

IN THE MATTER between **Behchoko Ko Gha Kaodee**, Applicant, and **Josephine Bishop and Scott Drybones**, 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 Behchoko in the Northwest Territories**.

BETWEEN:

**BEHCHOKO KO GHA KAODEE**

Applicant/Landlord

- and -

**JOSEPHINE BISHOP and SCOTT DRYBONES**

Respondents/Tenants

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondents Josephine Bishop and Scott Drybones must pay to the applicant rental arrears in the amount of \$8,698.00 (eight thousand six hundred ninety-eight dollars).
2. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent Josephine Bishop must pay to the applicant rental arrears in the amount of \$5,595.00 (five thousand five hundred ninety-five dollars).
3. Pursuant to section 41(4)(b) of the *Residential Tenancies Act*, the respondent Josephine Bishop must pay her rent on time in the future.

4. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondent Josephine Bishop must compensate the applicant for the cost of repairs to the rental premises in the amount of \$3,395.00 (three thousand three hundred ninety-five dollars).
5. Pursuant to section 45(4)(a) of the *Residential Tenancies Act*, the respondent Josephine Bishop must comply with her obligation to report household income in accordance with section 6 of her tenancy agreement.
6. Pursuant to sections 41(4)(c) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the rental premises known as Unit 39 in Behchoko, Northwest Territories, will terminate March 31, 2015, unless the rents for January to March 2015 are paid on time and the household income is reported for the months of August 2014 to March 2015.
7. Pursuant to sections 63(4)(b) and 83(2) of the *Residential Tenancies Act*, if the tenancy agreement between the parties terminates March 31, 2015, the respondent Josephine Bishop must compensate the applicant for use and occupation of the rental premises at a rate of \$50.79 for each day she remains in the rental premises after March 31, 2015.

DATED at the City of Yellowknife in the Northwest Territories this 9th day of January 2015.

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Adelle Guigon  
Deputy Rental Officer

IN THE MATTER between **Behchoko Ko Gha Kaodee**, Applicant, and **Josephine Bishop and Scott Drybones**, 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-

**JOSEPHINE BISHOP and SCOTT DRYBONES**

Respondents/Tenants

**REASONS FOR DECISION**

<b><u>Date of the Hearing:</u></b>	<b>December 18, 2014</b>
<b><u>Place of the Hearing:</u></b>	<b>Yellowknife, Northwest Territories, by teleconference</b>
<b><u>Appearances at Hearing:</u></b>	<b>Michael Keohane, representing the applicant Therese Migwi, representing the applicant Robert McCallum, witness for the applicant Josephine Bishop, respondent Scott Drybones, respondent</b>
<b><u>Date of Decision:</u></b>	<b>December 22, 2014</b>

### **REASONS FOR DECISION**

An application to a rental officer made by Behchoko Ko Gha Kaodee as the applicant/landlord against Josephine Bishop and Scott Drybones as the respondents/tenants was filed by the Rental Office October 20, 2014. The application was made regarding a subsidized public housing residential tenancy agreement for the rental premises known as Unit 39 in Behchoko, Northwest Territories. The applicant personally served a copy of the filed application on Scott Drybones October 22, 2014, and on Josephine Bishop November 18, 2014.

The applicant alleged in the application the respondents had accumulated rental arrears and caused damages to the rental premises. They sought an order for payment of rental arrears, compensation for the cost of repairs, termination of the tenancy agreement, eviction, and compensation for use and occupation. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for December 18, 2014, by teleconference. Mr. Michael Keohane and Ms. Therese Migwi appeared representing the applicant; Mr. Robert McCallum appeared as a witness for the applicant. Mr. Scott Drybones and Ms. Josephine Bishop appeared as respondents.

#### *Tenancy agreement*

The tenancy agreement entered into by the parties was a joint tenancy starting October 2008. The initial rental premises occupied by the respondents was Unit 59C in Behchoko. In April 2011 they were moved in accordance with section 3 of their tenancy agreement to Unit 271 and in July 2012 they were again moved to Unit 39. No check-in inspection report was conducted for Unit 39, however, the applicant provided post-hearing a condition rating report that was completed February 11, 2011, and Ms. Migwi confirmed by telephone that the damages identified were repaired prior to the respondents moving in and that the unit remained unoccupied until the respondents moved in, thereby establishing the good condition of Unit 39.

