure to pay the rent in full when due, the Respondent's failure to comply with Rental Officer orders to pay future rent on time, and the substantial amount of rental arrears, termination of the tenancy and eviction would be justified. However, the Respondent is an elder and with the recent motion passed in the Legislative Assembly last month calling for HNWT to forgive elders' rental arrears, I am mindful that the possibility exists that the issue of the rental arrears may be resolvable. Additionally, the Respondent has yet to access other resources to reduce her debt, such as Jordan's Principle. Whether it's through a forgiveness of the debt or through Jordan's Principle or other resources, the Respondent must take active actions to address the debt.

In recognition of the possibilities arising with respect to resolving the debt, it seems to me the immediate issue is really about the Respondent paying her rent in full and on time. While it is good business practice for the Landlord to notify the Tenant when their subsidized rent changes, given one cannot expect the Tenant to pay the rent in full if they don't know that it's changed, the subsidized public housing Landlord is not obligated under the Act to do so. Rather, it is the Tenant who is responsible for ensuring the rent is paid in full when due. This means, in the subsidized public housing context, that as much as the Landlord should be keeping their Tenants informed of changes to the subsidized rent amount, it is the Tenant who should also be regularly checking on their rent account status. If the Tenant hasn't seen or received an updated lease balance statement recently, the Tenant should ask the Landlord for it and the Landlord must provide it.

The Respondent is aware, and it was confirmed again at the hearings, that her monthly subsidized rent is currently assessed at \$890. That is the least amount the Respondent must pay every month, until the rent subsidy is reassessed. Given the fluid situation with respect to resolution of the debt, I am only satisfied termination of the tenancy is justified if the Tenant continues failing to pay the full amount of the monthly subsidized rent on time going forward. That conditional termination order will be issued to give the Tenant six months to show she can comply with her obligation to pay her rent on time. The six-month time period is also being issued in an effort to provide adequate time for the mentioned options for resolving the rental arrears to occur (i.e. debt forgiveness or Jordan's Principle).

An eviction order will not issue at this time, but the Landlord may make a new application for an eviction order should the Respondent continue failing to comply with her obligations, including resolving the rental arrears by whichever means becomes available to her. The Respondent was cautioned at the last hearing that this would likely be her last chance to preserve her tenancy given this is the fourth rental officer order since 2012 addressing the same issue of rental arrears.

Orders

An order will issue:

- rescinding paragraph 1 of Rental Officer Order #10-12548, and ordering the Respondent to pay the balance of rental arrears not accounted for under Rental Officer Order #15897 and Rental Officer Order #16331 in the amount of \$18,601.61 (p. 41(4)(a), ss. 84(3));
- requiring the Respondent to pay her rent on time in the future (p. 41(4)(b)); and
- terminating the tenancy October 31, 2023, unless the monthly subsidized rents for May to October are paid in full and on time (p. 41(4)(c), ss. 83(2)).

Adelle Guigon
Rental Officer