

IN THE MATTER between **Harvey Hamilton**, Applicant, and **Crystal Chraifi**,  
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 **Town of Hay River in the Northwest  
Territories.**

BETWEEN:

**HARVEY HAMILTON**

Applicant/Landlord

- and -

**CRYSTAL CHRAIFI**

Respondent/Tenant

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(b) of the *Residential Tenancies Act*, the Respondent shall pay her rent on time in the future.

DATED at the City of Yellowknife in the Northwest Territories this 17th day of June  
2014.

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Adelle Guigon  
Deputy Rental Officer

IN THE MATTER between **Harvey Hamilton**, Applicant, and **Crystal Chraifi**,  
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-and-

**CRYSTAL CHRAIFI**

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**REASONS FOR DECISION**

|                                       |   |
|---------------------------------------|---|
| <b><u>Date of the Hearing:</u></b>    | <b>June 10, 2013</b>  |
| <b><u>Place of the Hearing:</u></b>   | <b>Yellowknife, Northwest Territories, via Teleconference</b>             |
| <b><u>Appearances at Hearing:</u></b> | <b>Harvey Hamilton, the Applicant<br/>Crystal Chraifi, the Respondent</b> |
| <b><u>Date of Decision:</u></b>       | <b>June 10, 2013</b>  |

## **REASONS FOR DECISION**

### **Application**

This application package, submitted by the Applicant regarding the rental premises known as 18-61 Woodland Drive in Hay River, Northwest Territories, was filed by the Rental Office on May 16, 2013. The Applicant personally served a copy of the filed application package on the Respondent on May 24, 2013.

The Applicant requested in the application package the following remedies pursuant to the *Residential Tenancies Act* (the Act):

- Termination of the tenancy agreement for repeatedly late payment of rent pursuant to section 54(1)(g) of the Act; and
- Eviction pursuant to section 63(4) of the Act.

Included in the application package as exhibits were the following:

Exhibit 1: 10-day Notice of Termination signed May 14, 2013

Exhibit 2: CIBC Statement of Account from March 1, 2013, to May 14, 2013

Exhibit 3: Income Assistance Program Financial Case Reports for February, March, and April 2013

Exhibit 4: Applicant's Written Submission

### **Hearing**

A hearing was scheduled for June 7, 2013. Both parties appeared at the hearing as scheduled. To permit the Applicant an opportunity to review the documentation submitted by the Respondent (reference later), the hearing was adjourned to June 10, 2013. Both parties appeared at the hearing as adjourned.

### **Submissions**

Shortly before the June 7<sup>th</sup> hearing, the Respondent faxed a 19-page submission to the Rental Office. This submission consisted of the following:

Exhibit 5: Receipt issued by the Applicant to the Respondent dated January 31, 2013, for a total payment made of \$1,700

Exhibit 6: Receipt issued by the Applicant to the Respondent dated February 28, 2013, for a total payment made of \$650

Exhibit 7: Receipt issued by the Applicant to the Respondent dated May 13, 2013, for a total payment made of \$1,549

Exhibit 8: Respondent's Written Submissions

At the June 7<sup>th</sup> hearing the Respondent clarified that while her birth name is Crystal King, as indicated on the application, her married name is Crystal Chraifi, as referenced on the cash receipts, and she prefers to go by her married name. I acknowledged this request and agreed to process the order and reasons in her married name.

It was acknowledged at hearing that the Applicant had not received a copy of the submission made by the Respondent. In fairness to the Applicant, the hearing was adjourned to June 10<sup>th</sup> to give the Respondent the opportunity to provide the Applicant with a copy of her submission and allow the Applicant to review the content thereof.

At the continuation of the hearing on June 10<sup>th</sup> it was learned that the Applicant had not received the Respondent's written submission. The Respondent indicated that she was currently on medication which prohibits her from driving – and which also requires her to be off work temporarily – so she could not deliver her written submission to the Applicant as planned. She did attempt to contact the Applicant on his cell phone yesterday, both by direct dialling and text messaging, requesting that he pick up the written submission, but she did not receive a response from him. Unbeknownst to her, the Applicant does not use his cell phone outside of work during the week.

