

IN THE MATTER between **Hay River Housing Authority**, Applicant, and **Diana McArthur and Josh Salopree**, Respondents;

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:

HAY RIVER HOUSING AUTHORITY

Applicant/Landlord

- and -

DIANA MCARTHUR and JOSH SALOPREE

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondents must pay to the applicant rental arrears in the amount of \$480.00 (four hundred eighty dollars).
2. Pursuant to section 41(4)(b) of the *Residential Tenancies Act*, the respondents must pay their rent on time in the future.
3. Pursuant to sections 45(4)(a) and 45(4)(b) of the *Residential Tenancies Act*, the respondents must comply with their obligation to report household income in accordance with section 6 of their tenancy agreement and must not breach that obligation again.

4. Pursuant to sections 43(3)(a) and 43(3)(b) of the *Residential Tenancies Act*, the respondents must comply with their obligation to not disturb the landlords' or other tenants' possession or enjoyment of the rental premises or residential complex, and they must not breach this obligation again.
5. Pursuant to sections 41(4)(c), 45(4)(e), 43(3)(d), and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the rental premises known as 73B Stewart Drive in Hay River, Northwest Territories, will terminate March 31, 2015, unless the rental arrears of \$480.00 (four hundred eighty dollars) are paid in full, the rents for December 2014 to March 2015 are paid on time, the household income for the months of November 2014 to March 2015 are reported to the applicant, and no further legitimate complaints of disturbances against the respondents are received by the applicant.

DATED at the City of Yellowknife in the Northwest Territories this 2nd day of December 2014.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Hay River Housing Authority**, Applicant, and **Diana McArthur and Josh Salopree**, Respondents.

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:

HAY RIVER HOUSING AUTHORITY

Applicant/Landlord

-and-

DIANA MCARTHUR and JOSH SALOPREE

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	November 20, 2014
<u>Place of the Hearing:</u>	Hay River, Northwest Territories, by teleconference
<u>Appearances at Hearing:</u>	Adam Swanson, representing the applicant Joshua Salopree, respondent Diana McArthur, respondent
<u>Date of Decision:</u>	November 26, 2014

REASONS FOR DECISION

An application to a rental officer made by Hay River Housing Authority as the applicant/landlord against Diana McArthur and Josh Salopree was filed by the Rental Office September 4, 2014. The application was made regarding a subsidized public housing residential tenancy agreement for the rental premises known as 73B Stewart Drive in Hay River, Northwest Territories. The applicant personally served a copy of the filed application on the respondents September 10, 2014.

The applicant alleged in the application the respondents had accumulated rental arrears, had failed to report household income in accordance with the tenancy agreement, had permitted unauthorized occupants to reside with them, and had caused disturbances. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for November 20, 2014, in Hay River, Northwest Territories. Mr. Adam Swanson appeared representing the applicant. Mr. Josh Salopree and Ms. Diana McArthur appeared as respondents.

Mr. Swanson testified the respondents have been tenants in subsidized public housing since December 2013. Between May and November 2014, Mr. Salopree was incarcerated. Mr. Salopree's name remained on the tenancy agreement during his incarceration and to date. Ms. McArthur at no time gave notice to terminate the tenancy, but admitted in a meeting between herself, Mr. Salopree, and Mr. Swanson on November 5, 2014, that she had already moved back to the Reserve. It was confirmed at hearing that Ms. McArthur was not currently residing at the rental premises, that Mr. Salopree was currently back residing at the rental premises, and that the couple was not certain if they would be getting back together or not. It was agreed that currently the tenancy agreement remains in both Mr. Salopree and Ms. McArthur's names as joint tenants.

Since May 2014, Ms. McArthur failed to pay the full amount of rent when it was due, and the last payment actually received against the respondents' rent account was on July 17, 2014, in the amount of \$160. As of this hearing, Ms. McArthur also failed to report household income for the months of July to October 2014, resulting in assessment of the maximum monthly rent of \$1,625 for August to November 2014. The respondents did not dispute the failure to pay rent or the

failure to report household income. After the hearing, Mr. Swanson confirmed the respondents attended in his office to report the household income for the outstanding months, permitting the application of subsidies to the respondents' rents for August to November 2014 and reducing the accumulated rental arrears to \$480.

During Mr. Salopree's incarceration, several complaints were received by the applicant regarding Ms. McArthur permitting additional occupants in the rental premises. No additional occupants were authorized by the applicant. The tenancy agreement specifically prohibits additional occupants unless the landlord has given prior written consent.

