

IN THE MATTER between **Jane Dragon**, Applicant, and **Coreen Stewart**, 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,
regarding a rental premises located within the **town of Fort Smith in the Northwest
Territories.**

BETWEEN:

JANE DRAGON

Applicant/Landlord

- and -

COREEN STEWART

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 58(1.1) of the *Residential Tenancies Act*, the tenancy agreement between the parties will terminate April 30, 2016, and the respondent must vacate the rental premises on or before that date.

DATED at the City of Yellowknife in the Northwest Territories this 11th day of March 2016.

Adelle Guigon
Deputy Rental Officer

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BETWEEN:

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REASONS FOR DECISION

<u>Date of the Hearing:</u>	March 9, 2016
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories, by teleconference
<u>Appearances at Hearing:</u>	Brenda Dragon, representing the applicant Coreen Stewart, respondent
<u>Date of Decision:</u>	March 9, 2016

REASONS FOR DECISION

An application to a rental officer made by Jane Dragon as the applicant/landlord against Coreen Stewart as the respondent/tenant was filed by the Rental Office January 18, 2016. The application was made regarding a residential tenancy agreement for a rental premises located in Fort Smith, Northwest Territories. The applicant personally served a copy of the filed application on the respondent February 1, 2016.

The applicant requested termination of the tenancy agreement for the purposes of housing an immediate family member pursuant to section 58(1) of the *Residential Tenancies Act* (the Act). An addendum to the application was submitted February 17, 2016, requesting cost of repairs to the rental premises. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for March 9, 2016, by teleconference. Ms. Brenda Dragon appeared representing the applicant. Ms. Coreen Stewart appeared as respondent.

Preliminary matters

The written tenancy agreement identified Jane Dragon as the landlord on behalf of Joe Dragon - house owner). The applicant's representative clarified that Jane Dragon and Joe Dragon are co-owners of the rental premises. I am satisfied that Jane Dragon is the landlord as defined by the Act.

Tenancy agreement

The parties agreed that a written tenancy agreement was entered into between Jane Dragon and Coreen Stewart for the rental premises identified as 6 Cassette Crescent in Fort Smith, Northwest Territories, commencing October 1, 2015. The monthly rent was established at a total of \$830 (including water).

The written agreement included a paragraph stating:

“The Lease will start on October 1, 2015, and will continue on a month-to-month tenancy. To terminate tenancy the Landlord or Tenant must give the other party a 30 day notice of lease non-renewal.”

The reference to 'lease non-renewal' implies the tenancy agreement is of a fixed-term nature. Section 51(1) of the Act defines a fixed-term tenancy agreement as one that specifies a date for the termination of the tenancy agreement. Section 52(1) of the Act defines a periodic tenancy agreement as one that does not specify a date for the termination of the tenancy agreement. This written tenancy agreement identifies the tenancy as a month-to-month tenancy with no specific date for termination and therefore is a periodic tenancy agreement.

The reference to the landlord being able to terminate the tenancy by giving 30 days' notice to the tenant is contradictory to the Act. The only circumstance within which the landlord may give a tenant written notice to terminate the tenancy without making an application to a rental officer is under sections 51(2) and 52(2) of the Act where the rental premises is the landlord's only residence in the Northwest Territories. All other circumstances under which the landlord requests termination of a tenancy agreement require an application be made to a rental officer. As such, the condition in this written tenancy agreement permitting the landlord to give the tenant 30 days' notice to terminate the tenancy is void. Otherwise, I am satisfied a valid tenancy agreement is in place between the parties in accordance with the Act.

Damages

The applicant's addendum to the application with respect to cost of repairs is regarding the respondent's installation of a satellite dish on the roof of the rental premises. The applicant claims the installation has caused damages to the roof which will require repair and inspection by a qualified professional to remedy. The respondent did not dispute that the installation of the satellite dish will have caused damages to the roof and accepted responsibility for those damages. She acknowledged that by the end of her tenancy she would take all necessary actions to have the satellite dish removed and the damages repaired by a qualified professional. I am satisfied that damages have occurred to the rental premises with the installation of the satellite dish.

Section 42(1) of the Act requires a tenant to repair damages to the rental premises for which the tenant is liable. Remedies are available to the landlord where the tenant fails to comply with their obligation to effect repairs. In this instance, the tenant has acknowledged her responsibility for the damages and agreed she will take responsibility for ensuring the damages are repaired prior to her vacating the rental premises. She also understands that should any subsequent damages occur as a result of the damages to the roof she could be held liable for the additional damages.

The applicant indicated in her addendum that she received an estimate from a roofing specialist for the inspection and repair of the damages at approximately \$100. No supporting quote or estimate was provided. In my opinion, the landlord's application for cost of repairs at this time is premature. Certainly should the damages not have been adequately repaired by the respondent by the end of the tenancy the landlord will be in a position to make a claim for any costs the landlord directly incurs to effect repairs, and an application to a rental officer can be made at that time if necessary.

Termination of the tenancy agreement

The applicant has requested an order for vacant possession of the rental premises in order for her son, Brian Dragon, to reside there. Section 58(1) of the Act permits a landlord to apply to a rental officer to terminate a tenancy if the landlord requires possession of the rental premises for use as a residence by the child of the landlord. The applicant's representative confirmed Mr. Dragon has not had a permanent residence since October 2015.

The respondent did not dispute the purpose of the landlord's requirement for the rental premises, and has been making significant efforts since learning of Mr. Dragon's needs to find alternate accommodations. Those efforts have been unsuccessful to date, although promising prospects do appear to be coming. She stated that a recent inspection of the rental premises by the landlord was indicated to be for the purposes of preparing to sell the property. The applicant's representative confirmed the intended purchaser is Brian Dragon.

I am satisfied the landlord in good faith requires the rental premises for use as a residence by her son, Brian Dragon.

Section 58(1.1)(a) specifies that the rental officer may order termination of a periodic tenancy on the last day of a period of the tenancy that is not earlier than 90 days after the application is made. The application is dated January 5, 2016, was received by the Rental Office January 11, 2016, and was filed by the Rental Office January 18, 2016. Ninety days after the application is made – regardless of which date is used to determine the date the application is made – falls in April 2016. I find termination of the tenancy justified to take effect April 30, 2016.

Order

An order will issue terminating the tenancy agreement between the parties on April 30, 2016, and requiring the respondent to vacate the rental premises on or before that date.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Month to month rental agreement commencing October 1, 2015
- Exhibit 2: Respondent's correspondence to applicant dated November 2, 2015
- Exhibit 3: Northwest Territories Housing Corporation property information form signed by Jane Dragon October 19, 2015
- Exhibit 4: Applicant's correspondence to respondent dated October 26, 2015
- Exhibit 5: Applicant's correspondence amending the application to a rental officer dated February 17, 2016