In an effort to move forward with this matter, I read out the contents of the receipts and summarized the relevant portions of the written submissions on the record, advising the Applicant that should he wish further clarity or opportunity to receive the whole package that we could discuss it further. The Applicant indicated he was satisfied with learning what was read out to him and did not dispute the receipts.

The parties agreed that the oral tenancy agreement began February 1, 2013, that the rent is \$1,200 per month, and that utilities are payable by the tenant to the landlord. The utilities are in the landlord's name.

The Applicant spoke regarding his concern that he was not kept informed as to when payments were being deposited to his account, and reiterated that the rent and utilities were due the first of the month. He submitted that he usually had to go to the tenant seeking the rent and payment for the utilities, and he felt that it was not his responsibility to have to keep going to her to make sure the rent was paid. He currently does not receive monthly statements from his bank – although he is trying to remedy that – and he does not use on-line banking. The Applicant's banking information was provided to Income Support to facilitate direct deposit of the Respondent's assessed rent and utilities paid by Income Support.

The Respondent submitted that she was receiving income assistance and at the commencement of the tenancy she informed the Applicant that the payments from Income Support always took a few days to process; that the process is she attends Income Support with her income and expense information on the 1<sup>st</sup> or 2<sup>nd</sup> of the month, as the business calendar permits, they process her data that day and calculate her payments, and then the deposits to her account and/or her landlord's account are sent through the system resulting in the money actually being deposited in the receiving account around the 4<sup>th</sup> or 5<sup>th</sup> of the month. She established that the dates of the deposits coming from Income Support are consistent. The Respondent maintains that she informed the Applicant of this process at the commencement of the tenancy and that she believed he understood the rent would not be paid until the 4<sup>th</sup> or 5<sup>th</sup> of each month.

It was established at hearing that the real concern of the Applicant was receiving payment for the rent and utilities on time so that he could pay his own bills without delay.

### Determinations

#### *Payments*

The CIBC Statement of Account submitted by the Applicant represents payments made to the Applicant's bank account by Income Support on behalf of the Respondent. The first payment deposited was for \$1,450 on March 5, 2013. The second payment deposited was for \$2,202.35 on April 4, 2013. These amounts are corroborated by the Income Assistance Program Financial Case Reports submitted by the Applicant regarding the Respondent's income assistance calculations and transactions for February, March, and April 2013. I accept these payments as accurate and being made for the tenancy between the parties.

The Income Assistance Program Financial Case Reports indicate that the March 5<sup>th</sup> deposit represents the rent of \$1,200 and \$250 for the security deposit and that the April 4<sup>th</sup> deposit represents the rent of \$1,200, utilities totalling \$752.35, and \$250 for the security deposit. I accept that these reports corroborate the direct deposits made to the Applicant's account for payments made on behalf of the Respondent.

The receipt dated January 31, 2013, was made out to Crystal Chraifi and signed by Harvey Hamilton acknowledging receipt of a total of \$1,700 which was further identified as including \$1,200 for the February rent and \$500 representing 50 percent of the security deposit. This was not disputed and I accept it as accurately reflecting the payment made.

The receipt dated February 28, 2013, was made out to Crystal Chraifi and signed by Harvey Hamilton acknowledging receipt of a total of \$650 which was further identified as including \$500 for the security deposit and \$150 for utilities. This was not disputed and I accept it as accurately reflecting the payment made.

The receipt dated May 13, 2013, was made out to Crystal Chraifi and signed by Harvey Hamilton acknowledging receipt of a total of \$1,549 which was further identified as including \$1,200 for rent paid May 6, 2013, and \$349 for utilities paid May 13, 2013. This was not disputed and I accept it as accurately reflecting the payments made.

