

IN THE MATTER between **BEHCHOKO KO GHA K'AODEE**, Applicant, and
CATHY LAFFERTY AND GARY FOOTBALL, Respondents;

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, **HAL LOGSDON**, Rental Officer,
regarding the rental premises at **BEHCHOKO, NT**.

BETWEEN:

BEHCHOKO KO GHA K'AODEE

Applicant/Landlord

- and -

CATHY LAFFERTY AND GARY FOOTBALL

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondents shall pay the applicant rent arrears in the amount of one thousand six hundred forty four dollars and three cents (\$1644.03).

DATED at the City of Yellowknife, in the Northwest Territories this 5th of June, 2013.

Hal Logsdon
Rental Officer

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CATHY LAFFERTY AND GARY FOOTBALL, Respondents.

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

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BETWEEN:

BEHCHOKO KO GHA K'AODEE

Applicant/Landlord

-and-

CATHY LAFFERTY AND GARY FOOTBALL

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: May 23, 2013

Place of the Hearing: Behchoko, NT

Appearances at Hearing: Jessica Relucio, representing the applicant
Ioan Astle, representing the applicant
Therese Migwi, representing the applicant
Cathy Lafferty, respondent

Date of Decision: June 5, 2013

REASONS FOR DECISION

Although no formal notice of termination was executed by the applicant, this tenancy agreement was terminated by frustration when the premises were destroyed by fire on August 25, 2012. The applicant alleged that the respondents had breached the tenancy agreement by failing to pay rent and by failing to repair damages to the rental premises. The premises were subsidized public housing.

The applicant has executed numerous written tenancy agreements for four rental premises with one or both of the respondents since November, 2001. The agreements constitute three distinct tenancies for the following terms:

November 1, 2001 - August 1, 2005 with both respondents for unit #625D

October 1, 2005 - February 13, 2011 with Cathy Lafferty as sole tenant for unit #659A

February 14, 2011 - August 25, 2012 with both respondents for units #362 and #785A

The accounting records for these tenancies do not differentiate one tenancy from another. The closing rent balance of one tenancy was carried forward as the opening balance of the next.

Similarly, a ledger for repairs of tenant damage contains a running balance of all repair costs and does not differentiate one tenancy from another.

A security deposit of \$600 was collected in October 2001, applied against cumulative repair costs in February, 2011 and the balance of repair costs carried forward to the last tenancy. It also appears that another security deposit was collected at some point during the third tenancy and

applied to rent arrears in August, 2012.

Rather than making a separate application for each tenancy, the applicant has made a single application with an analysis of the rent account attributing rent arrears to the three distinct tenancies. The analysis assumes that all payments made are applied to the most recent tenancy agreement. The applicant submits that the cumulative arrears of \$19,204.02 should be assigned to the three tenancies as follows:

November 1, 2001 - August 1, 2005, joint tenancy (#625D) - \$6582.68

October 1, 2005 - February 13, 2011, Cathy Lafferty as sole tenant (#659A) - \$11,043.25

February 14, 2011 - August 25, 2012, joint tenancy (#362 and #785A) - \$1578.09

There is no similar analysis of the repair cost account although the repair dates range from 2000 to 2012.

The applicant sought the following orders:

An order requiring the respondents to pay rent arrears of \$6582.68.

An order requiring Cathy Lafferty to pay rent arrears of \$11,043.25.

An order requiring the respondents to pay rent arrears of \$1578.09

An order requiring Cathy Lafferty to pay repair costs of \$646.76.

The respondent did not dispute the amount owing. She stated that they had met with the applicant and had agreed to pay the rent arrears in monthly installments of \$150. She stated that she made a payment in March, 2013 of \$100 which did not appear on the ledger. The applicant

acknowledged that a \$100 payment had been made. The respondent stated that her partner was incarcerated and she didn't believe she would be able to pay the agreed \$150.

Section 68(1) of the *Residential Tenancies Act* sets out a time limitation on applications.

68. (1) An application by a landlord or a tenant to a rental officer must be made within six months after the breach of an obligation under this Act or the tenancy agreement or the situation referred to in the application arose.

A rental office may extend this limitation if in his/her opinion it is not unfair to do so. The authority to grant leave is contained in section 68(3).

