

IN THE MATTER between **NPR Limited Partnership**, Applicant, and **Brian MacDonald**, Respondent;

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act") and amendments thereto;

AND IN THE MATTER of a Hearing before, **Adelle Guigon**, Deputy Rental Officer, regarding a rental premises within the **City of Yellowknife in the Northwest Territories**.

BETWEEN:

NPR Limited Partnership

Applicant/Landlord

- and -

Brian MacDonald

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 41(4)(a) and 83(2) of the *Residential Tenancies Act*, the Respondent shall pay to the Applicant rental arrears in the amount of \$6,730 (six thousand seven hundred thirty dollars) and late payment penalties owing in the amount of \$235 (two hundred thirty-five dollars) in minimum monthly increments of no less than \$500 (five hundred dollars).

2. Pursuant to sections 41(4)(c) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the Applicant and the Respondent shall be terminated on November 30, 2013, if the rental arrears are not paid in full by that date.
3. Pursuant to section 41(4)(b) of the *Residential Tenancies Act*, the Respondent shall pay his rent on time in the future.

DATED at the City of Yellowknife in the Northwest Territories this 21st day of May 2013.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **NPR Limited Partnership**, Applicant, and **Brian MacDonald**, 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-

Brian MacDonald

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: May 17, 2013

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: Connie Diener, representing the Applicant
Megan LeFrancois, representing the Applicant
Brian MacDonald, Respondent
Arlene Hache, for the Respondent
Sue Qitsualik, for the Respondent

Date of Decision: May 17, 2013

REASONS FOR DECISION

Application

This application was submitted by the Applicant/Landlord and filed by the Rental Office on February 27, 2013, respecting a tenancy agreement for Apartment 204, 48 Con Road, in Yellowknife, Northwest Territories. The Applicant personally served a copy of the filed application on the Respondent/Tenant on March 5, 2013.

The application 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 June 23, 2011

Exhibit 2: Tenant Ledger for February 13, 2012, to February 18, 2013

Hearings

Three hearings were scheduled. The hearing scheduled for April 3, 2013, was attended by a representative for the Applicant and presided over by Rental Officer Hal Logsdon, but the Respondent did not attend. Service on the Respondent of notice of the hearing had been attempted by registered mail sent March 18, 2013, which had not been signed for by the Respondent, and attempts by the Rental Officer to contact the Respondent by telephone prior to the hearing were unsuccessful. The Rental Officer adjourned the matter to the next scheduled sitting.

The hearing scheduled for April 24, 2013, was attended by both parties and presided over by Deputy Rental Officer Adelle Guigon. This hearing was adjourned to May 17, 2013, at which time both parties attended and the Deputy Rental Officer presided.

Submissions

At the April 24, 2013, hearing it was learned that the Respondent had been suffering from medical problems for some time and had actually been in surgery the day of the last scheduled hearing.

Exhibits submitted at the April 24, 2013, hearing included:

Exhibit 3: Tenant Ledger for February 13, 2012, to April 22, 2013

Exhibit 4: Alberta Health Services Regional Financial Agreement signed by the Respondent on March 22, 2013

Exhibit 5: Attending Doctor's Certificate signed April 23, 2013, confirming medical clearance for the Respondent to return to work

Exhibit 6: Correspondence from John Doody, General Manager of Arctic Painting Ltd., dated April 23, 2013, confirming the Respondent's employment tentatively scheduled to start May 15, 2013, with salary yet to be determined

The Respondent did not dispute the rental arrears alleged, however, he did indicate the reasons for the rental arrears stem from the fact that he had been suffering from an undiagnosed medical condition that had become over time progressively worse, to the point that he was not able to continue working and earning an income. The medical condition finally resulted in a diagnosis requiring surgery, which it was previously mentioned took place on April 3, 2013. The Respondent has been recovering quickly enough since that surgery to be able to return to work.

Further, the respondent indicated that, due to an incident which occurred at the apartment building, his son – of whom the Respondent has primary custody – no longer felt safe in that building and went to live temporarily with his mother in Clyde River, Nunavut. Since then the Respondent had been unsuccessfully applying for a transfer to another building within the Applicant's properties in order to facilitate the return of his son. This was mentioned to support the Respondent's testimony that he had in fact been receiving support from Income Support due to his medical condition but because his son was not currently living with him they would only pay an amount for rent according to single occupant calculations, which were insufficient to cover the full rent for the Respondent's apartment. The Respondent submitted that had he been able to secure a transfer to another building his son would have returned to live with him and he would have received benefits from Income Support to pay the full amount of the rent based on family occupant calculations.

