

IN THE MATTER between **Hay River Housing Authority**, Applicant, and **Garry Martel**, 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, **Adelle Guigon**, Deputy Rental Officer, regarding a rental premises within **the town of Hay River in the Northwest Territories**.

BETWEEN:

**HAY RIVER HOUSING AUTHORITY**

Applicant/Landlord

- and -

**GARRY MARTEL**

Respondent/Tenant

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent must pay to the applicant rental arrears in the amount of \$67.60 (sixty-seven dollars sixty cents).
2. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondent must compensate the applicant for expenses directly associated with the repair of damages to the rental premises in the amount of \$960.43 (nine hundred sixty dollars forty-three cents).

3. Pursuant to section 43(3)(d) of the *Residential Tenancies Act*, the tenancy agreement between the parties regarding the rental premises known as Apt. 109, 46 Woodland Drive, in Hay River, Northwest Territories, is terminated effective March 10, 2014, and the respondent must vacate the rental premises on or before that date.

DATED at the City of Yellowknife in the Northwest Territories this 10th day of February 2014.

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Adelle Guigon  
Deputy Rental Officer

IN THE MATTER between **Hay River Housing Authority**, Applicant, and **Garry Martel**, 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.

BETWEEN:

**HAY RIVER HOUSING AUTHORITY**

Applicant/Landlord

-and-

**GARRY MARTEL**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:** January 28, 2014

**Place of the Hearing:** Hay River, Northwest Territories, by Teleconference

**Appearances at Hearing:** Adam Swanson, representing the Applicant  
Brenda McAuley, witness for the Applicant  
Garry Martel, representing himself as the Respondent

**Date of Decision:** February 9, 2014

**REASONS FOR DECISION**

An application to a rental officer made by Hay River Housing Authority as the applicant/landlord against Garry Martel as the respondent/tenant was filed by the Rental Office September 11, 2013. The application was made regarding a residential tenancy agreement for the rental premises known as Apt. 109, 46 Woodland Drive, in Hay River, Northwest Territories. The applicant served a copy of the filed application on the respondent by personal service September 17, 2013. Additional subsequent written submissions were made adding to the application on November 7, 2013, and January 21, 2014, of which the respondent was provided copies.

The applicant alleged the respondent had accumulated rental arrears, was responsible for the repair of damages to the rental premises, and had repeatedly disturbed the quiet possession and enjoyment of the residential complex by the landlord and other tenants. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for October 25, 2013. Notices of attendance were served on the applicant by registered mail signed for October 7, 2013, and on the respondent by personal service October 10, 2013. The respondent requested an adjournment of the hearing due to previously scheduled travel plans which he expected would keep him out of the community until the end of October; the applicant did not oppose the adjournment.

The hearing was rescheduled to November 13, 2013. Notices of attendance were served on the applicant by registered mail signed for October 24, 2013; personal service of the notice on the respondent was unsuccessful and it was determined that he had not returned to the community as of November 8, 2013. The hearing was adjourned *sine die* pending confirmation of the respondent's return to the community.

The hearing was rescheduled to January 28, 2014. Notices of attendance were served on the applicant by registered mail signed for January 9, 2014, and on the respondent by personal service January 17, 2014. Mr. Adam Swanson appeared representing the applicant; Mr. Garry Martel appeared representing himself as the respondent.

Mr. Swanson testified that Mr. Martel had recently accumulated rental arrears in the amount of \$67.60 and provided a statement of account as evidence of this outstanding amount. Mr. Martel did not dispute these rental arrears claimed.

Mr. Swanson testified that Mr. Martel was responsible for the repair of a broken window to his apartment. Mr. Swanson stated there were reports/complaints from other tenants hearing yelling coming from Mr. Martel's apartment on October 9, 2013, and that Mr. Martel himself reported that the outside pane of the window was broken that day. Mr. Swanson submitted work orders and invoices for the costs of materials and labour to replace the broken window – including an amended submission requesting the cost of the windows themselves, which had mistakenly not been included in the original invoice – as follows:

Misc carpentry – materials for repair of screen:	\$50.00
Material costs – mech gloves x2:	\$55.77
Additional material costs – sealed window unit one fixed/one slider:	\$486.46
Labour – two workers, four hours:	\$424.00

In subsequent submissions Mr. Swanson withdrew the request for compensation for the mech gloves. Mr. Martel did not dispute the window was broken but did dispute his responsibility for it, stating he was not the person who broke the window, that it had been broken from outside. Mr. Martel also disputed, both at hearing and in subsequent submissions, the time claimed to replace the window. Mr. Martel claimed that four hours for two workers to replace the window was unreasonably excessive. He questioned the purpose for two workers to do the work. Mr. Swanson argued the applicant had a safety policy in place that required the attendance of two workers to conduct repairs due primarily to the often hostile behaviour of certain tenants within their units, including Mr. Martel.