Two statutory declarations were submitted into evidence by the applicant: one signed by Mr. Drybones on May 14, 2013, confirming he ceased living at the rental premises on March 1, 2013; one signed by Ms. Bishop on May 15, 2013, confirming she and Mr. Drybones were no longer in a common-law relationship. Both statutory declarations were properly executed before an RCMP officer. The applicant acknowledged the veracity of the statutory declarations and are only holding Mr. Drybones and Ms. Bishop jointly responsible for the rental arrears accumulated up to March 1, 2013. The rental arrears accumulated since March 1, 2013, are being sought against Ms. Bishop alone.

At hearing, Mr. Drybones disputed the accuracy of his statutory declaration, stating he had actually moved out of the rental premises in March 2012 rather than 2013. He said he had just completed in September 2014 another statutory declaration indicating the corrected move-out date, which was given to Andy Tereposky, district director for the NWT Housing Corporation's North Slave District Office. Mr. Keohane confirmed he was aware that Mr. Tereposky had been given the new statutory declaration, however, neither he nor Mr. Drybones provided a copy into evidence.

#### *Voir dire*

A *voir dire* was held to establish Mr. Drybones' move-out date. Already in evidence were the statutory declarations of Mr. Drybones and Ms. Bishop from May 2013. Also testified to by Ms. Migwi and submitted into evidence were two Income Assistance Program (IAP) financial case reports for Josephine Bishop for the income assistance periods of January and February 2013. The financial case reports are generated from information provided to determine eligible financial assistance for the given household. It identifies the people living in the household, their status in the household, and the respective adults' incomes for the given month. The local housing authorities under the NWT Housing Corporation have an agreement with the IAP to share household income information for tenants in subsidized public housing; the agreement allows the eligible tenants to report their household income once rather than having to provide the same information to multiple offices. The financial case reports completed for this tenancy for the months of January and February 2013 clearly identify Ms. Bishop as the head of household and Mr. Drybones as the spouse. The submission by Mr. Drybones that he was in fact not living in the rental premises since March 2012, if held, would suggest that he was making

false claims to income support to receive income assistance. I am not prepared to accept this suggestion and instead will hold that the evidence substantiates Mr. Drybones was in fact resident at the rental premises until March 1, 2013, and that he was jointly responsible for the obligations under the tenancy agreement until that date.

*Rental arrears and reporting of household income*

The rental arrears claimed by the applicant currently total \$14,293. Of that, \$8,698 were accumulated as of March 1, 2013, and is the amount the applicant is claiming against Mr. Drybones and Ms. Bishop jointly. The remaining \$5,595 is the amount accumulated since March 1, 2013, representing the rent for which Ms. Bishop is solely responsible. The rents accumulated prior to March 2013 have all been assessed rent subsidies based on reported household income. The rents accumulated since March 2013 have been assessed rent subsidies based on reported household income, except for the months of September to December 2014 which have been assessed the maximum monthly rent due to Ms. Bishop failing to report household income for August to November 2014. Emphasis was made by the applicant that the income for all adult residents – whether named as tenants or not – must be reported monthly in order to determine eligibility for subsidies; until the outstanding income reports are received the maximum monthly rent must be assessed. The respondents did not dispute the amount of rental arrears claimed. Ms. Bishop acknowledged she has yet to report her total household income for the months of September to December 2014. I find Ms. Bishop and Mr. Drybones have jointly accumulated rental arrears in the amount of \$8,698. I find Ms. Bishop has solely accumulated additional rental arrears in the amount of \$5,595. I find Ms. Bishop has failed to comply with section 6 of her tenancy agreement, which states the tenant must report total household income whenever and as often as requested by the landlord.

*Tenant damages*

A condition rating report was completed on the rental premises known as Unit 39 in Behchoko, Northwest Territories, on September 3, 2014. As previously mentioned, a check-in inspection report was not completed for this unit when the respondents moved into it in July 2012. A condition rating report was provided for the unit which was completed on February 11, 2011. Ms. Migwi confirmed the damages reported in the 2011 condition rating report were repaired prior to the respondents moving into the rental premises in 2012, and that Unit 39 was not

occupied between February 2011 and July 2012, when the respondents moved in. This assertion assists in establishing the condition of Unit 39 when the respondents moved in was good, with no significant pre-existing damages. There is also no condition rating report or inspection report completed for when Mr. Drybones moved out in March 2013.