During the tenancy several complaints of disturbances were made against the respondents, most during Mr. Salopree's incarceration. The disturbances included incidents involving assaults, mischief, disturbing the peace, and child welfare cases, which eventually contributed to the removal of the respondents' child by Social Services. The most recent disturbance complaint was received October 6, 2014.

On October 6, 2014, Mr. Swanson received notification from ATCO (the local electricity provider) that Ms. McArthur had not paid her power bill so the electricity would be cut off. On October 14, 2014, an electricity limiter was installed to the rental premises. The tenancy agreement requires tenants to pay all utilities.

In light of the identified significant breaches, Mr. Swanson reiterated the applicant's request for an order for payment of rental arrears, future rent to be paid on time, termination of the tenancy agreement, and eviction.

Mr. Salopree testified that he had only just been released from custody approximately November 5th. He was first informed of the problems that have arisen during his incarceration that afternoon when he met with Mr. Swanson. Ms. McArthur confirmed she is not currently living at the rental premises with Mr. Salopree, that she was currently living on the Reserve. Mr. Salopree indicated he wants to pay the rental arrears, that he has a job lined up already and has never had problems before his incarceration with paying the rent. He expects to be able to have the subsidized rental arrears paid by the end of November. He also indicated he is trying to get custody of his daughter back. A letter of support from a child protection worker at Hay River Health and Social Services Authority was provided, confirming Mr. Salopree would need to have a safe home to be able to have visits with his daughter. Mr. Salopree made assurances at the hearing that the rent would be paid and no further disturbances would occur.

Mr. Swanson indicated he would be willing to enter into a new tenancy with Mr. Salopree alone but could only offer him a singles unit, which admittedly would not serve Mr. Salopree's desire to have his child returned to him. Mr. Swanson reiterated the necessity of terminating the respondents' tenancy agreement in light of the significant disturbances which have occurred and the number of complaints which have been received. He expressed concern that should the tenancy not be terminated it would be interpreted by the other tenants and neighbours as the respondents 'getting away' with causing problems and the landlord would be perceived as not doing anything about it.

I reserved my decision and made a determined as follows:

Tenancy agreement

The residential tenancy agreement entered into evidence is made between the parties for subsidized public housing at the rental premises identified as 73B Stewart Drive in Hay River, Northwest Territories. The parties did not dispute the validity of the tenancy agreement, nor was there any dispute that both respondents were jointly liable for the tenancy. I am satisfied a valid tenancy agreement is in place between the parties in accordance with the *Residential Tenancies Act* (the Act).

Rental arrears and reporting of household income

Section 7 of the tenancy agreement identifies the tenancy as being for subsidized public housing. It further indicates that the tenants are eligible for the rent subsidy calculated based on reported household income as long as none of the terms of the tenancy agreement are breached.

Section 6 of the tenancy agreement requires tenants to report their household income whenever and as often as requested by the landlord. It is clear from submissions in testimony and by correspondences to the respondents that the household income was required to be reported on a monthly basis.

Schedule A of the tenancy agreement specifies the monthly rent is due and payable the first of the month.

The client aged details and statements submitted into evidence by the applicant reflect the landlord's accounting of monthly assessed rent and payments received against the respondents' rent account. The respondents did not dispute the accuracy of these documents. I am satisfied the client aged details and statements accurately reflect the status of the respondents' rent account. These documents indicate no rent has been paid since July 12, 2014.

The historical client aged details and the applicant's testimony reflect the initial application of the maximum monthly rent for the months of July to November 2014. Mr. Swanson testified the household income had not been reported when it was due for the months of June to October 2014, necessitating the application of the maximum monthly rent. The household income for June was reported subsequent to the filing of this application from which the rent for July was reassessed for a subsidy. The respondents attended the office after the hearing closed and reported the household income for the remaining outstanding months. The resulting rents for August to November were reassessed based on that reported household income and the applicant provided an updated client aged detail reflecting the recalculated rental arrears.

I find the respondents have accumulated rental arrears in the amount of \$480. I find the respondents have breached their obligation to report household income in accordance with section 6 of their tenancy agreement.

Utilities

Section 8 of the tenancy agreement requires tenants to pay all utilities. An email between Mr. Swanson and a representative of ATCO confirms the respondents' electricity account was not paid as of October 6th and the electricity would be cut off. It further confirms a limiter was installed on October 14th. The respondents did not dispute the allegation they had not paid the electricity bill. I find the respondents have breached their obligation to pay all utilities.

