

IN THE MATTER between **Paulatuk Housing Association**, Applicant, and **Andrew Green**, 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 Hamlet of Paulatuk in the Northwest Territories**.

BETWEEN:

PAULATUK HOUSING ASSOCIATION

Applicant/Landlord

- and -

ANDREW GREEN

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent must pay to the applicant rental arrears in the amount of \$1,766.00 (one thousand seven hundred sixty-six dollars);
2. Pursuant to section 45(4)(a) of the *Residential Tenancies Act*, the respondent must comply with his obligation to report his monthly income to the applicant and to pay and maintain his utilities accounts for the rental premises known as Unit 55 in Paulatuk, Northwest Territories;

3. Pursuant to section 45(4)(d) of the *Residential Tenancies Act*, the respondent must pay to the applicant expenses directly associated with the repair of the electrical circuit to the rental premises known as Unit 55 in Paulatuk, Northwest Territories, in the amount of \$535.50 (five hundred thirty-five dollars fifty cents);
4. Pursuant to sections 41(4)(a), 45(4)(e), and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties regarding the rental premises known as Unit 55 in Paulatuk, Northwest Territories, will be terminated April 30, 2014, and the respondent must vacate the rental premises on or before that date, unless the rental arrears and repairs expenses totalling \$2,301.50 (two thousand three hundred one dollars fifty cents) are paid in full.

DATED at the City of Yellowknife in the Northwest Territories this 21st day of January 2014.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Paulatuk Housing Association**, Applicant, and **Andrew Green**, 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:

PAULATUK HOUSING ASSOCIATION

Applicant/Landlord

-and-

ANDREW GREEN

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	January 15, 2014
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories, via Teleconference
<u>Appearances at Hearing:</u>	Marjorie Hansen, representing the Applicant Andrew Green, representing himself
<u>Date of Decision:</u>	January 17, 2014

REASONS FOR DECISION

An application to a rental officer made by Paulatuk Housing Association as the applicant/landlord against Andrew Green as the respondent/tenant was filed by the Rental Office November 26, 2013. The application was made regarding a tenancy agreement for the rental premises known as Unit 55 in Paulatuk, Northwest Territories. The applicant served a filed copy of the application package on the respondent by registered mail sent December 20, 2013; it was deemed served December 27, 2013, pursuant to section 71(5) of the *Residential Tenancies Act* (the Act).

The applicant alleged the tenant had accumulated rental arrears and caused damages to the rental premises. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for January 15, 2014. Both parties were served with notices of the hearing by registered mail sent December 19, 2013. Ms. Marjorie Hansen appeared representing the applicant; Mr. Andrew Green appeared representing himself.

Ms. Hansen testified that Mr. Green had been in a tenancy agreement for subsidized public housing with the applicant since December 2010 at the rental premises known as Unit 55 in Paulatuk, Northwest Territories. Mr. Green had accumulated rental arrears as of January 1, 2014, of \$12,906. Ms. Hansen pointed out that the maximum monthly economic rent had been applied for the months of June 2013 through to January 2014 as Mr. Green had not attended the applicant's office to report his monthly income, which the tenant is required to do in accordance with his tenancy agreement. She indicated if he were to confirm at the office that his income had not changed during those months his rent would be re-assessed to \$70 per month, reducing the rental arrears owing as of January 1, 2014, to \$1,906.

Ms. Hansen also testified that Mr. Green was directly responsible for the utilities to the rental premises, an obligation specified in the tenancy agreement. She provided evidence in the form of notices from the Northwest Territories Power Corporation (NTPC) that Mr. Green has repeatedly been in arrears with paying his power bill over the course of the tenancy. Ms. Hansen provided a copy of a location connection detail from NTPC dated October 4, 2013, referencing the installation of a power limiter to the electrical supply box for the rental premises. Ms. Hansen testified power limiters are installed on units when the tenants fail to pay their power bills; the

power limiters restrict the amount of power supplied to the house, rather than cutting the power off completely. The applicant discovered that Mr. Green had by-passed the electrical supply box when the power was cut off by connecting a wire directly from the breaker panel to a junction box outside of the unit, thereby gaining additional power into the unit. Ms. Hansen identified this action as a breach of section 12(d) of the tenancy agreement, which specifies that a tenant shall not make any alterations or additions to the premises without the landlord's prior consent.

