

IN THE MATTER between **Behchoko Ko Gha Kaodee**, Applicant, and **Johnny Weyallon**, 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 community of Behchoko in the Northwest Territories**.

BETWEEN:

BEHCHOKO KO GHA KAODEE

Applicant/Landlord

- and -

JOHNNY WEYALLON

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 \$20,225.00 (twenty thousand two hundred twenty-five dollars).
2. Pursuant to section 41(4)(c) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the rental premises known as Unit 677A in Behchoko, Northwest Territories, will terminate October 31, 2014, and the respondent must vacate the rental premises on or before that date.

3. Pursuant to section 63(4)(b) of the *Residential Tenancies Act*, the respondent must compensate the applicant for use and occupation of the rental premises known as Unit 677A in Behchoko, Northwest Territories, at a rate of \$27.95 for each day the respondent remains in the rental premises after October 31, 2014.

DATED at the City of Yellowknife in the Northwest Territories this 10th day of October 2014.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Behchoko Ko Gha Kaodee**, Applicant, and **Johnny Weyallon**, 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:

BEHCHOKO KO GHA KAODEE

Applicant/Landlord

-and-

JOHNNY WEYALLON

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	October 7, 2014
<u>Place of the Hearing:</u>	Behchoko, Northwest Territories
<u>Appearances at Hearing:</u>	Michael Keohane, representing the applicant
<u>Date of Decision:</u>	October 7, 2014

REASONS FOR DECISION

An application to a rental officer made by Behchoko Ko Gha Kaodee (BKGK) as the applicant/landlord against Johnny Weyallon as the respondent/tenant was filed by the Rental Office July 24, 2014. The application was made regarding a residential tenancy agreement for the rental premises known as Unit 677A in Behchoko, Northwest Territories. The applicant personally served a copy of the filed application on the respondent September 15, 2014.

The applicant alleged in the application the respondent had accumulated significant rental arrears and requested an order for payment of the rental arrears, termination of the tenancy agreement, eviction, and compensation for use and occupation post-termination. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for October 7, 2014, in Behchoko, Northwest Territories. Mr. Michael Keohane appeared representing the applicant. Mr. Johnny Weyallon was served a notice of attendance by registered mail deemed served September 23, 2014, pursuant to section 71(5) of the *Residential Tenancies Act* (the Act). Mr. Weyallon did not appear at the hearing, nor did anyone appear on his behalf. The hearing proceeded in his absence pursuant to section 80(2) of the Act.

Mr. Keohane testified that Mr. Weyallon has been a tenant in a market rental unit with the applicant since April 1, 2011. The rent was established at the commencement of the tenancy at \$725 per month due the first of each month. In May 2013, Mr. Weyallon was given notice of a rent increase to \$850 per month effective September 1, 2013. From April 2011 to March 2012, although payments were repeatedly late, Mr. Weyallon was able to make sufficient payments to effect a zero balance on March 30, 2012. In April 2012 Mr. Weyallon began accumulating rental arrears; his payments became inconsistent and of amounts insufficient to cover the monthly rent and accumulated rent arrears. Mr. Weyallon's last payment against his rent account was received May 16, 2013, in the amount of \$500. Since then Mr. Weyallon has made no payments and no efforts to resolve his rental arrears. The rental arrears have accumulated as of this hearing date to \$20,225.

There was reference made to an incident in November 2011 involving the furnace at the rental premises which necessitated Mr. Weyallon's temporary accommodation at a local hotel for which the applicant accepted responsibility at the time. Mr. Keohane said at hearing that Mr. Weyallon mentioned in a conversation on March 20, 2014, that he intended to make a claim against the applicant for property which was damaged as a result of the issue with the furnace. As there has been no application made to a rental officer by Mr. Weyallon and he was not present at hearing to speak to it, I declined to consider the matter.

Mr. Keohane reiterated the applicant's request for an order for payment of rental arrears; the amount of rental arrears and Mr. Weyallon's repeated and continued failure to pay the rent was offered as justification for termination of the tenancy agreement and eviction.

Tenancy agreement

The tenancy agreement submitted as evidence by the applicant is between the parties for the market rental property known as Unit 677A in Behchoko. The agreement was signed March 29, 2011, for a fixed-term from April 1, 2011, to April 30, 2012, after which it automatically renewed as a month-to-month tenancy pursuant to section 49 of the Act. I am satisfied a valid tenancy agreement between the parties is in place in accordance with the Act.

Rental arrears

The lease balance statement and tenant ledger statement submitted into evidence by the applicant represent the landlord's accounting of monthly rent and payments made against Mr. Weyallon's rent account. The notice of rent increase also submitted by the applicant was dated May 16, 2013, regarding a rent increase to take effect September 1, 2013. I am satisfied the notice of rent increase was issued in compliance with section 47 of the Act. I am satisfied the statements accurately reflect the status of the respondent's rent account. I find Mr. Weyallon has breached his obligation to pay rent and has accumulated rental arrears in the amount of \$20,225.

Security deposit

Although the security deposit was not discussed at hearing, the tenant ledger card for the security deposit was submitted into evidence. Section 16(2) of the Act specifies the interest on security deposit must be credited to the tenant up to the date he vacates or abandons the rental premises. Section 18(3) specifies the security deposit (including interest) must be returned to the tenant

after he vacates or abandons the rental premises. As it has not been determined that Mr. Weyallon has vacated or abandoned the rental premises to date, the interest on the security deposit cannot be calculated and the total security deposit cannot be applied to the rental arrears at this time. Once Mr. Weyallon has vacated or abandoned the rental premises the landlord may calculate the interest in accordance with the *Residential Tenancies Regulations* and may apply the total security deposit against Mr. Weyallon's rental arrears in accordance with all parts of section 18 of the Act.

Termination of tenancy agreement and eviction

Under the circumstances, Mr. Weyallon has repeatedly breached his tenancy agreement with the applicant by failing to pay the full amount of his market rent for more than two years. This has resulted in a significant accumulation of rental arrears. Mr. Weyallon has made no efforts to resolve this matter. I am satisfied termination of the tenancy agreement and eviction is justified, as is ordering compensation for use and occupation of the rental premises for each day Mr. Weyallon remains in the premises after the termination date.

An order will issue requiring Mr. Johnny Weyallon to pay rental arrears in the amount of \$20,225, terminating the tenancy agreement on October 31, 2014, evicting Mr. Weyallon from the rental premises on November 1, 2014, or as soon thereafter as is practicable, and requiring Mr. Weyallon to compensate the landlord for use and occupation at a rate of \$27.95 for each day he remains in the rental premises after October 31, 2014. The eviction order will follow under separate cover.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

Exhibit 1: Lease balance statement dated July 23, 2014

Exhibit 2: Tenant ledger statement for March 29, 2011, to March 30, 2012

Exhibit 3: Security deposit tenant ledger card

Exhibit 4: Tenancy agreement effective March 29, 2011

Exhibit 5: Lease ledger dated October 6, 2014

Exhibit 6: Applicant's rental increase notice correspondence to respondent dated May 16, 2013