

IN THE MATTER between **EK**, Applicant, and **JS and EDS**, 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 **city of Yellowknife in the Northwest Territories**;

BETWEEN:

EK

Applicant/Landlord

-and-

JS and EDS

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	November 9, 2023
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	AJS, TPM, representing the Applicant PS, TPM, representing the Applicant EDS, the Respondent
<u>Date of Decision:</u>	November 9, 2023

REASONS FOR DECISION

An application to a rental officer made by TPM on behalf of EK as the Applicant/Landlord against JS and EDS as the Respondents/Tenants was filed by the Rental Office October 11, 2023. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was personally served on the Respondents October 18, 2023.

The Applicant alleged the Respondents had repeatedly failed to pay the rent and had accumulated rental arrears. An order was sought for payment of the rental arrears, termination of the tenancy, and eviction.

A hearing was held November 9, 2023, by three-way teleconference. AJS and PS appeared representing the Applicant. EDS appeared as the Respondent and on behalf of JS.

Tenancy agreement

Evidence was presented establishing a residential tenancy agreement between the parties commencing September 15, 2016. I am satisfied a valid tenancy agreement is in place in accordance with the *Residential Tenancies Act* (the Act).

Rental arrears

The client aged detail entered into evidence represents the Landlord's accounting of monthly rents and payments received against the Respondents' rent account. At the beginning of the tenancy the rent was established at \$2,400; the rent was increased to \$2,550 as of November 2020. The last payment received against the rent account was recorded June 29, 2023, in the amount of \$2,611. Over the last 12 months of this tenancy there are two months that the rent was paid late and five months where no payments were received.

The Respondent did not dispute the Applicant's claims, agreeing that they have not paid the rent since June and acknowledging their accumulated debt to date. The Respondent confirmed they do intend to leave the premises, but are still looking for alternate accommodations and requested a termination date of December 31st. The Respondent made no indication of how or when the rental arrears and December's rent would be paid.

The Applicant testified that the Respondents had been paying their rent through automatic monthly EFTs. All those EFTs since July have been reversed due to insufficient funds (NSF). The Applicant had been charging the Respondents \$45 per month for NSF fees. The Applicant also requested that late payment penalties be applied.

The Applicant argued against delaying termination of the tenancy to the end of December on the grounds that the repeated failure to pay the rent to date has resulted in extraordinary hardship to the Landlord and to permit the Respondents' to continue residing at the rental premises any longer would exacerbate the debt and its impact on the Landlord.

I am satisfied the client aged detail accurately reflects the payments received against the Respondents' rent account. I find the Respondent has repeatedly failed to pay rent when due.

The Applicant's claim for NSF fees is denied. Section 41 of the Act does not provide for the landlord to recover losses suffered as a direct result of the tenant's failure to pay the rent.

The Applicant's request for late payment penalties is granted. Subsection 41(2) of the Act provides for the Landlord to charge penalties for the late payment of rent, calculated in accordance with the *Residential Tenancies Regulations* (the Regulations). Section 3 of the Regulations specifies how the late payment penalties are to be calculated. I have calculated the late payment penalties that the Applicant is entitled to based on the client aged detail at \$428.

I find the Respondents liable to the Applicant for rental arrears, including late payment penalties, in the total amount of \$12,999.

Termination of the tenancy and eviction

In light of the Respondents' repeated failure to pay the rent and the substantial amount of rental arrears that have accumulated, I am satisfied termination of the tenancy agreement is justified. I agree with the Applicant that the termination and eviction orders should not be delayed given the likelihood that the rent for December will also not be paid and the impact that would continue to have on the Landlord.

Orders

An order will issue:

- requiring the Respondents to pay rental arrears in the amount of \$12,999 (p. 41(4)(a));
- terminating the tenancy November 30, 2023 (p. 41(4)(c));
- evicting the Respondents from the rental premises December 1, 2023 (p. 63(4)(a)); and
- requiring the Respondents to pay overholding rent after November 30, 2023, at a rate of \$83.84 per day to a maximum of \$2,550 per month (p. 63(4)(b)).

Adelle Guigon
Rental Officer