Mr. Green acknowledged he had accumulated rental arrears and had not reported his income for the months alleged. He did, however, state he did not realize he would need to report his income monthly when it had not changed. Mr. Green told me his income consists of a military pension and the occasional honorarium from consulting on community boards; his total annual income is no more than \$13,000. From that, \$600 per month is automatically withdrawn by Revenue Canada towards back taxes. This leaves him with less than \$500 per month for rent, utilities, food, and other necessities of life; \$500 is barely enough to cover Mr. Green's food costs alone in Paulatuk, leaving him with nothing to pay his rent and utilities. Hence, his power being cut off for failure to pay his power bill.

Mr. Green stated the power had been cut off completely prior to the power limiter being installed; for this reason he connected a power line to the sewer circuit so he could heat his home and cook his food. Mr. Green is an electrician by trade, so the connecting of the power was done in a safe manner. He did concede the act in and of itself was improper as he was not given permission by either his landlord or NTPC to conduct the work. He advised the amount of power the limiter permits is not enough to operate his stove and, since the by-pass was removed, he can only use a slowcooker to make his meals.

Mr. Green advised me he had just finalized the first stage of applying for his residential school settlement and anticipated, after speaking with his lawyer, completing the remaining stages and receiving a cheque by the end of March 2014. He expects the cheque to be more than sufficient to remedy his rental arrears and utilities arrears.

When asked, Mr. Green told me he had attempted to access income support a few times and been denied each time. I am having difficulty understanding how an elder with an income of \$13,000 per year living in Paulatuk can be denied income support, but that arena is not mine to judge here today. Although Ms. Hansen reiterated the applicant's desire for an order terminating the tenancy

primarily due to the illegal act of by-passing the power circuits, she did offer to coordinate a meeting between herself, Mr. Green, and the income support worker, all of whom are expected to be in Paulatuk at the same time at the end of the month. Mr. Green replied positively to this offer.

Tenancy agreement

The residential tenancy agreement entered into evidence is dated April 1, 2012, for a month-to-month tenancy starting April 1, 2012, in subsidized public housing at Unit 55 in Paulatuk, Northwest Territories. The tenant ledger cards submitted into evidence reflect accounting for a tenancy which began December 1, 2010. Mr. Green disputed neither the tenancy agreement nor the tenant ledger cards. I am satisfied a residential tenancy agreement has been in existence between the parties since December 1, 2010, for subsidized public housing.

Rental arrears

The tenant ledger cards entered into evidence are the landlord's accounting of assessed rent and payments made. They show Mr. Green has made one \$32 payment against his account, in January 2011; no other payments have been made by Mr. Green since. Aside from the calculation of subsidized rent for the months of June 2013 to January 2014, Mr. Green does not dispute the accuracy of the tenant ledgers or that he has accumulated rental arrears. I am satisfied the tenant ledger cards accurately reflect payments made by Mr. Green towards his rent.

Mr. Green has not reported his income since May 2013. The tenancy agreement identifies the maximum monthly rent (economic rent) for the rental premises as \$1,883; however, the tenant ledger cards reflect the application of \$1,445 economic rent per month. As Mr. Green had not reported his income since June 2013, the landlord assessed the economic rent of \$1,445 per month for June 2013 to January 2014. Ms. Hansen testified that if Mr. Green reported his income as unchanged for those months his rent would be re-assessed at \$70 per month and his rental arrears re-calculated to \$1,766. Having heard under oath that Mr. Green's income has not changed since the last time he reported his income, I find Mr. Green has accumulated rental arrears of \$1,766 as of January 15, 2014.

Tenant damages

The applicant submitted into evidence notices from NTPC dated June 13, 2011, and February 24, 2012, reflecting arrears to NTPC by Mr. Green for power consumption. Also submitted is a location connection detail from NTPC dated October 4, 2013, noting the installation of a power limiter to the rental premises. The applicant was notified at the time of the installation of the power limiter that Mr. Green had or had permitted the re-connection of power to the unit by connecting a wire directly to the breaker panel from an external junction box, effectively by-passing the unit's electrical circuits. Ms. Hansen testified this was done without the landlord's knowledge or consent. Mr. Green did not dispute this argument and confirmed he had made the connection. The applicant issued a work order to their maintenance staff to disconnect the by-pass, and had a qualified local contractor repair the equipment. The invoices for this work, as entered into evidence, total \$535.50 (as opposed to \$537.50 as testified to by Ms. Hansen). I am satisfied the by-pass of the electrical circuits was done by Mr. Green without the knowledge or consent of the landlord and I find Mr. Green responsible for compensating the landlord for the resulting repairs in the amount of \$535.50.

Termination of the tenancy

On September 25, 2013, the landlord served Mr. Green with a notice terminating his tenancy effective October 31, 2013, for failing to pay rental arrears. They requested the payment of the rental arrears, the reporting of income to date, the payment of his power bill and securing of an account with NTPC by October 31, 2013, if Mr. Green wished to continue his tenancy.

