

IN THE MATTER between **Behchoko Ko Gha Kaodee**, Applicant, and **Graig Ekendia and Ashley Fish**, Respondents;

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:

BEHCHOKO KO GHA KAODEE

Applicant/Landlord

- and -

GRAIG EKENDIA and ASHLEY FISH

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent Ashley Fish must pay to the applicant rental arrears in the amount of \$1,095.00 (one thousand ninety-five dollars).
2. Pursuant to sections 41(4)(a) and 84(2) of the *Residential Tenancies Act*, the respondents Graig Ekendia and Ashley Fish must pay to the applicant rental arrears in the amount of \$19,140.80 (nineteen thousand one hundred forty dollars eighty cents) in minimum monthly installments of \$150.00 (one hundred fifty dollars) starting in May 2015 and each month thereafter until the rental arrears are paid in full.

3. Pursuant to section 41(4)(b) of the *Residential Tenancies Act*, the respondents must pay their rent on time in the future.

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 **Behchoko Ko Gha Kaodee**, Applicant, and **Graig Ekendia and Ashley Fish**, 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:

BEHCHOKO KO GHA KAODEE

Applicant/Landlord

-and-

GRAIG EKENDIA and ASHLEY FISH

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: April 30, 2015

Place of the Hearing: Behchoko, Northwest Territories

Appearances at Hearing: Michael Keohane, representing the applicant
Ashley Fish, respondent

Date of Decision: May 20, 2015

REASONS FOR DECISION

An application to a rental officer made by Behchoko Ko Gha Kaodee as the applicant/landlord against Craig Ekendia and Ashley Fish 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 Unit #776 in Behchoko, Northwest Territories. The applicant personally served a copy of the filed application on the respondents February 18, 2015.

The applicant alleged the respondents had accumulated rental arrears and sought an order for payment of the 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. Mr. Michael Keohane appeared representing the applicant. Ms. Ashley Fish appeared as respondent and representing Mr. Graig Ekendia.

The application to a rental officer named Craig Ekendia as a joint tenant, however, the latest residential tenancy agreement included in the application package named Graig Ekendia. Ms. Fish confirmed at hearing that Mr. Ekendia's first name is in fact Graig, not Craig. The application was amended and the style of cause going forward will refer to the respondents as Graig Ekendia and Ashley Fish.

The parties agreed that a residential tenancy agreement for subsidized public housing is currently in place between them. The tenancy agreements entered into evidence establish that Ms. Fish was a sole tenant between January 11, 2005, and March 31, 2007. Commencing April 1, 2007, Ms. Fish and Mr. Ekendia became joint tenants. The tenancy originally commenced at the rental premises identified as Unit #434A until January 2011 when the tenants were transferred to Unit #776 as a result of reallocation made in accordance with section 3 of the tenancy agreement. As such, the tenancy has been continuous since January 2005.

The tenant ledger cards and lease balance statements entered into evidence by the landlord represent the landlord's accounting of monthly assessed rent and payments received against the respondents' rent account. Mr. Keohane acknowledged that the balance owing of \$31,305.80 as reflected on the lease balance statement does include charges for damages for which he does not have evidence to support, nor is he seeking compensation for. The entries for damages include both charges and credits, and calculating the values together results in a total amount charged of \$126. This amount was deducted from the balance owing as reflected on the lease balance statement, resulting in rental arrears claimed of \$31,179.80. Mr. Keohane confirmed that although the respondents hold a tenancy agreement for subsidized public housing they are rarely eligible for rent subsidies due to their reported household income exceeding the core need income threshold for calculating subsidies. He confirmed that they have received household income verification forms up to and including December 31, 2014. The applicant reiterated that they were not seeking to terminate the tenancy and requested an order for payment of the rental arrears and that future rent be paid on time.

