

IN THE MATTER between **HNT**, Applicant, and **CB**, 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 **hamlet of Tuktoyaktuk in the Northwest Territories**;

BETWEEN:

HNT

Applicant/Landlord

-and-

CB

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	October 5, 2023
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	DM, representing the Applicant CB, the Respondent LT, advocate for the Respondent
<u>Date of Decision:</u>	November 15, 2023

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An application to a rental officer made by THA/HNT as the Applicant/Landlord against CB as the Respondent/Tenant was filed by the Rental Office March 28, 2023. The application was made regarding a residential tenancy agreement for a rental premises located in Tuktoyaktuk, Northwest Territories. The filed application was served on the Respondent by registered mail deemed served April 27, 2023, pursuant to subsection 71(5) of the *Residential Tenancies Act* (the Act).

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, had caused damages to the rental premises, and had failed to pay costs of repairs in a timely manner. An order was sought for payment of the rental arrears, payment of future rent on time, payment for costs of repairs, termination of the tenancy, and eviction. At the hearing, the Applicant withdrew their requests for termination and eviction orders as long as the Respondent could follow an agreement to pay the arrears.

A hearing scheduled for May 17, 2023, was postponed at the Respondent's request. The hearing was rescheduled to June 27, 2023, but again was postponed at the Respondent's request. The hearing was rescheduled to September 13, 2023, but had to be postponed again, this time due to the Yellowknife wildfire evacuation closing the Rental Office. The hearing was finally rescheduled and held on October 5, 2023, by three-way teleconference. DM appeared representing the Applicant. CB appeared as the Respondent with LT appearing as an Advocate for the Respondent.

Tenancy agreement

Evidence was presented establishing a residential tenancy agreement between the parties for subsidized public housing that began November 11, 1995. The Respondent was transferred into the current rental premises on July 21, 2014. I am satisfied a valid tenancy agreement is in place in accordance with the Act.

Previous orders

Rental Officer Order #20-314 was issued February 5, 1990, and ordered the Respondent to pay rental arrears at the time of \$2,912 and ordered termination of the tenancy for February 28, 1990. The termination order was not enforced by the Landlord, rendering the tenancy reinstated as of March 1, 1990.

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Rental Officer Order #20-6328 was issued October 23, 2000, and ordered the Respondent to pay rental arrears at the time of \$8,032; ordered the Respondent to pay costs of repairs of \$825.63; ordered the Respondent to pay the total arrears in minimum monthly installments of \$100 starting in October 2000; and ordered the Respondent to pay their future rent on time.

Rental Officer Order #20-10172 was issued September 9, 2008, and ordered the Respondent to pay rental arrears in the amount of \$22,370.50; ordered the Respondent to pay costs of repairs in the amount of \$943.40; ordered conditional termination of the tenancy September 30, 2008, unless the household income for May, June, and July was reported; and ordered the Respondent to pay their future rent on time. The Landlord did not enforce the termination order despite the household income apparently not having been reported for the referenced period. Consequently, the tenancy agreement was effectively reinstated as of October 1, 2008. The monetary order to pay costs of repairs was satisfied by July 13, 2012. The monetary order to pay rental arrears has not been satisfied.

The Applicant confirmed that Rental Officer Order #20-10172 was never filed with the Territorial Court. As such, that order is now expired and unenforceable.

Rental arrears

The lease balance statement provided with the application included transactions entered between August 1, 2022, and March 20, 2023. A complete lease balance statement or accounting of the rent account since April 2008 was requested in order to validate the claimed balance as accurately representing the rental arrears accumulated since the last Rental Officer Order was issued. Those documents, consisting of tenant ledger cards for the period from April 2008 to March 2012 and the lease balance statement for the period from April 2012 to November 2023, were provided on November 15, 2023.

The tenant ledger cards and lease balance statements represent the Landlord's accounting of monthly rents and payments received against the Respondent's rent account since April 1, 2008. I have confirmed that the balance owing as of August 22, 2008, matches the Rental Officer's findings of rental arrears owing in Rental Officer Order #20-10172.

All rents since Rental Officer Order #20-10172 was issued have been subsidized and have been assessed at \$70 per month since July 2012. There were consistent efforts between July 2012 and March 2021 to make monthly payments in excess of the monthly subsidized rent amount, although those extra payments have been relatively minimal and had little impact on the overall balance of rental arrears. Over the last 36 months of the tenancy there are 17 months in which no payments were made. The vast majority of the rental arrears have been carried forward since the last Rental Officer Order was issued.

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The Respondent did not dispute the accuracy of the Landlord's accounting, acknowledging their debt and accepting responsibility for it. Through their Advocate, the Respondent testified that they are on a very limited income and are doing their best to make the payments of \$170 per month that they previously agreed to. They are making inquiries to see what other resources might be available to the Respondent to resolve the debt, including asking the Minister's Office to write off the oldest arrears. The Respondent asked if the monthly payment plan could be reduced to \$140 per month to provide them with some relief.

The Applicant's representative agreed to reducing the amount of the payment plan, but emphasized the importance of the Respondent making the payments every month. The \$140 would include the \$70 for the subsidized rent and \$70 towards the rental arrears.

I am satisfied the tenant ledger cards and the lease balance statement accurately reflect the current status of the Respondent's rent account. I find the Respondent has repeatedly failed to pay the rent in full when due, has failed to comply with a Rental Officer Order to pay the rental arrears, and has failed to comply with Rental Officer Orders to pay future rent on time. I find the Respondent has accumulated rental arrears in the amount of \$25,090.77. That amount represents more than 13 years' of primarily subsidized rent.

