

IN THE MATTER between **G.B.H. HOLDINGS LTD.**, Applicant, and **PETE SMITH AND CLARA ELIAS**, Respondents;

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, **HAL LOGSDON**, Rental Officer, regarding the rental premises at **INUVIK, NT**.

BETWEEN:

G.B.H. HOLDINGS LTD.

Applicant/Landlord

- and -

PETE SMITH AND CLARA ELIAS

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 43(3)(d) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Apartment 21, 40 Tununuk Place, Inuvik, NT shall be terminated on November 30, 2009 and the respondents shall vacate the premises on that date.

DATED at the City of Yellowknife, in the Northwest Territories this 13th day of November, 2009.

Hal Logsdon
Rental Officer

IN THE MATTER between **G.B.H. HOLDINGS LTD.**, Applicant, and **PETE SMITH AND CLARA ELIAS**, Respondents.

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 **Hal Logsdon**, Rental Officer.

BETWEEN:

G.B.H. HOLDINGS LTD.

Applicant/Landlord

-and-

PETE SMITH AND CLARA ELIAS

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: November 12, 2009

Place of the Hearing: Inuvik, NT via teleconference

Appearances at Hearing: Lois Kathrens, representing the applicant
Pete Smith, respondent
Clara Elias, respondent

Date of Decision: November 13, 2009

REASONS FOR DECISION

The applicant alleged that the respondents had breached the tenancy agreement by repeatedly disturbing other tenants in the residential complex and sought an order terminating the tenancy agreement between the parties.

A previous order (file #20-10982, filed on August 14, 2009) ordered the respondents to comply with their obligation to not disturb other tenants and to not create any disturbance in the future.

The applicant testified that the respondents had created numerous disturbances since the previous order was issued. Seven written notes to file, written between September 5, 2009 and November 7, 2009 were provided in evidence.

Several of the alleged incidents of disturbance are not, in my opinion, breaches of the tenancy agreement. On October 22 the applicant asked the respondents to not hold the front door open because cold air was entering the building. The applicant alleged that the respondents shut the door then "told her off". On October 26 the applicant notes that Pete Smith was circulating a petition among other tenants about her. She notes that other tenants found this disturbing. On September 19 the respondents' daughter, trying to gain entry to the building, allegedly damaged the intercom. She does not live with the respondents and there is no evidence that the respondents permitted her to enter the building or their premises on that occasion.

One written note to file describes a brief argument between the respondents in their apartment on October 21 at 11:00 AM. The applicant notes that she heard the yelling from the hallway and that the neighbours in the adjoining apartment have three small children. There is no indication that any tenants complained about the incident. The respondents did not deny the allegation.

The applicant provided a written complaint from another tenant in the residential complex in evidence. The complaint noted that there was loud "stomping on the floor" on October 3 which lasted more than an hour. The landlord also wrote a note to file on the incident. Neither document indicates the time of day this occurred. The respondents stated that they had guests with children, which was also noted by the landlord, and the children were running about as children are prone to do. The respondents stated that it was not late at night and noted that the neighbour often worked nights, a fact which is mentioned in his complaint.

The applicant stated that there was fighting and noise in the respondents' apartment on October 4. There is no written documentation of this incident and the respondents disputed the allegation.

The applicant stated that the respondents' guests park their vehicles in the wrong area and shout to the respondents to let them into the building. The applicant acknowledged that the intercom had not been programmed for the respondents' apartment but stated that they had not provided their telephone number to her to enable her to do so. The applicant stated that since the intercom was damaged, it worked for some apartments but not others.

The parties agreed that there was loud arguing between the respondents at 2:45 AM on November 7 which disturbed other tenants and resulted in the police attending the respondents' apartment. Mr. Smith left the premises after the arrival of the police.

I also note that Mr. Smith became quite agitated during the hearing and was warned by the rental officer to control his temper or he would be ordered to leave the hearing room.

It is difficult to find some of these incidents serious enough to warrant termination of the tenancy agreement. Some do not, in my opinion, constitute a breach of the respondents' obligations. A landlord can not hold a tenant liable for damage to an intercom caused by another person unless that person is permitted in the building by the tenant. It is hard to imagine how circulating a petition can significantly disturb other tenants.

However, it must be taken into consideration that any significant disturbance by the respondents also constitutes a breach of the previous order. One would assume that tenants who had been ordered to not create any further disturbance would be vigilant about their behaviour in order to avoid termination of the tenancy agreement. One would assume that the respondents would have avoided even a brief disturbance such as the October 21 argument and surely would have avoided a significant disturbance requiring the presence of the police.

I find the respondents in breach of their obligation to not disturb other tenants and in breach of the previous order. In my opinion, there are sufficient grounds to terminate the tenancy

agreement. An order shall issue terminating the tenancy agreement on November 30, 2009 and requiring the respondents to vacate the premises on that date.

Hal Logsdon
Rental Officer