Section 51(5) of the Act specifies that a tenancy agreement for subsidized public housing that is renewed as a monthly tenancy under section 49(1) of the Act may be terminated by the landlord on the last day of a period of the tenancy by giving notice not later than 30 days before that date. Section 49(1) of the Act states where a tenancy agreement ends on a specific date it is deemed renewed on that date as a monthly tenancy. Section 49(2)(a) states that section 49(1) does not apply where the landlord and tenant have entered into a new tenancy agreement. Sections 51(3) and (4) speak to termination of a tenancy agreement for subsidized public housing where the agreement *specifies* a date for termination of the agreement.

As the parties entered into a new tenancy agreement on April 1, 2012, which did not specify a date for termination of the tenancy, this landlord is not in a position to terminate the tenancy under section 51 of the Act. However, this landlord could be deemed to have given Mr. Green a notice to terminate the tenancy under section 54(1)(g) of the Act due to Mr. Green repeatedly failing to pay the full amount of the rent or to pay the rent on the dates specified in the tenancy agreement. In this case, the landlord has complied with the Act by filing an application to a rental officer pursuant to section 54(4). Section 54(4) of the Act also says a rental officer *may* issue an order terminating the tenancy.

Mr. Green has testified to the financial constraints which have forced him to choose between paying rent and eating; he has established the need for financial assistance, validating his eligibility for subsidized public housing. It is unfortunate (and I qualify this with the knowledge that I do not possess all the necessary information on the matter) that Mr. Green has not been successful in obtaining income assistance, but I am hopeful this will change when he meets with the income assistance officer at the end of the month. I acknowledge the applicant's desire to discourage the alteration of their housing units by their tenants, as Mr. Green has done. The performance of this act, although done in desperation, cannot be condoned.

In my opinion, however, unconditional termination of the tenancy agreement may be an extreme reaction in this instance. Mr. Green has never been brought before the Rental Officer before, with any landlord in the Northwest Territories. While the rental arrears that have accumulated since 2011, Mr. Green has a plausible explanation for his failure to pay his subsidized rent, citing the admitted need for financial assistance. Mr. Green has also offered an expectation of financial income in the near future which would allow him to satisfy the bills he carries. The point of offering subsidized public housing is to assist those in need; Mr. Green has been identified as such an individual, but one that needs further assistance. Any payments of any amount made by Mr. Green since 2011 certainly would have at least shown to the landlord's that he was making an effort, but he did not or was not able to do even that. He has, however, testified to the expectation of receiving monies in the near future.

Having found Mr. Green to have rental arrears, to have repeatedly been late paying his rent, and to have altered the rental premises without permission, and balancing that against Mr. Green's obvious need for financial assistance, his expectation of a residential school settlement, and the responsibility he has accepted for his actions, I find a conditional termination order is warranted.

An order will issue that Mr. Green pay \$1,766 in rental arrears, that he reports his monthly income, that he pays for and maintains his utilities account, that he pay \$535.50 for repairing the electrical circuit connections, and that the tenancy will be terminated April 30, 2014, unless the rental arrears and tenant damages totalling \$2,301.50 are paid in full.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Applicant's Termination Notice of an Indeterminate Tenancy Agreement correspondence to respondent dated September 25, 2013
- Exhibit 2: Tenant ledger card for tenant damages
- Exhibit 3: Applicant's invoice number 001-2014 dated November 22, 2013
- Exhibit 4: Applicant's work order number 004162 dated November 18, 2013
- Exhibit 5: Millennium Construction Ltd. Invoice number 4845 dated November 19, 2013
- Exhibit 6: Applicant's requisition order number PO-399 dated November 18, 2013, to Millennium Construction Ltd.
- Exhibit 7: NWT Power Corporation location connection detail dated October 4, 2013
- Exhibit 8: NWT Power Corporation 48 Hour Disconnect/Load Limiting Device Notice correspondence to respondent dated June 13, 2011
- Exhibit 9: NWT Power Corporation 48 Hour Disconnect/Load Limiting Device Notice correspondence to respondent dated February 24, 2012
- Exhibit 10: Set of three (3) photographs of breaker box power bypass
- Exhibit 11: Tenant ledger card for rent from December 1, 2010, to November 1, 2013
- Exhibit 12: Residential tenancy agreement - indeterminate lease dated April 1, 2012
- Exhibit 13: Tenant ledger card for rent from April 1, 2013, to January 1, 2014
- Exhibit 14: Statutory declaration of Eileen Ruben and Lottie Thrasher declared January 15, 2014