

IN THE MATTER between **NWT Housing Corporation**, Applicant, and **Shirley Lafferty**, 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 town of Behchoko in the Northwest Territories**.

BETWEEN:

NWT HOUSING CORPORATION

Applicant/Landlord

- and -

SHIRLEY LAFFERTY

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(b) of the *Residential Tenancies Act*, the respondent must pay her rent on time in the future.
2. Pursuant to section 45(4)(a) and 45(4)(b) of the *Residential Tenancies Act*, the respondent must comply with her obligation to report her total household income in accordance with section 6 of her tenancy agreement and must not breach that obligation again.

DATED at the City of Yellowknife in the Northwest Territories this 22nd day of May 2015.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **NWT Housing Corporation**, Applicant, and **Shirley Lafferty**, 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:

NWT HOUSING CORPORATION

Applicant/Landlord

-and-

SHIRLEY LAFFERTY

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	April 30, 2015
<u>Place of the Hearing:</u>	Behchoko, Northwest Territories
<u>Appearances at Hearing:</u>	Bonnie Leonardis, representing the applicant Michael Keohane, representing the applicant Shirley Lafferty, respondent Leon Lafferty, representing the respondent
<u>Date of Decision:</u>	April 30, 2015

REASONS FOR DECISION

An application to a rental officer made by NWT Housing Corporation as the applicant/landlord against Shirley Lafferty as the respondent/tenant was filed by the Rental Office February 16, 2015. The application was made regarding a subsidized public housing residential tenancy agreement for the rental premises known as House #324 in Behchoko, Northwest Territories. The applicant personally served a copy of the filed application on the respondent February 18, 2015.

The applicant alleged the respondent had accumulated rental arrears and sought an order for payment of the rental arrears and that future rent be paid on time. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for April 30, 2015, in Behchoko, Northwest Territories. Ms. Bonnie Leonardis and Mr. Michael Keohane appeared representing the applicant. Ms. Shirley Lafferty appeared as respondent and Mr. Leon Lafferty appeared representing Ms. Lafferty.

The parties agreed that Ms. Lafferty has been a tenant in subsidized public housing under the Homeownership Entry Level Program (HELP) since March 13, 2009.

The applicant provided evidence that until August 2013 Ms. Lafferty carried a credit to her rent account. No payments were made against Ms. Lafferty's rent account since then until April 24, 2015. All monthly rent charged has been subsidized. The applicant claimed rental arrears totalling \$4,962.12 and reiterated their request for an order for payment and that future rent be paid on time.

The monthly rent prior to April 2014 was assessed a subsidy based on reported household income. As of April 2014, changes were introduced to HELP, including to the way subsidies are calculated. Ms. Lafferty was notified on January 29, 2014, that her subsidized rent would be set at \$375 per month for four years and the maximum monthly rent for her unit would be reduced to \$980. The applicant confirmed the flat rate for subsidized rent would remain unchanged for a four-year period and that as a consequence of this change reporting of household income would not be required going forward.

There was no dispute from Ms. Lafferty that she has not paid any rent between April 1, 2013, and April 24, 2015. Concern was raised with respect to how the rent subsidy was calculated and whether or not Ms. Lafferty could afford the revised rent amount. Prior to April 2014, Ms. Lafferty's assessed rent was \$151 per month based on her reported household income. As of April 2014, Ms. Lafferty's subsidized rent was set at \$375. This is a substantial increase for someone who's income has not effectively changed. The argument was put forward that if Ms. Lafferty's rent subsidy had been assessed based on her household income as is required by the tenancy agreement it would likely recalculate to an amount less than that now being imposed by the arbitrary changes to HELP. The applicant suggested this might not be the case, and that the imposed changes would more likely work in Ms. Lafferty's favour.

The applicant further argued that for any re-assessment to be done based on household income, the total household income would need to be reported for all occupants of the premises who are 19 years of age or older; Ms. Lafferty's eldest daughter has turned 19 since her family took occupancy of the premises, but her income has not been included in the household income reports. As such, that income must be reported for the periods since the daughter turned 19. Ms. Lafferty advised that her daughter has been attending college in Yellowknife and only stays at home during the scheduled school breaks. It was acknowledged that her daughter's income would only need to be reported for the periods when she was living at home, not while she was at school. The applicant suggested that if the daughter is enrolled full-time at college her income may be exempt from calculating the rent subsidy.

Mr. Lafferty pointed out on Ms. Lafferty's behalf that the tenancy agreement requires the rent subsidy to be calculated in accordance with the HELP agreement, and that the HELP agreement has not been changed by its own terms. He argued that until the rent subsidies were calculated in accordance with the tenancy and HELP agreements an accurate amount of rental arrears could not be determined, including the assessed rents prior to April 2014 due to the eldest daughter's income not being reported since she turned 19 years old.