A preliminary review of the application package revealed that the last adjustment to the maximum monthly rent for the rental premises was entered on Schedule A of the residential tenancy agreement dated April 17, 2009. The maximum monthly rent was set at \$1,149 commencing April 1, 2009. Section 7 of the tenancy agreement stipulates the landlord will give the tenant at least one month's written notice of any increase to the maximum monthly rent amount shown in Schedule A. There is no evidence indicating the respondents were given this notice of any rent increases since the April 2009 tenancy agreement was entered into. The lease balance statement shows rent was charged in excess of the maximum monthly rent set out in Schedule A starting in July 2012; \$1,230 was charged for eight months and \$1,545 was charged for 26 months. Mr. Keohane was unable to provide evidence at hearing of the required notification of rent increase and was given until May 8, 2015, to provide that evidence. It was made clear at hearing that amount of rental arrears would be determined after May 8, 2015, based on information received by or before that date.

Ms. Fish did not dispute that she and Mr. Ekendia had accumulated rental arrears, although she did question whether or not the subsidies or their eligibility for subsidies were accurately calculated. As the calculation of subsidies and determination of eligibility for them lies solely with the landlord, Ms. Fish was encouraged to meet with her tenant relations officer to go over how the subsidies or her eligibility for them were assessed. My authority lies only in determining whether there are rental arrears accumulated based on no more than the maximum monthly rent amounts agreed upon in the tenancy agreement and in accordance with the *Residential Tenancies Act* (the Act). Ms. Fish acknowledged her responsibility to pay her monthly rent on time and was able to commit to paying \$150 per month towards the accumulated rental arrears in addition to her rent.

Ms. Fish explained that she has been a student for the last three years and their only source of income during that time has been from Mr. Ekendia's employment. She also mentioned that they have five children and they are living in a two-bedroom unit; the respondents have asked for a transfer to a larger unit without success as yet. Mr. Keohane encouraged Ms. Fish to continue communicating with her local tenant relations officer and indicated that they would look further into alternative accommodations to suit her family's needs.

Tenancy agreement

The residential tenancy agreements provided into evidence establish a continuous tenancy between the parties for subsidized public housing commencing January 11, 2005. The agreements indicate that Ms. Fish was the sole tenant responsible for the tenancy between January 11, 2005, and March 31, 2007, and that Ms. Fish and Mr. Ekendia were joint tenants responsible for the tenancy between April 1, 2007, and present. There was no dispute between the parties respecting the tenancy agreements. I am satisfied a valid tenancy agreement is in place between the parties in accordance with the Act.

Rental arrears

I am satisfied the lease balance statements and tenant ledger cards entered into evidence accurately reflect the payments made against the respondents' rent account. As no further evidence was received regarding notices of increases to the maximum monthly rent, adjustments to the amounts applied for rents for the months of July 2012 to April 2015 were made as follows:

Amount charged per lease balance statement	Number of months charged	Total erroneously charged
\$1,230.00	8	\$9,840.00
\$1,545.00	26	\$40,170.00
Maximum monthly rent per Schedule A of tenancy agreement	Number of months to charge	Corrected total to charge
\$1,149.00	34	\$39,066.00
Rental arrears balance per lease balance statement	Minus total erroneously charged of \$50,010 =	Plus corrected total to charge of \$39,066 = Total corrected rental arrears =
\$31,179.80	(\$18,830.20)	\$20,235.80

Of the adjusted total rental arrears, \$1,095 was accumulated during Ms. Fish's sole tenancy and \$19,140.80 was accumulated during Ms. Fish's and Mr. Ekendia's joint tenancy.

An order will issue requiring Ms. Ashley Fish to pay rental arrears in the amount of \$1,095. An order will issue requiring Ms. Ashley Fish and Mr. Graig Ekendia to pay rental arrears in the amount of \$19,140.80 in minimum monthly installments of \$150 starting in May 2015 and each month thereafter until the rental arrears are paid in full. An order will issue requiring the respondents to pay their rent on time in the future.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

Exhibit 1: Lease balance statement dated February 11, 2015

Exhibit 2: Tenant ledger cards for rent from January 11, 2005, to March 22, 2012

Exhibit 3: Residential tenancy agreements dated: January 27, 2011; October 28, 2009; April 17, 2009; December 22, 2008; June 20, 2007; April 6, 2005; January 11, 2005

Exhibit 4: Applicant's rental arrears correspondence to respondents dated: June 17, 2013; December 12, 2012; October 18, 2012; September 18, 2012; August 22, 2012; May 10, 2012

Exhibit 5: Tenant ledger card for security deposit

Exhibit 6: Lease balance statement dated April 28, 2015