68.(3) A rental officer may extend the time for the making of an application to the rental officer, whether or not the time for making the application to a rental officer has expired, where the rental officer is of the opinion that it would not be unfair to do so.

The applicant submitted that the delay was the result of significant counselling efforts undertaken with the respondents as evidenced by the numerous notices provided to the tenants. She stated that there was some expectation that the tenants would comply with their obligation to pay rent. The applicant also stated that there were children involved and extra efforts were made to preserve the tenancy.

The first tenancy ended in September, 2005 over seven years ago. According to the applicant's list of correspondence, there was only one notice sent within six months after the tenancy ended (March, 2006). The notice was most likely sent to Ms Lafferty since she was the sole tenant at that time. The letter itself was not entered in evidence. The alleged balance of \$6582 includes

repair costs of \$947.90 which was later reversed and is now part of the amount claimed against Cathy Lafferty. There were no work orders detailing the repairs undertaken or cost detail. Also included in the balance are unidentified debits of \$1132 and \$18.93. The security deposit collected for this tenancy was not applied until February 2011 and was applied to cumulative repair costs of \$1429.49, some of which represent repairs pursuant to later tenancy agreements and one charge that predates any of the three agreements.

The second tenancy ended on February 13, 2011 over two years ago. In February, 2009 a note to file indicates that the tenant, Cathy Lafferty, acknowledged rent arrears of \$18,718.48 and agreed to pay the monthly rent plus an additional \$100/month until the rent arrears were paid. When the tenancy agreement ended in February, 2011 the rent arrears had fallen to \$17,625.93 indicating that only about \$45/month had been paid against the arrears. No payments have been made since. Although the applicant testified that all of the rent assessments had been adjusted to the household income, it appears that the full unsubsidized rent was applied on three occasions in 2007 and 2008. Given the usual rent assessments during this period the assessments do not appear to be based on the household income.

The application was filed on March 25, 2013 seven months after the premises were destroyed and the tenancy agreement terminated. On January 28, 2013 the respondents acknowledged that \$20,028.73 was owing and the respondent testified that they had agreed to pay \$150/month until the rent arrears were paid. The payments of \$150 were made in January, February and April. No payment was made in March and no payment has been received in May.

It was evident at the hearing that the respondent had little idea of how the arrears had accrued or how they had been allocated to the three tenancies. The applicant's representatives had considerable difficulty with the facts of the matter and were unable to provide answers to questions such as the disposition of the security deposit. Some of the applicant's testimony, such as the adjustment of rent to reported income, appeared to be more guesswork than fact. My own efforts to disentangle the rent arrears and repair costs left me with less than complete confidence that the result was accurate, particularly with the two earlier tenancy agreements.

In my opinion, there are not sufficient grounds to extend the time limitation for the two earlier tenancy agreements. The history of rent payments would not lead a prudent property manager to conclude that the arrears would be paid without resorting to legal action. The age of these rent arrears and repair costs and the method by which they are derived, make it difficult if not impossible for the respondents to address the allegations. Notwithstanding the respondents' acknowledgement of the debt which is, in my opinion, motivated more by the desire to get another unit than an acknowledgement of accuracy, I do not believe that it would be fair to consider the earlier tenancy agreements at this late date. In my opinion, it is not unfair to consider the most recent agreement and I shall extend the time limitation related to this tenancy.

I find the total amount owing from the most recent tenancy agreement (February 14, 2011 to August 25, 2012) to be \$2794.01. This amount includes two repair costs related to this tenancy which I find to be reasonable. Applying the security deposit which was held for this tenancy agreement and the accrued interest first to the repair costs, I find rent arrears of \$1644.03

calculated as follows:

Rent assessed (March, 2011 - August, 2012)	\$4915.00
Rent paid (March, 2011 - February 2013)	(2186.93)
Rent paid (unposted)	(100.00)
Invoice #6927	106.56
Invoice #6935	<u>59.38</u>
Subtotal	\$2794.01
Less security deposit and interest	<u>(1149.98)</u>
Rent arrears	\$1644.03

An order shall issue requiring the respondents to pay the applicant rent arrears in the amount of \$1644.03.

Hal Logsdon
Rental Officer