In reviewing all the payments made as reflected by the receipts and the bank statement I extrapolate the following as of May 13, 2013:

| Date              | Description                     | Rent              | Utilities         | Security Deposit  |
|-------------------|---------------------------------|-------------------|-------------------|-------------------|
| January 31, 2013  | Cash Receipt                    | \$1,200.00        |                   | \$500.00          |
| February 28, 2013 | Cash Receipt                    |                   | \$150.00          | \$500.00          |
| March 5, 2013     | Direct Deposit - Bank Statement | \$1,200.00        |                   | \$250.00          |
| April 4, 2013     | Direct Deposit - Bank Statement | \$1,200.00        | \$752.35          | \$250.00          |
| May 6, 2013       | Cash Receipt                    | \$1,200.00        |                   |                   |
| May 13, 2013      | Cash Receipt                    |                   | \$349.00          |                   |
|                   |                                 |                   |                   |                   |
| <b>TOTALS</b>     |                                 | <b>\$4,800.00</b> | <b>\$1,251.35</b> | <b>\$1,500.00</b> |

*Table 1*

### *Security Deposit*

Based on the receipt dated January 31, 2013, which specifically identifies \$500 as 50 percent of the security deposit, I deduce the total security deposit requested to be \$1,000. As Income Support identified two payments of \$250 each being paid directly to the landlord on behalf of the tenant specifically for the remaining security deposit owing, I will apply the tenant's cash payment of \$500 evidenced by the receipt dated February 28<sup>th</sup> towards the utilities. The security deposit was not disputed. I accept that the payment of the security deposit has been satisfied in accordance with the Act.

### *Tenancy Agreement*

Section 9 of the Act states a tenancy agreement may be oral, written or implied. The parties to this tenancy agree they made an oral agreement regarding this tenancy. Based on the information provided and testimony given, I accept the tenancy agreement made is an oral agreement which took effect February 1, 2013.

### *Rent Due Date*

While the parties agreed that an oral tenancy agreement was entered into, the parties disagreed as to the established due date for the rent to be paid by. The Applicant believes the rent due date was set at the 1<sup>st</sup> of the month; the Respondent believes the rent due date was set at the 4<sup>th</sup> or 5<sup>th</sup> of the month. The Respondent testified to informing the landlord that she was on income assistance which processed payments by direct deposit which were historically received on the 4<sup>th</sup> or 5<sup>th</sup> of the month, depending on the business calendar. The Applicant acknowledged this, but maintained that the due date for the rent to be paid was set for the 1<sup>st</sup> of the month. The Respondent's position was corroborated by the Applicant's bank statements which reflected receipt of the rent for March and April on the 5<sup>th</sup> and 4<sup>th</sup> of the months respectively. In an oral agreement, and where the payments made to date have been consistently paid on a particular date, as in this case, a finding must be made in favour of the tenant and, therefore, I find that the due date for the rent to be paid is established as the 5<sup>th</sup> of the month.

## *Rent*

Section 1 of the Act defines “rent” as:

““rent” includes the amount of any consideration paid or required to be paid by a tenant to a landlord...for the right to occupy rental premises and for any services and facilities...that the landlord provides for the tenant in respect of his or her occupancy of the rental premises, whether or not a separate charge is made for the services and facilities...”

Section 1 of the Act includes utilities and related services in the definition of “services and facilities”.

Sections 47(1), (2), and (3) of the Act state:

47. (1) Notwithstanding a change in landlord, no landlord shall increase the rent in respect of a rental premises until 12 months have expired from
- (a) the date the last increase in rent for the rental premises became effective; or
  - (b) the date on which rent was first charged, where the rental premises have not been previously rented.
- (2) The landlord shall give the tenant notice of the rent increase in writing at least three months before the date the rent increase is to be effective.
- (3) An increase in rent by a landlord is not effective until three months have expired from the date of the notice of the rent increase.

Section 10 of the Act states a tenancy agreement is deemed to include the provisions of the form of a tenancy agreement set out in the regulations. Part 4 of the form tenancy agreement included in the Schedule of the *Residential Tenancies Regulations* (the Regulations) speaks to rent as follows:



#### 4. RENT

The Tenant agrees to pay the Landlord \$\_\_\_\_\_ on the \_\_\_\_\_ day of every \_\_\_\_\_, plus the following charges:

\$\_\_\_\_\_ for parking for each vehicle

\$\_\_\_\_\_ for \_\_\_\_\_

\$\_\_\_\_\_ for \_\_\_\_\_

*If the Tenancy Agreement is made for a fixed term and the rental premises are not subsidized public housing check one of the following:*

- ☐ The rent shall not be increased during the term of the Tenancy Agreement.
- ☐ The rent may be increased during the term of the Tenancy Agreement, 12 months after the last rental increase on these rental premises and with notice to the Tenant. (Section 47 of Act)

The date of the last rental increase for the rental premises was \_\_\_\_\_, 20\_\_\_\_\_.

