

IN THE MATTER between **NPR Limited Partnership**, Applicant, and **Charlene Klengenberg**, 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**, Deputy Rental Officer, regarding a rental premises located within the **City of Yellowknife in the Northwest Territories**.

BETWEEN:

NPR LIMITED PARTNERSHIP

Applicant/Landlord

- and -

CHARLENE KLENGENBERG

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the tenant shall pay to the landlord rental arrears in the amount of four thousand seventy-one dollars and forty-one cents (\$4,071.41) and late payment penalties in the amount of fifty-one dollars (\$51.00), for a total amount payable of four thousand one hundred twenty-two dollars and forty-one cents (\$4,122.41).
2. Pursuant to section 41(4)(c) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Apartment 318 at 492 Range Lake Road in Yellowknife, Northwest Territories, shall be terminated on May 13, 2013, and the tenant shall vacate the premises on that date unless the rental arrears are paid in full.

DATED at the City of Yellowknife in the Northwest Territories this 30th day of April 2014.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **NPR Limited Partnership**, Applicant, and **Charlene Klengenberg**, 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**, Deputy Rental Officer.

BETWEEN:

NPR LIMITED PARTNERSHIP

Applicant/Landlord

-and-

CHARLENE KLENGENBERG

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: April 24, 2013

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: Connie Diener for the Applicant

Date of Decision: April 24, 2013

REASONS FOR DECISION

Application

The application package submitted by the Applicant/Landlord was received and filed by the Rental Office on February 27, 2013, respecting a tenancy agreement for Apartment 318 at 492 Range Lake Road in Yellowknife, Northwest Territories. The Applicant personally served a copy of the filed application on the Respondent on March 5, 2013.

The application package indicated that the Applicant was seeking the following remedies pursuant to the *Residential Tenancies Act*:

- payment of rental arrears pursuant to section 41(4)(a);
- termination of the tenancy agreement for non-payment of rent pursuant to section 41(4)(c);
- termination of the tenancy agreement for repeatedly late payment of rent pursuant to section 54(1)(g); and
- an eviction order pursuant to section 63(1).

Exhibits attached to the application include:

Exhibit 1: Tenancy Agreement made July 6, 2011 [sic]

Exhibit 2: Tenant Ledger from June 28, 2012, to February 18, 2013

Hearings

A hearing on this application was originally scheduled for April 3, 2013, for which notices were served on the Applicant personally on March 18, 2013, and on the Respondent by registered mail sent March 18, 2013. The Rental Officer confirmed receipt of the notice by the Respondent on April 2, 2013.

Both the Applicant and the Respondent were present at the hearing on April 3, 2013, before Rental Officer Hal Logsdon. At that time, the Respondent requested an adjournment in order to seek legal counsel. The Rental Officer granted the application for adjournment and set the matter over to the next hearings in April, 2013.

Subsequent notices regarding the April 24th hearing date were served on the Applicant in person on April 10, 2013, and on the Respondent by registered mail sent on April 9, 2013. The notice was signed for as received by the Respondent on April 15, 2013.

On April 24, 2013, Ms. Connie Diener appeared representing the Applicant. Neither the Respondent nor any representative for the respondent appeared. As all required notices were confirmed delivered and the Respondent was aware of the adjournment of this hearing, the hearing proceeded in her absence.

Submissions

The Applicant submitted at hearing an updated Tenant Ledger representing account entries from June 28, 2012, to April 22, 2013 [Exhibit 3]. Further, the Applicant confirmed that they were seeking an order for payment of rental arrears and late payment penalties, termination of the tenancy for non-payment of rent, and an eviction order.

At hearing it was noted by me that the Tenancy Agreement was made "this 6 day of July, 2011", that the term of the lease commenced August 1, 2012 and ended July 31, 2013, and that early occupation began July 6, 2012. The Applicant confirmed that the date the Tenancy Agreement was made should read 2012 rather than 2011. The remaining dates referenced are accurate.

The Tenancy Agreement also indicates that the monthly rent amount effective August 1, 2012, was set at \$1,670. The pro-rated partial-month rent amount for July 2012 was established at \$1,400.65. The security deposit was set at \$1,670.

The Tenant Ledger reflects a charge for the security deposit of \$835 (half of the total amount owing) on June 28, 2012. Three subsequent entries of payments on July 5, 2012, for \$835, August 2, 2012, for \$417.50, and September 6, 2012, for \$417.50 were described as payments for rent, however, the Applicant confirmed that these were incorrectly described on the ledger and should be applied against the security deposit owing. She also acknowledged that it did not

appear that the remaining \$835 for the security deposit was entered in the Tenant Ledger and that she would remedy that. Therefore, I am able to determine that the security deposit has been paid in full by the tenant pursuant to section 14(2) of the *Residential Tenancies Act*.

The Tenant Ledger further reflects partial rent for July 2012 and full rent for August 2012 through April 2013 totalling \$16,430.65. Payments made by the tenant applied against the rent and accounted for in the Tenant Ledger total \$12,359.24. Of the paid amount, \$200 was paid directly by the Respondent and the remaining \$12,159.24 was paid by Income Support. Income Support paid the full amount of monthly rent for July, August, September, October, November, March, and April, and paid partial amounts against the rent for December. Income Support did not pay any amounts against January and February rent. The total amount of rent payable by the tenant to date is \$4,071.41.

Late payment penalties totalling \$163 were also applied against the Tenant Ledger pursuant to section 41(2) of the *Residential Tenancies Act* and calculated in compliance with section 3 of the *Residential Tenancies Regulations*. All payments made during the tenancy were made after they were due. In acknowledgment that the majority of the payments were made by Income Support, an entry was made on March 4, 2013, crediting \$112 of the late fees charged to date, amending the total amount of late payment penalties to \$51.

Determinations

Section 54(1)(g) of the *Residential Tenancies Act* speaks to termination of the tenancy for repeatedly late payment of rent with a minimum of 10-days notice by the landlord. Section 54(4) of the *Residential Tenancies Act* specifies that “a landlord who has given a notice of termination under subsection (1) shall make an application to a rental officer for an order to terminate the tenancy agreement...”. As the landlord in this instance did not submit any evidence that they did in fact give a minimum of 10 days notice to terminate the tenancy to the Respondent, termination of the tenancy cannot be considered under section 54.

Section 41(1) of the *Residential Tenancies Act* requires a tenant to pay rent to the landlord on the dates specified by the tenancy agreement. The evidence submitted by the Applicant in this matter clearly shows that approximately 2.5 months of rent equalling \$4,071.41 currently remains outstanding.

Section 41(2) of the *Residential Tenancies Act* confirms that tenants are liable to any late payment penalties that are justifiably applied against them, calculated in accordance with the *Residential Tenancies Regulations*. The evidence submitted by the Applicant in this matter clearly shows that the Respondent's rent has never been paid on time and that the late payment penalties applied by the Applicant currently equal \$51.

Order

In consideration of the evidence that has been brought before me, an order shall be made requiring the payment of rental arrears in the amount of \$4,071.41 and late payment penalties in the amount of \$51, for a total amount payable of \$4,122.41. Further, an order shall be made terminating the tenancy agreement on May 13, 2013, if the rental arrears are not paid in full by that date. An eviction order shall also be made under separate cover which will be effective May 14, 2013, if the rental arrears have not been paid in full by May 13, 2013.

Adelle Guigon
Deputy Rental Officer