Mr. Robert McCallum, maintenance foreman for the applicant, testified he personally inspected the residence on September 3, 2014, and took the photographs submitted into evidence. Each item claimed was discussed at hearing. Mr. Drybones testified that all of the damages occurred after he moved out. Ms. Bishop did not dispute that claim. Aside from the following notes, Ms. Bishop also did not dispute the damages claimed. She did make note that the two windows were broken from the outside by unidentified persons while she was at work. The damage was not reported to the RCMP because there were no witnesses to identify the alleged perpetrators. Ms. Bishop also noted: that the wall damage identified in photograph number four is from the door knob hitting the wall; that she does not know who kicked the hole in the utility door; that she already fixed the small holes in the hallway walls about three weeks ago; and that she was not at home when the exterior light fixture was broken.

Section 12(b) of the tenancy agreement specifies the tenant is responsible for the cost to repair damages to the rental premises caused by the willful or negligent conduct of the tenant or of any persons who are permitted on the premises by the tenant. Section 42(1) of the *Residential Tenancies Act* (the Act) specifies a tenant is responsible to repair damages caused by the willful or negligent conduct of the tenant or persons who are permitted on the premises by the tenant.

Ms. Bishop testified, and Mr. McCallum confirmed, that the two windows were broken from the outside. Ms. Bishop testified that she does not know who broke the windows but does not believe that it was any of the occupants of the rental premises. Unfortunately there being no witnesses to the incident, her belief cannot be corroborated and as such she remains responsible for the cost of replacing the two windows. The same applies to the responsibility for the cost of replacing the exterior light fixture. I accept Ms. Bishop's assertion that the hallway wall repairs have been completed and will not allow the claim for those repairs on the rationale that should it be discovered at a later date they are not completed to the landlord's satisfaction a new application can be made for compensation. The remaining damages occurred within the rental premises, are beyond normal wear and tear, and were not caused by acts of God or infrastructure defects; as such they remain the responsibility of the tenant to pay the costs of repair for.

I accept Mr. Drybones' undisputed testimony that the claimed damages occurred after he moved out of the rental premises. I find Ms. Bishop solely responsible for the cost of repairing damages to the rental premises as follows:

Replacement of two bedroom and one utility room doors	\$1,365.00
Replacement of two windows (glass)	\$450.00
Replacement of switch plate covers	\$30.00
Replacement of one steel exterior door	\$800.00
Replacement of one exterior light fixture	\$170.00
Repair of holes in walls	\$350.00
10% of the cost to repaint	\$230.00
<b>Total repair costs</b>	<b>\$3,395.00</b>

*Termination of tenancy agreement and eviction*

At hearing, Mr. Keohane testified the applicant would have preferred to mediate an agreement with the respondents, specifically with Ms. Bishop as the applicant acknowledges Mr. Drybones' interest in the rental premises ceased in March 2013. Mr. Keohane indicated the applicant's policies do not permit them to end a joint tenancy when one party leaves if there are rental arrears. He confirmed that when Mr. Drybones left the premises the applicant did not wish to evict Ms. Bishop and permitted her to retain possession of the rental premises, hoping that she would comply with her own obligations as a tenant under the existing tenancy agreement. Having failed to do that and having very little confidence that matters will change, the applicant is now in a position to seek termination of the tenancy agreement and eviction. Meetings between the applicant and Ms. Bishop emphasized the applicant is willing to work with Ms. Bishop to resolve her arrears and to provide her with the opportunities she needs to do so, but they have received very little resolve from Ms. Bishop; at the last meeting in September, Ms. Bishop told them she understood the problem and would start reporting her income and making regular payments, yet since then no reports of income have been provided and only two payments of \$50 and \$700 were made on November 13<sup>th</sup> and 14<sup>th</sup>. At the very least the applicant's requested a termination order conditional on the payment of rent and reporting of income, suggesting that if Ms. Bishop



could show some consistent effort to meet her obligations the applicant would have some comfort in continuing the tenancy. They rationalized if Ms. Bishop was able to comply with a rental officer's conditional termination order they could then enter into a new tenancy agreement with Ms. Bishop as sole tenant (or perhaps joint with her current common-law spouse), thereby removing Mr. Drybones' name as a tenant, such as he is in the current tenancy agreement.