**[NOTE:** A tenant who does not pay his or her rent on the date specified in the tenancy agreement may be liable to a penalty. (Section 41 of Act)]

In my opinion, the inclusion of utilities as rent is not meant to be a variable dollar amount, rather it is meant to be a fixed figure. Were the utilities included in rent intended to be variable the application of section 47 with respect to the requirement to give 90 days written notice of a rent increase once in a 12-month period would be impossible. The amount charged for utilities to be paid to the landlord must be established at a fixed rate.

As the oral tenancy agreement currently stands, the parties agreed that the rent would consist of the premises rent of \$1,200 plus utilities. Due to the manner in which the parties have dealt with the utilities to date, that being the landlord requesting payment of utilities invoices upon receipt of those invoices, I calculate the total utilities invoices to date by the landlord to be \$1,399.93. This breaks down to a monthly average of \$349.98 over four months. I find it reasonable to apply \$350 per month as a fixed rate for utilities. This results in a total rent and utilities payable monthly by the tenant to the landlord of \$1,550.

Should the landlord choose to continue submitting monthly invoices to the tenant for payment of actual costs of utilities, the tenant is only required to pay up to a maximum of \$350 in any given month. Of the payments made towards utilities, \$350 per month must be paid by the tenant or on behalf of the tenant no later than the 5<sup>th</sup> of each month. Should the tenant (or Income Support as the case may be) make payments for utilities in a particular month greater than \$350 the difference may either be carried forward or returned to the tenant.

Having established the total monthly rent payable (including utilities) at a flat rate of \$1,550 and applying the payments identified in Table 1 against the total rent and utilities for February through May, I find that as of May 13<sup>th</sup> the tenant carries a credit in her favour of \$101.35 calculated as follows:

**Table 2**

| <b>Date</b>       | <b>Rent including Utilities</b> | <b>Payments Made</b> | <b>Balance</b> |
|-------------------|---------------------------------|----------------------|----------------|
| January 31, 2013  |                                 | \$1,200.00           | (\$1,200.00)   |
| February 5, 2013  | \$1,550.00                      |                      | \$350.00       |
| February 28, 2013 |                                 | \$150.00             | \$200.00       |
| March 5, 2013     | \$1,550.00                      | \$1,450.00           | \$300.00       |
| April 4, 2013     |                                 | \$1,952.35           | (\$1,652.35)   |
| April 5, 2013     | \$1,550.00                      |                      | (\$102.35)     |
| May 5, 2013       | \$1,550.00                      |                      | \$1,447.65     |
| May 6, 2013       |                                 | \$1,200.00           | \$247.65       |
| May 13, 2013      |                                 | \$349.00             | (\$101.35)     |

In recognition of the rather sporadic application of the utilities bills, which were not disputed by the tenant, I accept that the receipt of payments as reflected in Table 2 shows a consistency on the part of the tenant to honour the payment of her rent as she became aware of the amounts being requested and I am satisfied for all intents and purposes that as of May 13, 2013, the tenant has not been late paying her rent for any month except May.

Notice of Termination

The 10-day Notice of Termination signed by the Applicant on May 14, 2013, notified the Respondent that the landlord was terminating the tenancy effective May 24, 2013, for repeatedly late payment of rent pursuant to section 54(2)(g) of the Act. I would note that the correct section which should be referenced is 54(1)(g) of the Act. However, having established that the rent was not repeatedly late, this notice is of no effect. At any rate, I find that termination of the tenancy is not warranted.

Order

An order will issue requiring the Respondent to pay her rent on time in the future.

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Adelle Guigon  
Deputy Rental Officer