Given this Respondent's personal circumstances and their commitment to follow a payment plan, I am satisfied that including an order for the Respondent to make minimum monthly installments is appropriate. At the hearing I identified October 2023 as the starting month for the minimum monthly installments, however, given the updated documents were not provided until mid-November I have taken the liberty of adjusting the starting month to November 2023. The referenced rental arrears also include the November 2023 subsidized rent.

Damages

At the hearing and before the submission of the updated lease balance statement and tenant ledger cards, it appeared as though there would be a credit as of February 26, 2021, of \$491.49 resulting from payments described as being made towards costs of repairs. However, upon reviewing the updated documents the credit for costs of repairs was re-calculated to \$1 as of February 26, 2021.

Two work orders were provided in support of claims for costs of repairs. One was for \$49 to unclog the kitchen sink p-trap in December 2016. The Respondent did not dispute this charge, and the payment of \$50 received February 26, 2021, covered that cost.

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The second work order was for two call-outs on December 21 and 23, 2022, related to complaints regarding the stove burners and oven not working. Maintenance personnel attended the premises both times and inspected the stove. At the first visit they observed the stove was extremely dirty, that three of the stove top burners were no longer working due to apparent improper use, and that the oven was functioning properly. The maintenance personnel replaced the three stove top burners. At the second visit, the maintenance personnel again observed the stove was extremely dirty, but determined upon investigation that the burners and oven were both functioning properly. The Respondent was charged a total of \$442.49 for the two after-hours call-outs and repair.

The Respondent disputed that she was responsible for the condition of the stove and for the burners being damaged. She claimed that the stove was at least 15 years old and had not been working for a long time. It had been repaired many times before, but then stopped working again in the Spring of 2022. The Respondent's Advocate testified that she began helping the Respondent in November and helped her submit a work order regarding the stove then. However, it has only recently come to the Advocate's attention that the Respondent suffers from a neurological disorder that is affecting her memory. It was conceded that the November work order may have been the first request since the last time the stove was repaired. If I understand correctly, the stove burners were replaced in November when the work order was submitted. The Respondent's Advocate is suggesting that the stove burners keep failing because the stove itself is failing due to its age, not because of any actions or negligence on the Respondent's part.

The Applicant's representative confirmed that the stove was old when the Respondent moved into the premises and was due to be replaced. She also confirmed that there had been three previous work orders submitted before the November work order, all regarding the burners not working. The first one was submitted in 2015, when maintenance personnel determined that the burners were all working okay, but they replaced one of them anyway and acknowledged they were old. The next two work orders were submitted in 2017 and all the burners were replaced then.

The stove itself was not replaced until February 2023. It seems to me that despite the apparent uncleanliness of the stove that there is sufficient reason to suspect that the age of the stove was a likely contributing factor to the burners repeatedly failing. However, the call-outs on December 21st and 23rd were not just about the burners as the Respondent was also complaining that the oven wasn't working. The burners were replaced at the December 21st call-out, and the oven was determined to be functioning properly. During the December 23rd call-out it was determined that both the burners and the oven were functioning properly.

The second work order was for two call-outs on December 21 and 23, 2022, related to complaints regarding the stove burners and oven not working. Maintenance personnel attended the premises both times and inspected the stove. At the first visit they observed the stove was extremely dirty, that three of the stove top burners were no longer working due to apparent improper use, and that the oven was functioning properly. The maintenance personnel replaced the three stove top burners. At the second visit, the maintenance personnel again observed the stove was extremely dirty, but determined upon investigation that the burners and oven were both functioning properly. The Respondent was charged a total of \$442.49 for the two after-hours call-outs and repair.

The Respondent disputed that she was responsible for the condition of the stove and for the burners being damaged. She claimed that the stove was at least 15 years old and had not been working for a long time. It had been repaired many times before, but then stopped working again in the Spring of 2022. The Respondent's Advocate testified that she began helping the Respondent in November and helped her submit a work order regarding the stove then. However, it has only recently come to the Advocate's attention that the Respondent suffers from a neurological disorder that is affecting her memory. It was conceded that the November work order may have been the first request since the last time the stove was repaired. If I understand correctly, the stove burners were replaced in November when the work order was submitted. The Respondent's Advocate is suggesting that the stove burners keep failing because the stove itself is failing due to its age, not because of any actions or negligence on the Respondent's part.

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While I am not satisfied that the Respondent can be held entirely responsible for the burner replacements on the December 21st call-out, I am satisfied that she should be liable for some of the call-out given that despite her insistence to the contrary there was nothing wrong with the oven. The same applies with respect to the December 23rd call-out, which I am satisfied the Respondent should be liable for given there was nothing in fact wrong with either the burners or the oven on that date either. I am prepared to allow a total of 2 service hours for both call-outs, at a rate of \$70.92 per hour for a total compensation amount of \$141.84. The previously mentioned \$1 credit will be applied to that balance.

Orders

An order will issue:

- requiring the Respondent to pay rental arrears in the amount of \$25,090.77 (p. 41(4)(a));
- requiring the Respondent to pay their future rent on time (p. 41(4)(b));
- requiring the Respondent to pay costs for after-hours call-outs in the amount of \$140.84 (p. 43(3)(c)); and
- requiring the Respondent to pay at least \$140 per month towards the monthly subsidized rents and rental arrears starting in November 2023 and continuing until the rental arrears are paid in full (ss. 84(2)).

Adelle Guigon
Rental Officer

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