

IN THE MATTER between **NWT Housing Corporation**, Applicant, and **Andrew Beaverho and Bianca Simpson**, 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 community of Whati in the Northwest Territories**.

BETWEEN:

**NWT HOUSING CORPORATION**

Applicant/Landlord

- and -

**ANDREW BEAVERHO and BIANCA SIMPSON**

Respondents/Tenants

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent Andrew Beaverho must pay to the applicant rental arrears in the amount of \$1,116.00 (one thousand one hundred sixteen dollars).
2. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondents Andrew Beaverho and Bianca Simpson must pay to the applicant rental arrears in the amount of \$7,731.00 (seven thousand seven hundred thirty-one dollars).
3. Pursuant to section 41(4)(b) of the *Residential Tenancies Act*, the respondents must pay their rent on time in the future.

4. Pursuant to section 45(4)(a) of the *Residential Tenancies Act*, the respondents must comply with their obligation to report their total household income in accordance with section 6 of their residential tenancy agreement.
5. Pursuant to sections 41(4)(c), 45(4)(e), and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the rental premises known as Unit 827A in Whati, Northwest Territories, will terminate September 30, 2015, unless the rents for July, August, and September 2015 are paid on time and the total household income is reported for the months of June, July, August, and September 2015.

DATED at the City of Yellowknife in the Northwest Territories this 18th day of June 2015.

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Adelle Guigon  
Deputy Rental Officer

IN THE MATTER between **NWT Housing Corporation**, Applicant, and **Andrew Beaverho and Bianca Simpson**, 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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Applicant/Landlord

-and-

**ANDREW BEAVERHO and BIANCA SIMPSON**

Respondents/Tenants

**REASONS FOR DECISION**

<b><u>Date of the Hearing:</u></b>	<b>June 11, 2015</b>
<b><u>Place of the Hearing:</u></b>	<b>Yellowknife, Northwest Territories, by teleconference</b>
<b><u>Appearances at Hearing:</u></b>	<b>Jessica Relucio, representing the applicant Andrew Beaverho, respondent Bianca Simpson, respondent</b>
<b><u>Date of Decision:</u></b>	<b>June 11, 2015</b>

**REASONS FOR DECISION**

An application to a rental officer made by NWT Housing Corporation as the applicant/landlord against Andrew Beaverho and Bianca Simpson as the respondents/tenants was filed by the Rental Office February 27, 2015. The application was made regarding a subsidized public housing residential tenancy agreement for the rental premises known as Unit 827A in Whati, Northwest Territories. The applicant personally served a copy of the filed application on Andrew Beaverho March 3, 2015, and on Bianca Simpson May 5, 2015.

The applicant alleged the respondents had accumulated rental arrears and sought an order for payment and termination of the tenancy agreement. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for June 11, 2015, by teleconference. Ms. Jessica Relucio appeared representing the applicant. Mr. Andrew Beaverho and Ms. Bianca Simpson appeared as respondents.

Ms. Relucio submitted that the subsidized public housing residential tenancy agreement for the rental premises known as Unit 827A in Whati, Northwest Territories, commenced in January 2007 and continues to date. The tenancy began with a written fixed-term tenancy agreement made with Mr. Beaverho as sole tenant on January 1, 2007; the written tenancy agreement entered into between the applicant and Mr. Beaverho and signed by both parties was submitted into evidence corroborating this. A subsequent fixed-term tenancy was entered into with Mr. Beaverho as sole tenant commencing July 1, 2009, and ending September 30, 2009. Ms. Relucio testified and provided evidence that Ms. Simpson had moved in with Mr. Beaverho on August 8, 2009, claiming a common-law relationship. The landlord deemed Mr. Beaverho and Ms. Simpson as joint tenants as of August 8, 2009. A written tenancy agreement reiterated the joint tenancy as of April 1, 2012, for a fixed-term to June 30, 2013, after which the joint tenancy agreement automatically renewed on a month-to-month basis.

Testimony was given indicating that the common-law relationship ended in December 2013 and Ms. Simpson moved out of the rental premises at that time. The most recent joint tenancy agreement was never replaced with a new sole tenancy agreement with Mr. Beaverho and as such that joint tenancy agreement remains in effect. Ms. Relucio requested that the joint tenancy agreement be terminated to facilitate entering into a new sole tenancy with Mr. Beaverho, citing the landlord's intention and the parties' willingness to execute a new tenancy agreement. I denied termination of the tenancy on the requested grounds; the *Residential Tenancies Act* does not identify termination of a tenancy agreement because the parties wish to enter into a new tenancy agreement as a reason for a rental officer to terminate the tenancy. If the parties wish to enter into a new tenancy agreement for the same rental premises (or any other rental premises) they may do so at any time. If the parties wish to replace a joint tenancy with a sole tenancy they may do so by either entering into a new tenancy agreement with the sole tenant or by assigning the joint tenancy to the sole tenant.