With respect to the removal of Mr. Drybones as a tenant, notwithstanding the applicant's internal policy, in my opinion there is no reason or benefit to permitting a joint tenancy agreement to continue after one tenant leaves when that event is acknowledged and agreed to by all parties to the tenancy agreement. In this case, if the applicant is going to permit the remaining tenant to continue occupying the rental premises they could enter into a new tenancy agreement with that tenant, effectively terminating the joint tenancy agreement, and preserve their interest in collecting the rental arrears accumulated under the joint tenancy agreement by filing an application to a rental officer within six months of the date the other tenant left. To my mind it is unfair to refuse to amend or end a tenancy agreement where all parties agree just because there are rental arrears at the time of the change.

Based on the amount of accumulated rental arrears and the repeated failure to report household income as required I find justification for termination of the tenancy agreement. In an effort to give Ms. Bishop 'one more chance', the termination of the tenancy agreement will be conditional on Ms. Bishop reporting her household income as requested and paying her monthly rent on time. An eviction order and order for compensation for use and occupation post-termination is also justified in the event Ms. Bishop fails to comply with her obligations and the termination date becomes effective.

An order will issue: requiring Ms. Josephine Bishop and Mr. Scott Drybones to pay rental arrears in the amount of \$8,698; requiring Ms. Josephine Bishop to pay additional rental arrears in the amount of \$5,595; requiring Ms. Josephine Bishop to pay her rent on time in the future; requiring Ms. Josephine Bishop to report her household income in accordance with section 6 of her tenancy agreement; requiring Ms. Josephine Bishop to compensate the applicant for the cost of repairs in the amount of \$3,395; terminating the tenancy agreement March 31, 2015, unless Ms. Josephine Bishop pays the rents for January to March 2015 on time and reports her household income for August 2014 to March 2015; evicting the respondents from the rental premises April

1, 2015, if the termination of the tenancy agreement becomes effective March 31, 2015; and requiring Ms. Josephine Bishop to compensate the applicant for use and occupation of the rental premises at a rate of \$50.79 for each day she remains in the rental premises after March 31, 2015, if the termination of the tenancy agreement becomes effective on that date. The eviction order will follow under separate cover.

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Adelle Guigon  
Deputy Rental Officer

## APPENDIX A

### Exhibits

- Exhibit 1: Reasons for application
- Exhibit 2: Lease balance statement dated October 2, 2014
- Exhibit 3: Statement of account dated October 2, 2014
- Exhibit 4: Tenant account statement for Josephine Bishop as of October 2014
- Exhibit 5: Tenant account statement for Josephine Bishop and Scott Drybones as of March 2013
- Exhibit 6: Tenant ledger card for damage deposit
- Exhibit 7: Statutory declaration of Josephine Bishop signed May 15, 2013
- Exhibit 8: Statutory declaration of Scott Drybones signed May 14, 2013
- Exhibit 9: Residential tenancy agreement dated November 1, 2012
- Exhibit 10: Residential tenancy agreement dated April 1, 2012
- Exhibit 11: Residential tenancy agreement dated July 8, 2009
- Exhibit 12: Residential tenancy agreement dated May 8, 2009
- Exhibit 13: Residential tenancy agreement dated January 14, 2009
- Exhibit 14: Applicant's names on lease correspondence to respondents dated May 7, 2014, with attached lease balance statement dated May 7, 2014
- Exhibit 15: An agreement between the Behchoko Ko Gha K'aodee Scott Drybones dated April 23, 2014
- Exhibit 16: Applicant's rental arrears, public housing unit #39 correspondence to Josephine Bishop dated June 17, 2013
- Exhibit 17: Applicant's outstanding rental arrears of \$9,642.00 correspondence to Josephine Bishop dated May 18, 2011
- Exhibit 18: Applicant's outstanding rental arrears of \$8,240.00 correspondence to respondents dated April 26, 2011
- Exhibit 19: Condition rating report dated September 3, 2014
- Exhibit 20: Set of 10 photographs
- Exhibit 21: Lease balance statement dated December 17, 2014
- Exhibit 22: Tenant ledger card for damage deposit as of December 31, 2014
- Exhibit 23: Condition rating report for Unit 39 dated February 11, 2011