

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

YELLOWKNIFE HOUSING AUTHORITY

Applicant/Landlord

- and -

SHERRY GRAHAM

Respondent/Tenant

MEMORANDUM OF JUDGMENT

[1] The Yellowknife Housing Authority (“the Housing Authority”) provides subsidized housing in Yellowknife. It entered into a fixed term residential lease with Sherry Graham. The Housing Authority applies for an order evicting Ms. Graham from the premises on the basis that the tenancy agreement was terminated as of December 31<sup>st</sup>, 2006. The Housing Authority also seeks an order against Ms. Graham for payment of rental arrears, compensation for occupancy of the premises after December 31<sup>st</sup>, 2006, and repair costs.

A) BACKGROUND OF APPLICATION

[2] The tenancy agreement provides that it starts on August 1<sup>st</sup>, 2006 and ends on December 31<sup>st</sup>, 2006. The monthly rent is \$1,337.00. The agreement provides that the tenant is eligible for a rent subsidy calculated by the GNWT.

[3] The affidavits filed on behalf of the Housing Authority show among other things that a hearing took place before the Rental Officer on November 28<sup>th</sup>,

2006 about alleged breaches of the tenancy agreement. Ms. Graham was not present at that hearing. Representations were made to the Rental Officer that Ms. Graham had breached the tenancy agreement by failing to pay rent, by failing to repair damages caused to the rental premises, and by failing to provide information about her household income.

[4] On November 30<sup>th</sup>, 2006, the Rental Officer issued his decision. He found Ms. Graham in breach of her obligation to pay rent and of her obligation to report her household income. He also found her in breach of her obligation to repair damages. The Rental Officer made the following orders:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant rent arrears in the amount of four thousand seven hundred dollars (\$4,770.00)
2. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondent shall pay the applicant repair costs in the amount of six hundred seven dollars and sixty two cents (\$607.72)
3. Pursuant to sections 41(4)(c) and 83(2) of the *Residential Tenancies Act* the tenancy agreement between the parties for the premises known as 742 Bigelow Crescent, Yellowknife NT shall be terminated on December 31<sup>st</sup>, 2006 and the respondent shall vacate the premises on that date unless the rent arrears and repair costs in the total amount of five thousand three hundred seventy seven dollars and sixty two cents (\$5377.62) are paid in full and the respondent has complied with her obligations to report her household income in accordance with the tenancy agreement.

[5] In its Originating Notice the Housing Authority seeks an order stating that the tenancy agreement has ended as of December 31<sup>st</sup>, 2006, an order evicting Ms. Graham from the premises, an order for payment of rental arrears, compensation for occupation of the premises after December 31<sup>st</sup> 2006, and repair costs.

[6] Ms. Graham has filed an affidavit where she deposes that she wants an extension of time to appeal the Rental Officer's decision. She states that she had to leave Yellowknife in November of 2006 as a result of her grandmother's passing on ... Ms. Graham's father was seriously ill at the time and he passed away on .... Ms. Graham returned to Yellowknife in January 2007.

- [7] Ms. Graham deposes that she advised the Housing Authority before she left that she would be away for some time. She also says that she had contact with the Housing Authority while she was away and was led to believe there was nothing pressing relating to her housing unit. She states that it was only after her return to Yellowknife, when she was served with the Originating Notice and supporting materials on this application, that she learned that she was facing eviction. She took steps to get legal assistance at that point, and was approved for legal aid on February 14<sup>th</sup>, 2007.
- [8] Ms. Graham also states that she disagreed with the calculation of her subsidy and rent. She states that she advised the Housing Authority in November... that she was unemployed, and that she believed that her utilities' credit was sufficient to cover her rent for the months of November, December and January.

## ANALYSIS

- [9] Section 87 of the *Residential Tenancies Act*, R.S.N.W.T.1988 c. R-5 ("the *Act*") provides that a person wishing to appeal a decision made by a Rental Officer must do so within fourteen days of being served with the Order. Subsection 87(3) allows this Court to extend the time for filing an appeal. Ms. Graham is seeking such an extension. My understanding from the submissions made on her behalf is that she wants to challenge the eviction order and other aspects of the Rental Officer's decision.
- a) Termination of Tenancy and Eviction
- [10] The Housing Authority argues that Ms. Graham's application to extend the time to appeal is a moot point because the tenancy agreement expired as of December 31<sup>st</sup>, 2006, irrespective of the Rental Officer's decision. Fixed tenancy agreements are ordinarily deemed to be automatically renewed as a monthly tenancy pursuant to Subsection 49(1) of the *Act*, but Subsection 49(3) makes that general rule inapplicable to subsidized public housing. As a result, the Housing Authority argues that the tenancy agreement expired on December 31<sup>st</sup> 2006 and would have done so even if the Rental Officer had not issued his Order.
- [11] Ms. Graham argues that it is unfair for the Housing Authority to rely on Subsection 49(3) in this Court because no reference to that provision was made

in the proceedings before the Rental Officer. Those proceedings focused on other grounds for terminating the tenancy agreement, namely, the non payment of rent, the failure to report income and the failure to pay for repairs.

[12] I understand Ms. Graham's submission but find that, as a matter of law, it does not assist her. The Originating Notice filed in this Court by the Housing Authority seeks an order that the tenancy agreement terminated as of December 31<sup>st</sup> 2006 in accordance with section 63(1) of the *Act*. That provision is not limited to tenancy agreements terminated by order of a Rental Officer. Subsection 63(1) reads:

63(1) Where, on application of a landlord, a judge of the Supreme Court determines that a tenancy has been terminated in accordance with this Act, the judge may make an order

- (a) evicting the tenant on the date specified in the agreement, notice or order or on the earliest reasonable date after the date of termination of the tenancy; and
- (b) requiring the tenant to compensate the landlord for the use and occupation of the rental premises, calculated for each day the tenant remains in occupation following the termination of the tenancy.

