

IN THE MATTER between **NWT Housing Corporation**, Applicant, and **Stephanie Poole**, 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 **community of Lutselk'e in the Northwest Territories**.

BETWEEN:

NWT HOUSING CORPORATION

Applicant/Landlord

- and -

STEPHANIE POOLE

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 \$2,950.00 (two thousand nine hundred fifty dollars).
2. Pursuant to section 41(4)(b) of the *Residential Tenancies Act*, the respondent must pay her rent on time in the future.

DATED at the City of Yellowknife in the Northwest Territories this 29th day of September 2014.

Adelle Guigon
Deputy Rental Officer

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REASONS FOR DECISION

<u>Date of the Hearing:</u>	September 23, 2014
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories, by teleconference
<u>Appearances at Hearing:</u>	Jessica Relucio, representing the applicant Stephanie Poole, respondent
<u>Date of Decision:</u>	September 29, 2014

REASONS FOR DECISION

An application to a rental officer made by NWT Housing Corporation as the applicant/landlord against Stephanie Poole as the respondent/tenant was filed by the Rental Office June 2, 2014. The application was made regarding a subsidized public housing residential tenancy agreement for the rental premises known as Unit 173 in Lutselk'e, Northwest Territories. The applicant personally served a copy of the filed application on the respondent June 17, 2014.

The applicant alleged the respondent had accumulated rental arrears and requested either a mediated agreement where the respondent and her common-law spouse enter into a Supported Lease Program agreement and provide household income verification or an order to evict the respondent from the rental premises. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for September 23, 2014, by teleconference. Ms. Jessica Relucio appeared representing the applicant. Ms. Stephanie Poole appeared as respondent.

Ms. Relucio testified that Ms. Poole and her former partner, Mr. Brian Sanderson, took possession of Unit 173 in Lutselk'e, Northwest Territories, under the terms of a homeownership program agreement which at the time was called the Homeownership Independent Housing Program (HIHP). The HIHP agreement was signed by Ms. Poole and Mr. Sanderson on March 22, 2002, when they took possession of the premises, but it was not signed by the applicant.

In July 2002 correspondence was sent to Ms. Poole and Mr. Sanderson confirming that their monthly payments based on reported household income would be fully subsidized so they would have zero dollar monthly payments until their household income increases. The correspondence also confirmed the separation of Ms. Poole and Mr. Sanderson, and that Mr. Sanderson would no longer be residing in the premises; the applicant confirmed Ms. Poole, being the parent having physical care and control of her children, was entitled to retain possession and occupancy of the house under the applicant's policy. In correspondence provided by Mr. Sanderson in January 2012, Mr. Sanderson confirmed that he has no claim to the premises, that he and Ms. Poole separated in August 2002, and that he has not resided in the premises since then.

Annual requests for updated household income verifications in the form of taxpayer consent forms were made to Ms. Poole by the applicant which were complied with until 2009. Testimony at hearing revealed an apparent misunderstanding after 2009 which led Ms. Poole to believe she should submit the taxpayer consent forms via her employer, whom she incorrectly assumed was forwarding them to the applicant; hence the applicant failing to receive the requested forms for 2009 to 2012.

In January 2013 a review of Ms. Poole's file by the applicant was completed and discovered there was no formal written rental or purchase agreement between the parties for the premises and that the terms of the HIHP agreement initially intended was transferred to the Lease to Purchase Program (LPP) in 2002 when the applicant was notified of the respondent's separation from Mr. Sanderson. Ms. Poole was notified by correspondence of the review and its results, and was asked to enter into a formal written agreement and available program options were outlined. Ms. Poole replied to that correspondence in April 2013 and confirmed she has occupied the premises since 2002, that there are deficiencies to the premises which must be addressed and which the applicant has been repeatedly informed of over the years, and that she is not prepared to enter into a new agreement without assurances that the deficiencies will be addressed. The applicant replied to Ms. Poole's concerns by correspondence, confirming a unit condition rating would be completed on the premises to identify and conduct required repairs; they also expressed appreciation for Ms. Poole's expressed willingness to provide income verification and requested she do so for all adult occupants of the premises.

In January 2014 the applicant notified the respondent that her tenancy agreement now fell under the Supported Lease Program (SLP) and that effective April 1, 2014, her subsidized rent assessed on household income reported to date would be \$300 per month for the next four years and that the maximum monthly rent under the SLP for the premises was \$1,150. Up to April 2014 Ms. Poole's rent remained assessed at zero dollars based on last reported household income. Ms. Poole did not start paying the new assessed rent in April 2014, prompting the applicant to file this application to a rental officer.

Ms. Relucio reiterated the applicant's position that the tenancy agreement between the parties was implied when the respondent took possession of the premises in 2002. She also reiterated that the applicant did not intend to charge the respondent re-assessed rent for the months prior to April 2014 if the respondent and her common-law spouse, Adrian Nataway, agreed to execute a SLP tenancy agreement. Otherwise, the applicant requested an order evicting the respondent from the rental premises.

Ms. Poole disputed that any form of tenancy agreement was actually in place, citing a verbal conversation she had with Brian Hebert, senior program advisor at the time, prior to returning to the premises in 2002. Ms. Poole testified that shortly after moving in to the premises in March 2002 she had to leave the community due to family violence in the home. She did not return to the community until she learned Mr. Sanderson had been incarcerated, and then returned to the premises after a conversation with Mr. Hebert from which she believed the premises was being provided to her as an emergency shelter. She questioned the appropriateness of bringing this matter before the rental officer under the *Residential Tenancies Act* (the Act).