Additional occupants

Section 5 of the tenancy agreement specifies the tenants may not have any additional occupants in the rental premises without the landlord's prior written consent. Several pieces of correspondence were submitted from complainants referring to people living with Ms. McArthur at the rental premises. A letter from Ms. McArthur to the applicant requested permission to have a family live with her; this request was denied. Information was received by the applicant from Income Assistance that an individual other than the respondents had identified the rental

premises as his primary residence. The respondents acknowledged that Ms. McArthur did have additional occupants from whom rent was requested to help pay the bills during Mr. Salopree's incarceration. I find the respondents have breached their obligation to not have additional occupants without the landlord's written permission.

Disturbances

Section 12(c) of the tenancy agreement requires tenants to conduct themselves and require guests to conduct themselves in a manner that will not disturb the landlord's or other tenant's possession or enjoyment of the premises or residential complex.

The applicant submitted several notes to file and correspondences to the respondents regarding complaints of significant disturbances occurring at the rental premises between May and October 2014. The respondents did not dispute the claims. It was acknowledged that these disturbances occurred during Mr. Salopree's incarceration. It was also acknowledged at hearing that Mr. Salopree is a stabilizing force for Ms. McArthur and that even if she does return to the rental premises he is likely to ensure there are no further disturbances. I find the respondents have failed to comply with their obligation not to disturb the landlord's or other tenants' possession or enjoyment of the premises or complex.

Termination of the tenancy agreement

The compilation of the above findings justifies the termination of the tenancy agreement. However, in light of this being the first time the respondents have been brought before the rental officer and all of the issues occurring during Mr. Salopree's incarceration, and in consideration of the assurances at hearing that there will be no further issues, in my opinion an order with several strict conditions and termination of the tenancy if certain conditions are not met is appropriate. Should any of the conditions not be met the applicant may file another application to a rental officer and I would caution the respondents of the increased likelihood that an unconditional termination order and eviction could be ordered at that time.

An order will issue requiring the respondents to pay rental arrears in the amount of \$480, to pay future rent on time, to report household income as required and not to breach that obligation again, to comply with their obligation not to disturb the landlord's and other tenants' enjoyment and possession of the premises and complex and not to breach that obligation again, and

terminating the tenancy agreement March 31, 2015, unless the rental arrears are paid in full, the rents for December 2014 to March 2015 are paid on time, the household income is reported for the months of November 2014 to March 2015, and no further complaints of disturbances are received by the applicant.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Applicant's statement of facts
- Exhibit 2: Residential tenancy agreement dated December 4, 2013
- Exhibit 3: Applicant's notes to file dated: May 12, 2014; May 14, 2014; May 15, 2014; May 20, 2014; June 9, 2014; June 12, 2014; June 16, 2014; July 15, 2014; August 28, 2014;
- Exhibit 4: Applicant's statements dated: July 8, 2014; August 12, 2014; August 25, 2014; August 28, 2014;
- Exhibit 5: Applicant's outstanding rental arrears correspondences to respondents dated: January 20, 2014; February 10, 2014; March 24, 2014; April 9, 2014; April 23, 2014; May 8, 2014; 21, 2014; June 9, 2014; June 24, 2014; July 21, 2014;
- Exhibit 6: Email conversation between Emily Tatachi and Adam Swanson dated May 6, 2014
- Exhibit 7: Applicant's overdue account correspondences to respondents dated: January 8, 2014; March 10, 2014; March 17, 2014
- Exhibit 8: Applicant's correspondences to respondents dated: May 12, 2014; May 15, 2014; June 10, 2014; June 12, 2014
- Exhibit 9: Applicant's warning correspondence to respondents dated June 12, 2014
- Exhibit 10: Diana McArthur's written notice requesting the addition of an occupant to her lease dated May 14, 2014
- Exhibit 11: Client aged detail as at August 28, 2014
- Exhibit 12: Applicant's notice of termination of tenancy correspondence to respondents dated August 28, 2014
- Exhibit 13: Applicant's statements dated: September 8, 2014; September 22, 2014; October 8, 2014; October 22, 2014; November 10, 2014; November 17, 2014
- Exhibit 14: Client aged detail as at November 17, 2014
- Exhibit 15: Hay River Health and Social Services Authority correspondence to the applicant dated November 14, 2014
- Exhibit 16: Applicant's notes to file dated: September 16, 2014; September 24, 2014; October 3, 2014;

October 8, 2014; November 5, 2014

Exhibit 17: Email conversation between Amanda Coleman and Adam Swanson dated October 9-14, 2014

Exhibit 18: Applicant's warning correspondences to respondents dated: September 16, 2014; October 6, 2014

Exhibit 19: Photocopied screenshot of Facebook posts dated September 20, 2014

Exhibit 20: Photocopy of emailed complaints dated September 8, 2014

Exhibit 21: Client aged detail as at December 1, 2014