Although the representative for the Applicant could not speak to the status or history of the requests for transfer, Ms. Diener did suggest that it is possible they may not have had any suitable units available to transfer the Respondent to at the time.

The Applicant was not adverse to making a payment plan, however, their practice is to discuss those options at a Rental Office hearing in order to provide them with an enforceable order.

In light of the Respondent's circumstances relating to the reasons for his rental arrears and the Respondent now being medically cleared for work, having secured employment which was not expected to begin until some time about or after May 15, 2013, and for which a salary had not yet been confirmed, it was agreed that an adjournment of this hearing to allow the Respondent to gather more detailed information to facilitate the negotiation of an agreeable payment plan would be appropriate.

At the May 17, 2013, hearing further exhibits submitted included:

Exhibit 7: Correspondence addressed to Northern Properties from John Doody, Administrator of Arctic Painting Ltd., dated May 15, 2013

Exhibit 8: Tenant Ledger for February 13, 2012 to May 16, 2013

Exhibit 7 spoke to the Respondent's employer's willingness to make payments directly to the landlord on behalf of the Respondent for his monthly rent plus an additional \$500 per month towards the Respondent's rental arrears until they are paid off. The Respondent clarified that these amounts to be paid directly by the employer would be deducted by the employer from the Respondent's monthly salary. It was confirmed at hearing by both parties that the employer had in fact already submitted a payment of \$750 towards the balance of rent owing. It was also clarified that ultimate responsibility for the payment of rent and rental arrears fell to the Respondent/Tenant, regardless of the employer's stated intent to cover the rent.

When queried by both the Applicant and the Deputy Rental Officer regarding the proposed payments of \$500 per month towards the rental arrears, and the acknowledgement that this proposed amount would take approximately 13 months to pay the rental arrears in full, the Respondent clarified that it was his intention to make additional payments, over and above the \$500 per month his employer would be putting forward. The amounts of each of these additional payments would depend largely on what the Respondent could afford at any given time, but he expected to be able to repay the rental arrears in full within six to eight months.

In light of the Respondent's circumstances, the Applicant was prepared to accept the payment plan offered, varied such that the Respondent would be required to pay a minimum of \$500 per month towards the rental arrears and only if they could obtain an order terminating the tenancy agreement if the rental arrears were not paid in full within six months. The Applicant indicated they would be satisfied without the eviction order at this time, acknowledging that if they ended up needing it they could apply for an eviction order at a later date.

Determination

As evidenced by the Tenant Ledger for February 13, 2012, to May 16, 2013, [Exhibit 8], I find the tenant does have rental arrears in the amount of \$6,730, and unpaid Late Payment Penalties in the amount of \$235. This Tenant Ledger also shows a pattern of repeatedly late payment of rent. I also find that the varied payment plan and the request for a termination of tenancy order without an eviction order is fair in the circumstances.

With respect to the Applicant's application for termination of the tenancy agreement pursuant to s. 54(1)(g) of the *Residential Tenancies Act*, this section speaks to the landlord's right to give a minimum of 10 days notice to a tenant to terminate the tenancy agreement in the event "the tenant has repeatedly failed to pay the full amount of the rent or to pay the rent on the dates specified in the tenancy agreement." S. 54(4) of the *Residential Tenancies Act* requires the landlord "who has given a notice of termination under subsection (1)" to make an application to a rental officer for a termination order. Although there is evidence to support the allegation of repeatedly late payment of rent, there is no evidence before me that the minimum 10-days notice has been given in accordance with s. 54(1)(g) of the *Residential Tenancies Act* and, therefore, I cannot consider an order to termination the tenancy agreement pursuant to s. 54(4) of the *Residential Tenancies Act*.

Order

An order will issue that the Respondent shall pay to the Applicant rental arrears in the amount of \$6,730 and late payment penalties in the amount of \$235, for a total amount owing of \$6,965, to be paid in minimum monthly increments of no less than \$500; that the tenancy agreement shall be terminated on November 30, 2013, unless the rental arrears are paid in full by that date; and that the Respondent shall pay future rent on time.

Adelle Guigon
Deputy Rental Officer