Ms. Poole acknowledged receipt of Mr. Hebert's July 2002 correspondence and understood she did not have to pay any money for monthly payments; Ms. Poole also confirmed she did not receive any subsequent bills from the applicant suggesting there are outstanding monthly payments. She testified that she has been maintaining the rental premises herself, but has reported major deficiencies to the applicant from which there was no response or acknowledgement until the April 2013 correspondence from the applicant where they indicated a unit condition rating would be completed on the premises.

Tenancy agreement

The HIHP agreement entered into evidence by the applicant was signed by the respondent March 22, 2002, but was not signed by the applicant. This agreement reads as an agreement to loan or mortgage property. The property is not identified in the agreement. Permission for the respondent to occupy the premises is expressly given. A maximum monthly payment is established at \$1,441.87 starting April 1, 2002, and a condition specifying the applicant may subsidize the monthly payment based on household income is included. The respondent was granted and did take occupancy of the premises on March 22, 2002.

The respondent's signing of the HIHP agreement suggests a discussion between the applicant and the respondent did occur and the respondent was aware of the terms of an agreement for occupancy of the premises. The respondent did take occupancy of the premises on March 22, 2002, after signing the HIHP agreement, and the applicant did permit the respondent to take occupancy. I find that an agreement for the right to occupy the premises was made when the applicant permitted the respondent to take occupancy of the rental premises and that an implied tenancy agreement for subsidized public housing came into effect on March 22, 2002.

I would suggest it may be in both parties best interest to execute a new, updated written tenancy agreement to ensure the terms are clearly understood and quantified. It is not within my authority, however, to order the parties to enter into a written tenancy agreement.

Rental arrears

The correspondence from the applicant to the respondent dated July 4, 2002, confirms communication was had between the parties on or before that date and that income verification forms were received. This correspondence establishes the application of a subsidy based on household income which reduced the respondent's monthly payments to zero. This correspondence also corroborates the respondent's testimony that she became the sole occupant of the rental premises with her children the summer of 2002. Mr. Brian Sanderson's correspondence to the applicant dated January 17, 2012, corroborates that he no longer resided in the premises after July 2002.

Subsidized public housing is exempt from section 47 of the Act, which speaks to notification of rent increases; this means that unless a written tenancy agreement states otherwise, there is no requirement under the Act for the applicant to give a tenant a specified amount of notice of any increase to monthly rent. There being no written tenancy agreement specifying otherwise, the applicant's notice to the respondent dated January 29, 2014, of changes to the subsidized rent amount is in accordance with the Act. I find as of April 1, 2014, the respondent's monthly subsidized rent is \$300 and the maximum monthly rent is \$1,150.

The lease balance statement entered into evidence by the applicant represents the landlord's accounting of monthly assessed rent and payments made against the respondent's rent account. The balance as of March 31, 2014, is zero, in accordance with the last notified assessed monthly rent of zero established in July 2002. The statement reflects the monthly assessed rent of \$300 applied for the months of April 2014 to September 2014, in accordance with the notice of rent changes dated January 29, 2014. The statement also indicates no payments have been received for the 2014 rents that have been assessed. Ms. Poole did not dispute that she has not made any payments against her rent account. I am satisfied the statement accurately reflects monthly assessed rent and payments received to date. I find Ms. Pool has accumulated rental arrears in the amount of \$2,950.

Maintenance of rental premises

Ms. Poole has raised issues related to the condition of the premises and repairs which are required. Although I could consider these issues at this hearing under section 68(2) of the Act, I am not prepared to do so under the circumstances as I do not have enough specific information before me as to the full extent of the deficiencies, the causes of the deficiencies, and the repercussions to the respondent of the existence of the deficiencies. Ms. Poole retains the option to file an application to a rental officer under section 30 of the Act to speak to the deficiencies alleged. I would remind Ms. Poole that a tenant does not have the right to withhold rent for any reason.

Termination of the tenancy agreement and eviction

Under the circumstances, it seems to me there has been sufficient misunderstanding and delayed pursuit of a resolution to the status of this tenancy to question the justification of termination of the tenancy agreement and eviction at this time. The applicant's request for an eviction order is denied.

An order will issue requiring Ms. Stephanie Poole to pay rental arrears in the amount of \$2,950 and to pay her rent on time in the future.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Applicant's correspondence to respondent dated April 22, 2013
- Exhibit 2: Applicant's rental of homeownership unit is Lutselk'e correspondence to respondent dated January 22, 2013
- Exhibit 3: Applicant's 2001 home ownership delivery correspondence to respondent dated July 4, 2002
- Exhibit 4: Brian Sanderson's homeownership unit #173 correspondence to the applicant dated January 17, 2012
- Exhibit 5: Homeownership Independent Housing Program Agreement signed by the applicant, respondent, and Brian Sanderson March 22, 2002
- Exhibit 6: Lease balance statement dated September 19, 2014
- Exhibit 7: Notice of taxes payable from GNWT to respondent dated October 24, 2010
- Exhibit 8: Respondent's notice of taxes payable, assessment account #1039002-0000-0014-00 correspondence to GNWT MACA dated January 6, 2011
- Exhibit 9: Respondent's appeal to board of revision, property account 9002-0000-0014-00 correspondence to NWT Assessment Appeals Tribunal and Board of Revision dated July 26, 2011
- Exhibit 10: Respondent's rental of homeownership unit in Lutsel K'e correspondence, dated January 22, 2013, correspondence to applicant dated April 5, 2013
- Exhibit 11: Applicant's correspondence to respondent dated July 31, 2014
- Exhibit 12: Lease balance statement dated July 31, 2014
- Exhibit 13: Applicant's supported lease program correspondence to respondent dated January 29, 2014