

IN THE MATTER between **Fort Smith Housing Authority**, Applicant, and **Katie Wanderingspirit and Allan Bourke**, 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 Fort Smith in the Northwest Territories**.

BETWEEN:

FORT SMITH HOUSING AUTHORITY

Applicant/Landlord

- and -

KATIE WANDERINGSPIRIT and ALLAN BOURKE

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 67(4) of the *Residential Tenancies Act*, the respondents must pay to the applicant overholding rental arrears in the amount of \$3,170.00 (three thousand one hundred seventy dollars).
2. Pursuant to section 63(4)(b) of the *Residential Tenancies Act*, the respondents must compensate the applicant for use and occupation of the rental premises known as Unit #0069-11 at 60 Breynat Street in Fort Smith, Northwest Territories, at a rate of \$53.42 for each day they remain in the rental premises after March 31, 2015.

DATED at the City of Yellowknife in the Northwest Territories this 7th day of April 2015.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Fort Smith Housing Authority**, Applicant, and **Katie Wanderingspirit and Allan Bourke**, Respondents.

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

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BETWEEN:

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-and-

KATIE WANDERINGSPIRIT and ALLAN BOURKE

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	March 31, 2015
<u>Place of the Hearing:</u>	Fort Smith, Northwest Territories, by teleconference
<u>Appearances at Hearing:</u>	Kevin Mageean, representing the applicant
<u>Date of Decision:</u>	March 31, 2015

REASONS FOR DECISION

An application to a rental officer made by Fort Smith Housing Authority as the applicant/landlord against Katie Wanderingspirit and Allan Bourke as the respondents/tenants was filed by the Rental Office February 5, 2015. The application was made regarding a subsidized public housing residential tenancy agreement for the rental premises known as Unit #0069-11 at 60 Breynat Street in Fort Smith, Northwest Territories. The applicant served a copy of the filed application on the respondents by registered mail signed for February 26, 2015.

The applicant alleged the respondents had accumulated rental arrears, caused disturbances to other tenants and the landlord, and had failed to vacate the rental premises after the landlord terminated the tenancy in accordance with the *Residential Tenancies Act* (the Act). The applicant sought an order for payment of the rental arrears, termination of the tenancy agreement, and eviction. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for March 31, 2015, by teleconference. Mr. Kevin Mageean appeared representing the applicant. Ms. Katie Wanderingspirit and Mr. Allan Bourke were served notices of attendance by registered mail signed for March 13, 2015. Neither Ms. Wanderingspirit nor Mr. Bourke appeared at hearing, nor did anyone appear on their behalf. The hearing proceeded in their absence pursuant to section 80(2) of the Act.

Mr. Mageean testified to and provided evidence of a subsidized public housing residential tenancy agreement made between the parties. The residential complex is a seniors complex comprised of 28 apartments. The agreement was for a fixed-term tenancy starting November 17, 2014, and ending January 31, 2015. The maximum monthly rent was established at \$1,625 against which a subsidy would be applied upon receipt of monthly household income reports. The tenancy agreement further specified the tenants would only be eligible for the subsidy as long as they were not in breach of any of the terms of the tenancy agreement. The tenancy agreement further stipulates the tenants and/or the tenants' guests must not disturb the landlord's or other tenants' possession or enjoyment of the premises or residential complex.

Mr. Mageean stated that shortly after the respondents moved into the rental premises he began receiving verbal complaints from other tenants in the residential complex regarding disturbances caused by the respondents or their guests. The nature of the disturbances included partying, fighting, and threats. Mr. Mageean testified that he was personally informed by several of the other tenants in the building that they were afraid to put anything in writing in case of retaliation from the respondents or their guests. Although he was unable to provide them into evidence at the time of the hearing, Mr. Mageean confirmed the existence of several monthly reports made by the resident caretaker of the complex to the housing authority's board of directors which included reference to the complaints of partying and fighting by the respondents and their guests. Mr. Mageean further confirmed being present at and witnessing in-person reprimands to the respondents regarding their conduct.

Upon receipt of the reports from the resident caretaker, the housing authority board directed the termination of the respondents' tenancy agreement for breaching their obligation not to disturb the other tenants' possession and enjoyment of the rental premises and residential complex. A letter was drafted and served on the respondents December 18, 2014, giving them notice of the termination of their tenancy effective January 31, 2015, and requiring them to vacate the rental premises on or before that date; that notice was given in accordance with section 51(3) of the Act.

The notice to terminate the tenancy included advising the respondents that due to the termination of their tenancy they would no longer be eligible for a rental subsidy and as such, should they remain in the rental premises after January 31, 2015, they would be charged the maximum monthly rent of \$1,625 as overholding tenants. A resident ledger was included in evidence reflecting the application of maximum monthly rent for February and March 2015. The ledger further indicates a payment made by ECE on behalf of the respondents on February 28, 2015, in the amount of \$160, \$80 of which was applied against the subsidized rent for January 2015. The current balance of \$3,170 reflected in the resident ledger represents the overholding rents for February and March, less \$80.

The respondents did not vacate the rental premises in accordance with the notice terminating their tenancy agreement and the landlord made application to the rental officer seeking payment of rental arrears, termination of the tenancy agreement, and eviction. Mr. Mageean attended the rental premises the week of March 23rd and found Mr. Bourke in the process of packing his belongings, presumably in preparation for vacating the rental premises; however, Mr. Mageean again visited the rental premises the morning of March 31st (prior to this hearing) and found the

rental premises in disarray with no sign of Mr. Bourke. Mr. Mageean confirmed he has not seen or heard from Mr. Bourke in five days. Mr. Mageean believes Ms. Wanderingspirit may currently be incarcerated, but has no confirmation of this.

I am satisfied a valid residential tenancy agreement for subsidized public housing was in place between the parties in accordance with the Act. I am satisfied the respondents are responsible for disturbing the possession and enjoyment of the rental premises and residential complex for other tenants and the landlord. I am satisfied the landlord has terminated the tenancy agreement in accordance with the Act effective January 31, 2015. I am satisfied the application of the maximum monthly rent for the months of February and March 2015 is appropriate.

I find the respondents have overholding rental arrears in the amount of \$3,170. I also find justification for evicting the respondents from the rental premises and granting compensation for use and occupation of the rental premises.

An order will issue requiring Ms. Katie Wanderingspirit and Mr. Allan Bourke to pay overholding rental arrears in the amount of \$3,170, to pay compensation for the use and occupation of the rental premises at a rate of \$53.42 for each day the respondents remain in the rental premises after March 31, 2015, and evicting the respondents from the rental premises on April 15, 2015. The eviction order will issue under separate cover.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

Exhibit 1: Lease balance statement dated January 30, 2015

Exhibit 2: Applicant's registered mail correspondence to respondents dated December 18, 2014

Exhibit 3: Respondent Katie Wanderingspirit's letter of appeal correspondence to applicant dated December 18, 2014

Exhibit 4: Pages 1, 6, 7, and tenant information sheets of residential tenancy agreement dated November 17, 2014

Exhibit 5: Residential tenancy agreement dated November 17, 2014

Exhibit 6: Check-in inspection report dated November 17, 2014

Exhibit 7: Lease balance statements dated March 30, 2015, and March 31, 2015