Mr. Swanson testified that Mr. Martel had repeatedly disturbed the quiet enjoyment and possession of the residential complex for other tenants and the landlord. He submitted documentary evidence of reported complaints regarding 17 separate incidents taking place between December 31, 2012, and January 9, 2013, including submitting copies of warning correspondences given to Mr. Martel requesting he comply with his obligation not to disturb the quiet enjoyment of the premises for others. Mr. Swanson included in his documentary evidence reports of the RCMP attending Mr. Martel's apartment in response to complaints 12 times during the period referenced. Ms. Brenda McAuley, caretaker of the apartment building, testified supporting the documentary evidence submitted, as much of it she had direct knowledge of. Mr. Martel did not dispute six of the incidents reported but did dispute five of them, with no real reference to the remaining six incidents alleged.

Mr. Swanson also submitted an e-mail he received from Cst. Yannick Gagnon of the Hay River RCMP Detachment which confirmed the RCMP had received 23 complaints involving Mr. Martel's apartment #109 between December 31, 2012, and January 31, 2014; Cst. Gagnon's e-mail further defined the complaints to include seven incidents involving youth drinking or intoxicated at the location, five noise complaints, eight incidents where violence was involved – including the December 26<sup>th</sup> incident requiring the RCMP to break into the apartment, and one incident where drugs were located on the premises. Mr. Martel's response to this e-mail was to indicate most of the allegations referenced were false and that it seemed like he was dealing with very gullible people, it was not his doing.

Mr. Swanson provided copies of security video into evidence intending to confirm the allegations of disturbances which could be seen in the video. He was only able to provide video from December 29<sup>th</sup>, 30<sup>th</sup>, and January 9<sup>th</sup> as the video surveillance system only holds video for six weeks in the past. The video in question does not have audio and covers the hallway of the first floor of the complex from one end. Extrapolating from the information submitted at hearing and in the submissions, the apartment in question is at the far end of the hallway from the camera on the left. It is not possible to identify individuals who appear at the far end of the hallway until or unless they approach nearer the camera. What can be confirmed from the video is what appears to be a physical altercation taking place at the far end of the hallway on December 29, 2013, and the attendance of the RCMP at the apartment on the left side at the far end of the hallway on December 29<sup>th</sup>, 30<sup>th</sup>, 31<sup>st</sup>, and January 9<sup>th</sup>. All of these incidents are included in the notes submitted by the applicant and attributed to Mr. Martel.

Mr. Martel alleged there was a conspiracy of false allegations being laid against him by other tenants and the caretaker of the apartment building, and that the caretaker would repeatedly eavesdrop at his door. Mr. Martel was not able to provide evidence in support of the allegations of eavesdropping and Ms. McAuley disputed this allegation. I do not see the relevance of the allegations of eavesdropping to the claims that Mr. Martel has disturbed the quiet enjoyment of the premises for others.

Mr. Martel testified that the apartment building as a whole had very thin walls, that one could hear everything going on in the building, and that he was not solely responsible for the noises in the building. He stated the disturbances he does not dispute were caused by people coming to his place; he said he had to tell them to be quiet and they often wouldn't.

*Tenancy agreement*

The residential tenancy agreement submitted into evidence by the applicant is dated December 15, 2011, for a fixed-term lease for subsidized public housing from December 15, 2011, to March 15, 2012, after which it was automatically renewed as a monthly periodic tenancy. The parties did not dispute that a valid tenancy agreement was in place and I am satisfied one is.

*Rental arrears*

The statement of account represents the landlord's accounting of assessed monthly rent and payments made by the tenant between October 16, 2013, and January 7, 2014. Mr. Martel did not dispute the accuracy of this statement and I am satisfied it accurately reflects the payments made by him during the period. I find Mr. Martel has accumulated rental arrears of \$67.60.

*Tenant damages*

The applicant's testimony and note to file dated October 9, 2011, refer to the reporting of a damaged window to Mr. Martel's apartment. Mr. Martel testified the damage was caused by persons other than himself, but no elaboration was made as to whether those persons were his visitors or not, nor were they specifically identified. Until those other individuals are identified and charged under the Criminal Code for mischief causing damage, damages to rental premises such as broken windows not caused by an act of God or defective workmanship must remain the responsibility of the tenant. It remains in Mr. Martel's hands to seek restitution from the parties he alleges actually broke the window.

The repairs to the window required the replacement of the window and screen, including the removal and reinstallation of the trim, foam and double-sided tape, and cleaning up of the broken glass from inside and outside the apartment. The applicant's safety policy requiring the dispatch of two workers to complete a job is a reasonable one, to my mind, regardless of whether the tenant in question has a historical pattern of hostile behaviour or not. It also seems reasonable to me that the replacement of a two-part window for an apartment would require the efforts of two workers and that four hours to complete that work is also reasonable. I do agree that the costs of the mech gloves is not an expense for which the tenant should be responsible; these are items that are reusable by the applicant's workers and are not necessarily specific to this job. I find Mr. Martel is responsible for the costs associated with replacing the broken window in the amount of \$960.43.

*Disturbing the quiet enjoyment*

The notes to file submitted into evidence by the applicant are the landlord's records of complaints received and actions taken with respect to disturbances attributed to Mr. Martel. I have no reason to disbelieve the veracity of those notes.