Ms. Relucio testified and provided evidence that the respondents had repeatedly failed to pay the full amount of rent when it was due, that they had repeatedly failed to report their total household income as and when required by the landlord, and that they had accumulated rental arrears currently totalling \$14,208. In recognition that Ms. Simpson had moved out of the rental premises in December 2013, Ms. Relucio requested payment of rental arrears from both tenants for the amount accumulated during the joint tenancy up to December 2013, and payment of rental arrears from Mr. Beaverho alone for the amounts accumulated during his sole tenancy and since January 2014.

Ms. Relucio testified that all rents up to and including March 2015 had been assessed subsidies based on reported household income, and that the rents for April to June 2015 had been assessed the maximum monthly rent of \$1,545 due to not having received the total household income reports for the months of March to May 2015.

Mr. Beaverho and Ms. Simpson did not dispute any of Ms. Relucio's testimony, acknowledging the total amount of rental arrears and appreciating the division of the arrears requested. Mr. Beaverho testified that he had submitted the outstanding household income reports for March to May 2015 the day before this hearing (June 10, 2015) to the local housing office; Ms. Relucio was unable to confirm or deny this, except to say that she is located at the Yellowknife district office and had not as yet received the reports.

*Tenancy agreement*

The initial tenancy agreement with Mr. Beaverho was for a fixed-term from January 1 to 31, 2007. Prior to September 2010, fixed-term tenancy agreements for subsidized public housing were exempt from the provision automatically renewing fixed-term tenancy agreements (s. 49(3), *Residential Tenancies Act*, RSNWT 1988, c R-5, amended SNWT 2002, c.18). As Mr. Beaverho remained in possession of the rental premises after his initial tenancy agreement expired and he continued to be assessed subsidized rent, an implied tenancy agreement was in effect starting February 1, 2007. A new fixed-term tenancy agreement for subsidized public housing was executed by the landlord and Mr. Beaverho setting out a fixed-term period from July 1 to September 30, 2009.

The landlord's assertion that a joint tenancy agreement began when Ms. Simpson moved in with Mr. Beaverho on August 8, 2009, is faulty. A written tenancy agreement was not entered into by the respondents when she moved in. Ms. Simpson's statutory declaration that she commenced a common-law relationship with Mr. Beaverho on August 8, 2009, does not constitute a new or amended tenancy agreement. It was agreed at hearing, however, that Mr. Beaverho and Ms. Simpson accepted joint responsibility for the tenancy. As the written sole tenancy ended September 30, 2009, I find that as of October 1, 2009, an implied joint tenancy agreement commenced between the landlord and Mr. Beaverho and Ms. Simpson as joint tenants. The implied joint tenancy continued until April 1, 2012, when a written tenancy agreement signed by both tenants came into effect for a fixed-term to June 30, 2013. This latest written joint tenancy agreement automatically renewed as a monthly joint tenancy agreement as of July 1, 2013, pursuant to section 49(1) of the current *Residential Tenancies Act* and continues in effect to date.

In summary, I find that Mr. Beaverho was a sole tenant from January 1, 2007, to September 30, 2009, and Mr. Beaverho and Ms. Simpson have been joint tenants from October 1, 2009, to present.

The statutory declarations respecting the on-again/off-again common-law status of the respondents does not constitute an amendment to an existing written tenancy agreement. The statutory declarations in this instance are relevant only to the landlord in determining who is residing in the rental premises for which income must be reported to assess subsidized rent.

*Rental arrears*

The applicant provided into evidence lease balance statements, statements of account, and invoices reflecting the status of the respondents' rent account from January 2007 to present. The respondents did not dispute the accuracy of the accounting and the total amount of rental arrears accumulated over the years.

The maximum monthly rent of \$1,545 was assessed for the months of April, May, and June 2015 as a consequence of Mr. Beaverho failing to report his household income for the months of March, April, and May 2015. In consideration of Mr. Beaverho's testimony that he reported his income for the outstanding months the day before this hearing, and in noting the lease balance statements indicate Mr. Beaverho's monthly subsidized rent for December 2014 to March 2015 was assessed at \$75, I find it reasonable to estimate the re-assessed rents for April to June will be \$75 and as such the total rental arrears will be adjusted accordingly. Should this estimate be less than the actual assessment, the landlord may file a new application to a rental officer seeking an order for payment of the additional amount, if they wish.