[13] The relief sought in the Originating Notice does not purport to be based on the Rental Officer's decision. It is based on the termination of the tenancy agreement. The statutory provision relied on enables a landlord to apply for an eviction order when a tenancy agreement has been terminated. It is not limited to situations where that termination is the result of a Rental Officer's order.

[14] Given this, Ms. Graham's appeal of the Rental Officer's decision has no bearing on the Housing Authority's application to evict her from the rental premises. Hers was a fixed tenancy agreement that ended on December 31<sup>st</sup> 2006. The agreement was not renewed. Had there been no proceedings before the Rental Officer, the tenancy agreement would still have ended on that date. Even a successful appeal of the Rental Officer's decision would not change that fact.

- [15] Given this, I find that Ms. Graham's application for an extension of time to appeal the Rental Officer's decision is a moot point as far as the Housing Authority's application for an eviction order is concerned.
- b) Order for Rent Arrears, Compensation for Occupation and Repair Costs
- [16] Subsection 87(3) grants this Court the discretion to extend time to file an appeal of a Rental Officer's decision. The Act does not provide any criteria for the exercise of this discretion. I agree with the conclusion the Court reached in *Corrigan v. Scott* [1990] N.W.T.J. No 42 that in the absence of any statutory criteria, this Court has a wide discretion to grant applications to extend the time to file an appeal of a Rental Officer's decision. I also agree that this discretion must be exercised in a judicial manner, and based on the Court's findings as to what the interests of justice require.
- [17] Exhibit "C" to the affidavit sworn January 31<sup>st</sup> 2007 by Julie Forget is a copy of an Affidavit of Service showing that the Rental Officer's Order and Reasons for Decision were purportedly served on Ms. Graham on December 9<sup>th</sup>, 2006, by leaving copies of the documents at the leased premises "with an adult resident who identified herself as Jessie Graham". In her affidavit Ms. Graham deposes that she was away from Yellowknife in November and December 2006, and that although Jessie Graham, her 15 year old daughter, advised her that documents had been left for her at the residence, Jessie was unable to communicate what the documents were about. As already mentioned, Ms. Graham deposes that she was not aware of the outcome of the proceedings before the Rental Officer until she returned to Yellowknife in January of 2007. Once she was served, she took steps to seek legal assistance to deal with the matter.
- [18] The determination of how much money Ms. Graham owed to the Housing Authority flowed from the Rental Officer's assessment of the evidence and record placed before him by the Housing Authority. The Rental Officer did not have the benefit of any evidence or submissions from Ms. Graham at that hearing. Some of the matters now deposed to by Ms. Graham may have had an impact on the Rental Officer's assessment of how much money she owed. For example, Ms. Graham deposes that she advised the Housing Authority in November 2006 that she was unemployed. This might have had an impact on what her rent would be assessed at, and consequently, on the calculation of

arrears for the months of November and December. Under all these circumstances, this may well be a case where this Court could exercise the broad discretion conferred to it by Subsection 87(3) and grant Ms. Graham an extension of time to file an appeal of the Rental Officer's decision.

[19] However, in the circumstances of this case, I find that the interests of justice can be served without granting Ms. Graham leave to appeal the Rental Officer's decision. The issue of how much money Ms. Graham owes to the Housing Authority is before this Court on this application. Evidence relevant to that issue can be adduced in the context of this application and can be resolved by this Court. This will be more expeditious and cost efficient for the parties.

[20] I will therefore deal with Paragraphs 1 to 3 of the Originating Notice. As for the issues raised in Paragraphs 4 and 5, I direct that any further affidavit material that the parties wish to adduce be filed no later than Thursday April 5<sup>th</sup>, 2007. That part of the application is adjourned to be spoken to in Civil Chambers on Friday April 13<sup>th</sup>, at 10:00AM. At that time, depending on whether there will be a need to call *viva voce* evidence, the matter can be scheduled for either a Special Chambers date or to a regular Civil Chambers date. Either way I will have to preside over the continuation of this matter, as I am now seized.

## CONCLUSION

[21] For the above reasons, my Order is as follows:

1. The tenancy agreement respecting the premises located at 742 Bigelow Crescent in the City of Yellowknife, NT between the Applicant/Landlord and the Respondent/Tenant having terminated as of December 31<sup>st</sup>, 2006 pursuant to section 63(1) of the *Residential Tenancies Act*, the Respondent/Tenant shall be evicted from the same premises on March 30<sup>th</sup>, 2007.

2. The Sheriff of the Northwest Territories is hereby empowered to evict the Respondent/Tenant from the premises on or after March 30<sup>th</sup>, 2007 pursuant to section 63(2) of the *Residential Tenancies Act* unless the premises have by then been surrendered to the Applicant/Landlord.

3. All other matters raised in the Applicant/Landlord's Originating Notice filed February 1<sup>st</sup>, 2007, are adjourned to be spoken to on Friday, April 13<sup>th</sup>, 2007, at 10:00, at which time a date will be set for a hearing on those issues.

4. Any affidavit material that the parties wish to rely on shall be filed with this Court no later than Thursday April 5<sup>th</sup>, 2007 at 4:00PM.

L.A. Charbonneau  
J.S.C.

Dated at Yellowknife, NT, this  
16<sup>th</sup> day of March 2007

Counsel for the Applicant/Landlord:  
Agent for the Respondent/Tenant:

Glenn Tait  
Jay Bran

S-1-CV2007000023

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MEMORANDUM OF JUDGMENT OF THE  
HONOURABLE JUSTICE L.A. CHARBONNEAU

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