

IN THE MATTER between **SHELTER CANADIAN PROPERTIES LTD.**, Applicant,  
and **ASHLEE LAGACE**, Respondent;

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

BETWEEN:

**SHELTER CANADIAN PROPERTIES LTD.**

Applicant/Landlord

- and -

**ASHLEE LAGACE**

Respondent/Tenant

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant rent arrears in the amount of two thousand two hundred thirty two dollars and sixty five cents (\$2232.65) on or before June 20, 2012.
2. Pursuant to sections 43(3)(a) and 43(3)(b) of the *Residential Tenancies Act*, the respondent shall comply with her obligation to not disturb other tenants and shall not create any disturbance in the future.

DATED at the City of Yellowknife, in the Northwest Territories this 15th day of May,  
2012.

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Hal Logsdon  
Rental Officer

IN THE MATTER between **SHELTER CANADIAN PROPERTIES LTD.**, Applicant,  
and **ASHLEE LAGACE**, 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 **Hal Logsdon**, Rental Officer.

BETWEEN:

**SHELTER CANADIAN PROPERTIES LTD.**

Applicant/Landlord

-and-

**ASHLEE LAGACE**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:** May 3, 2012

**Place of the Hearing:** Yellowknife, NT

**Appearances at Hearing:** Shelly Longhurst, representing the applicant  
Colin Avey, witness for the applicant  
Ashlee Lagace, respondent  
Julie Carter, witness for the respondent

**Date of Decision:** May 15, 2012

### **REASONS FOR DECISION**

The applicant alleged that the respondent has breached the tenancy agreement by failing to pay rent and by disturbing other tenants in the residential complex. The applicant sought an order requiring the respondent to pay the alleged rent arrears and terminating the tenancy agreement and evicting the respondent.

The applicant provided a statement of the rent account which indicated a balance of rent and late payment penalties of \$2232.65. The monthly rent for the premises is \$1685 which is frequently paid in full on behalf of the tenant through the *Income Security Program*. The applicant holds a security deposit of \$1682.50. The applicant stated that the parties had agreed on a payment schedule to retire the arrears in full by June 20, 2012.

The applicant served notices on the respondent on February 29, 2012 and April 23, 2012 stating that they had received complaints of loud music, banging and yelling and reminding her of her obligation to not disturb other tenants in the building. The applicant's representative stated that she had no direct knowledge of the incidents. Although she lives in the building her apartment is not in close proximity to the respondent's suite.

The applicant's witness lives in the apartment directly above the respondent's suite (#406). He submitted a list of dates, times and details of disturbances allegedly caused by the respondent between February 1 and April 21, 2012. In total, the witness had documented over sixty

incidents, often several in a single day. Only three of the recorded incidents occurred late at night or early in the morning. The complaints consist of loud music, banging and shouting. The witness stated that he had spoken to the respondent about the noise on numerous occasions without effect.

The applicant's witness also provided a written statement from his wife outlining in more general terms the alleged disturbances caused by the respondent. She described the disturbance as occurring "regardless of day or night".

The applicant also provided a letter from the tenant who resides in the apartment directly below the respondent's suite (#206). The letter was obtained from the applicant's witness at the hearing. That letter complained about stomping and loud music between 11:00 PM and 4:00 AM. The letter also indicates that the tenants had spoken to the tenants in #406 and were encouraged to write the complaint after hearing that they suffered from the same disturbances.

The applicant also provided a note from the tenant occupying #304, adjacent to the respondent's suite. This was also obtained from the witness at the hearing. The tenant stated that loud music has been heard from the respondent's apartment "on occasion after work or on Saturday afternoons". He wrote that he can escape from the disturbance if he "retires to his bedroom".

The respondent did not dispute the rent arrears. She stated that she is now employed and will be able to pay the arrears even earlier than the payment plan agreed to by the parties, likely by May

31, 2012.

The respondent disputed the allegations of disturbance. She acknowledged that she played music in the afternoon and early evenings while she was cleaning but denied that it was unreasonably loud, noting that the times noted by the applicant's witness were almost exclusively before 11:00 PM. The respondent stated that the tenant in #406 frequently beat on his floor when she played any music, disturbing her and her child. She noted that the written statement by the wife of the applicant's witness stated that they had been disturbed by noise for over two years. She concluded that they had also been disturbed by the former tenants as her tenancy commenced in June, 2010. The respondent stated that no one else in the building had complained about the music and on one occasion when the landlord was at her apartment and music was playing, there was no indication from the landlord that the music was too loud.

The respondent's witness testified that she and the respondent were watching a movie one evening about 8:00 PM with the volume at a normal level when the applicant's witness started banging on his floor. The respondent and her witness went to the apartment upstairs where "words were exchanged". The banging continued accompanied by loud music from upstairs which then disturbed others in the building.

The landlord has been rather passive during this dispute which appears to be primarily between the tenants of #406 and the respondent. Although it is quite appropriate for a landlord to file an *Application to a Rental Officer* when they receive complaints of disturbance from another tenant,

I would have expected the applicant to look into the matter somewhat more vigorously to determine for themselves the nature and severity of the complaints. It appears that the gathering of evidence concerning the complaints has been delegated to the complainant who has obviously solicited others to corroborate his allegations. It is obvious that the tenants in #406 are disturbed by the respondent's music but are the complaints warranted? The landlord's observations and opinion would have been helpful here as some of the solicited complaints from other tenants appear influenced by the tenants in #406 and are not entirely consistent.

While the tenants in #406 have documented noise during the day (notwithstanding that the wife's statement attributes disturbances "regardless of day or night") the tenant in #206 writes about music and stomping between 11:00 PM and 4:00 AM. The complaint solicited from the tenant in #304 appears to more closely corroborate the evidence from the tenants in #406 describing the music volume as "excessive even during the non-quiet hours". The tenant in #304 does acknowledge that the music is not disturbing if he moves into his bedroom which I assume does not share a common wall with the respondent's apartment.

The respondent appears to be of the opinion that if the music is not played late at night or early in the morning, it can not be disturbing. She has noted that her music respects the quiet hours between 11:00 PM and 7:00 AM. While the landlord has designated these hours as quiet hours, that does not imply that noise during any other time period can not be disturbing. Of course it can and the *Residential Tenancies Act* makes no distinction regarding time of day in section 43.

**43. (1) A tenant shall not disturb the landlord's or other tenants' possession or enjoyment of the rental premises or residential complex.**

Given the evidence, I am convinced that the respondent has disturbed other tenants in the residential complex. However, it appears to me that the major complainant is somewhat over sensitive to noise and is offended by the respondent's disturbances where others might not be. In my opinion, it is likely that without the urging of the complainant in #406, others would not have come forward with their complaints and that one other complainant may have embellished his complaint to make it appear more serious than it was. In my opinion, the tenancy agreement should continue provided the respondent does not create any future disturbances and the rent arrears are retired in accordance with the agreed payment schedule. The landlord may file a future application seeking termination and eviction if this order is breached.

An order shall issue requiring the respondent to pay rent arrears of \$2232.65 on or before June 20, 2012 and to comply with her obligation to not disturb other tenants and to not create any disturbance in the future.

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Hal Logsdon  
Rental Officer