Further review of the rent account statements found the rent for June 2009 had been charged at the maximum monthly rent at the time of \$983; no subsidy had been assessed. Ms. Relucio testified that all rents throughout the entire tenancy had been assessed subsidies. Mr. Beaverho testified that all his household income had been reported all the way back to January 2009. Ms. Relucio was not able to confirm or prove otherwise. All other rents for the period between January 2007 and December 2009 had been assessed subsidized rent in the amount of \$32 per month. I am satisfied the rent for June 2009 should have been applied a subsidy as well and that it is not unreasonable to determine the subsidized rent would have been \$32. The rental arrears will be adjusted accordingly.

In determining the distribution of the rental arrears between the respondents I have also taken into consideration the applicant's recognition that Ms. Simpson has not been residing with Mr. Beaverho since December 2013. The applicant requested an order for payment of the rental arrears accumulated since January 1, 2014, be made against Mr. Beaverho alone. Under the circumstances I am in agreement that such a division is appropriate.

I find that Mr. Beaverho, being the sole tenant between January 2007 and September 2009 has accumulated rental arrears from that period in the amount of \$336.

I find that the rental arrears accumulated during Mr. Beaverho's and Ms. Simpson's joint tenancy from October 1, 2009, to present totals \$8,511. Of that, I am satisfied it is appropriate to order Mr. Beaverho and Ms. Simpson to jointly pay the amount accumulated between October 1, 2009, and December 31, 2013, in the amount of \$7,731, and Mr. Beaverho alone to pay the amount accumulated between January 1, 2014, and June 11, 2015, in the amount of \$780.

The last payment received against the respondents' rent account was made December 17, 2014, in the amount of \$225. I find the respondents have repeatedly failed to pay the full amount of their rent when it is due.

Section 6 of the residential tenancy agreement requires tenants to report their total household income as and when required by the landlord. The statements provided into evidence and Ms. Relucio's testimony indicate the respondents have failed to report their household income repeatedly and for lengthy periods of time throughout the tenancy. Mr. Beaverho's testimony confirms the most recent delay in reporting. I find the respondents have repeatedly failed to comply with their obligation to report their total household income.

#### *Termination*

In light of the repeated pattern throughout the tenancy of failing to pay the full amount of rent when it is due, failing to report total household income as required, and carrying substantial rental arrears, I find that termination of the tenancy agreement is justified. I am satisfied based on the circumstances that an opportunity to prove compliance is possible is warranted and as such the order to terminate the tenancy will be conditional on payment of rents on time and reporting of household income.

An order will issue requiring Mr. Andrew Beaverho to pay rental arrears in the amount of \$1,116; requiring Mr. Andrew Beaverho and Ms. Bianca Simpson to pay rental arrears in the amount of \$7,731; requiring the respondents to pay their future rent on time; requiring the respondents to comply with their obligation to report their total household income in accordance with section 6 of their tenancy agreement; and terminating the tenancy agreement September 30, 2015, unless the rents for July to September 2015 are paid in full and the total household income is reported for June to September 2015.

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Adelle Guigon  
Deputy Rental Officer



## APPENDIX A

### Exhibits

- Exhibit 1: Invoice
- Exhibit 2: Lease balance statement dated February 26, 2015
- Exhibit 3: Statement of account dated March 31, 2012
- Exhibit 4: Applicant's rent arrears correspondences to respondent dated: October 29, 2014; June 8, 2013; February 11, 2014; March 3, 2014; May 26, 2014; May 29, 2014
- Exhibit 5: Residential tenancy agreement dated March 11, 2013, for joint fixed-term tenancy from April 1, 2012, to June 30, 2013, signed by Bianca Simpson and Andrew Beaverho
- Exhibit 6: Residential tenancy agreement dated December 19, 2006, for sole fixed-term tenancy from January 1 to January 31, 2007, signed by landlord and Andrew Beaverho
- Exhibit 7: Four statutory declarations regarding common-law status
- Exhibit 8: Applicant's amended reasons for application
- Exhibit 9: Two invoices
- Exhibit 10: Statement of account dated March 31, 2012
- Exhibit 11: Residential tenancy agreement dated December 19, 2006, for sole fixed-term tenancy from January 1 to 31, 2007, signed by landlord and Andrew Beaverho (duplicate of Exhibit 6)
- Exhibit 12: Residential tenancy agreement dated July 1, 2009, for sole fixed-term tenancy from July 1 to September 30, 2009, signed by landlord and Andrew Beaverho
- Exhibit 13: Residential tenancy agreement dated March 25, 2010, for joint fixed-term tenancy from April 1 to June 30, 2010, not signed by either party
- Exhibit 14: Residential tenancy agreement dated March 11, 2013, for joint fixed-term tenancy from April 1, 2012, to June 30, 2013, signed by Bianca Simpson and Andrew Beaverho (duplicate of Exhibit 5)
- Exhibit 15: Residential tenancy agreement dated October 17, 2012, for joint fixed-term tenancy from April 1 to December 31, 2012, signed by Bianca Simpson