Tenancy agreement

The residential lease agreement entered into evidence establishes a tenancy between the parties for subsidized public housing under the Homeownership Entry Level Program commencing March 13, 2009. The Homeownership Entry Level Program agreement entered into evidence was signed by the respondent on March 13, 2009, and by the applicant on April 1, 2009. Neither party disputed the validity of the two agreements. I am satisfied a valid tenancy agreement is in place between the parties for subsidized public housing in accordance with the *Residential Tenancies Act* (the Act).

Rental arrears

The lease balance statements and statement of account entered into evidence represent the landlord's accounting of monthly assessed rent and payments received against the respondent's rent account. I am satisfied the documents accurately reflect payments received against the respondent's rent account.

The Homeownership Entry Level Program (HELP) correspondence dated January 29, 2014, from the applicant to the respondent informs the respondent of changes to her HELP agreement taking effect April 1, 2014, that result in her monthly subsidized rent being set at \$375 for four years and her maximum monthly rent for her unit being set at \$980. The correspondence is addressed to the respondent and signed by the district director.

Section 7 of the residential lease agreement says the rent is due the first of every month. It also says that as long as the tenant is not in breach of the lease agreement and the HELP agreement that the subsidized rent will be calculated by the applicant in accordance with the HELP guidelines. Section 7 of the lease agreement also says that the landlord will give the tenant at least three months' notice of any increase to the maximum monthly rent amount shown in Schedule A to the lease agreement.

Section 5(b) of the HELP agreement states that after two years the rent payment will be calculated as 20 percent of the gross income of the tenant and all persons 19 years or older who reside on the property minus the applicant's approved shelter costs, but not more than the maximum unit rent.

Section 13 of the HELP agreement states that any amendment to the HELP agreement must be in writing and be properly executed by both parties.

Late payments

With respect to rent being paid on the first of every month, it is clear from the evidence and testimony that the respondent has not in fact made any rent payments between April 1, 2013, and April 24, 2015. I find the respondent has failed to comply with her obligation to pay the full amount of rent when it is due.

Maximum monthly rent

With respect to the notice of increase to the maximum monthly rent, Schedule A to the lease agreement specifies that as of April 1, 2008, the maximum monthly rent was \$1,416. The January 29, 2014, correspondence notifies the respondent of a decrease to the maximum monthly rent to \$980. The requirement to give three months' notice is for any increases, not decreases, so the fact of the applicant only giving the respondent two months' notice is irrelevant and as such I find the maximum monthly rent as of April 1, 2014, is \$980.

Calculation of subsidized rent

The January 29, 2014, correspondence consists of notification of changes to the respondents' tenancy agreement under HELP. The correspondence is signed by the district director. It is not signed by tenant. The changes include restructuring the way subsidized rent is calculated without defining the method by which the calculations were made. Section 5 of the HELP agreement is very specific in defining how the rent subsidy is to be calculated. Pursuant to section 13 of the HELP agreement, section 5 of that agreement cannot be changed without being properly executed by both parties. As the respondent has not properly executed the change to section 5 of the HELP agreement, the proposed changes referenced in the January 29, 2014, correspondence are invalid. Without verification of the correct calculations of rent subsidies made in accordance with section 5 of the HELP agreement I am unable to make a finding of the correct amount of rental arrears from which to issue an order for payment.

The parties were encouraged at hearing to obtain the required household income reports from which to determine the appropriate subsidies to apply against the respondent's monthly rent. Discussion was also encouraged between the parties to determine whether or not HELP was still the most suitable subsidized public housing program for the respondent to be a part of. The applicant has leave to file a new application to a rental officer for payment of rental arrears once those rental arrears are accurately determined.

Reporting of household income

The applicant testified to and the respondent confirmed that not all household income has been reported in accordance with section 6 of the lease agreement. I have heard that the respondent's eldest daughter's income has not been included in her household income reports since her daughter turned 19 years old. It is clear from both section 6 of the lease agreement and section 5 of the HELP agreement that the daughter's income must be reported for the periods during which the daughter has resided at the rental premises. I find the respondent has failed to comply with her obligation to report the total household income as required.

An order will issue requiring Ms. Shirley Lafferty to pay her rent on time in the future, to report her total household income in accordance with section 6 of her tenancy agreement, and not to breach her obligation to report her total household income again.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Applicant's written reasons for application
- Exhibit 2: Residential lease agreement
- Exhibit 3: Lease balance statement dated February 5, 2015
- Exhibit 4: Homeownership Entry Level Program agreement signed March 13, 2009
- Exhibit 5: Statement of account as of March 31, 2012
- Exhibit 6: Income verification documents
- Exhibit 7: Applicant's rental arrears correspondence to respondent dated February 12, 2015
- Exhibit 8: Applicant's correspondence to respondent dated March 26, 2014
- Exhibit 9: Applicant's payment change correspondences to respondent dated March 14, 2014
- Exhibit 10: Applicant's Homeownership Entry Level Program (HELP) correspondences to respondent dated: January 29, 2014; June 14, 2010
- Exhibit 11: Lease balance statement dated April 27, 2015