The copies of correspondence to the respondent from the applicant submitted into evidence reflect the repeated warnings given to Mr. Martel regarding the disturbances attributed to him, his apartment, and/or his guests. These warnings coincide with the notes to file recording the incidents referenced. I am satisfied Mr. Martel was notified of the complaints laid against him and that he was aware of his obligation to keep himself and his guests from disturbing the quiet enjoyment and possession of the residential complex for other tenants and the landlord.

The video submitted into evidence by the applicant is the landlord's security surveillance of the first floor of the residential complex commonly referred to as the Singles building. It does not include audio. While it does support some of the incidents alleged against Mr. Martel, it is not of a quality to confirm either the identity of individuals involved at the far end of the hallway nor even of the apartment numbers. It is clear when the RCMP attend and that they attend at the apartment on the left at the far end of the hallway. This video is of limited value in my considerations.

The e-mail to Mr. Swanson from Cst. Gagnon dated January 31, 2014, reflects confirmation of the number of complaints received by the Hay River RCMP Detachment regarding Mr. Martel's rental premises. Mr. Martel's argument that the complaints filed with the RCMP are false allegations is not relevant to the authenticity of the reporting of the number of complaints made to the RCMP; whether the complaints are true or not, they were made and the RCMP responded to them. I have no reason to disbelieve the contents of Cst. Gagnon's e-mail.

I find Mr. Martel – or those he has permitted on the premises – has repeatedly breached his obligation to not disturb the landlord's or other tenants' possession or enjoyment of the rental premises or residential complex.



*Termination of the tenancy agreement and eviction*

Section 43 of the *Residential Tenancies Act* (the Act) speaks to the tenant's obligation to not disturb the landlord's or other tenants' possession or enjoyment of the rental premises or residential complex and remedies available to the landlord should the tenant to be found in breach of this obligation. Section 54(1)(a) of the Act permits the landlord to give a tenant at least 10-days notice terminating the tenancy where the tenant has repeatedly and unreasonably disturbed the landlord's or other tenants' possession or enjoyment of the residential complex. The applicant did give Mr. Martel a notice pursuant to section 54(1)(a) of the Act terminating the tenancy September 20, 2013, followed by the making of this application to a rental officer as required by section 54(4) of the Act. I find termination of the tenancy agreement and eviction is justified in the circumstances.

An order will issue for the respondent to pay rental arrears of \$67.60, compensation for tenant damages of \$960.43, and termination of the tenancy agreement effective March 10, 2014. An eviction order will follow under separate cover.

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Adelle Guigon  
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Applicant's statement of facts
- Exhibit 2: Residential tenancy agreement dated December 15, 2011
- Exhibit 3: Applicant's note to file dated September 9, 2013, regarding complaint of September 6, 2013
- Exhibit 4: Applicant's note to file dated September 9, 2013, regarding complaint of September 6, 2013
- Exhibit 5: Applicant's final warning correspondence to the respondent dated August 27, 2013
- Exhibit 6: E-mail dated August 23, 2013, from Brenda to Willa-Jean Conroy regarding complaint of the same date
- Exhibit 7: Applicant's second warning correspondence to the respondent dated July 25, 2013
- Exhibit 8: Applicant's note to file dated July 20, 2013, regarding complaint of the same date
- Exhibit 9: Applicant's warning correspondence to the respondent dated June 18, 2013
- Exhibit 10: Applicant's note to file dated June 18, 2013, regarding complaints of June 17, 2013
- Exhibit 11: Applicant's correspondence to the respondent dated January 29, 2013, regarding conduct of persons permitted in residential complex by the respondent
- Exhibit 12: Applicant's note to file dated January 29, 2013, regarding complaint of respondent permitting unwelcome individuals into the residential complex
- Exhibit 13: Applicant's first warning correspondence to the respondent dated January 2, 2013
- Exhibit 14: Applicant's note to file dated January 2, 2013, regarding complaint of December 31, 2012
- Exhibit 15: Applicant's notice to the respondent terminating the tenancy effective September 20, 2013, pursuant to section 54(1)(a) of the *Residential Tenancies Act*
- Exhibit 16: Applicant's note to file dated October 17, 2013, regarding RCMP complaints
- Exhibit 17: Applicant's correspondence to the respondent dated October 16, 2013, regarding tenant damages
- Exhibit 18: Applicant's work order number WO-1,173 initiated October 10, 2013, for replacement of sealed units in window due to tenant damage
- Exhibit 19: Applicant's invoice number 14018 dated October 16, 2013, for replacement of broken window in the amount of \$529.77
- Exhibit 20: Applicant's invoice number 50815 dated October 16, 2013, for replacement of broken window in the amount of \$529.77
- Exhibit 21: Applicant's note to file dated October 9, 2011, regarding complaint of noise and report of broken window
- Exhibit 22: Applicant's warning correspondence dated October 4, 2013, regarding complaint of October 3, 2013

- Exhibit 23: Applicant's note to file dated October 4, 2013, regarding complaint of same date
- Exhibit 24: Applicant's warning correspondence dated October 1, 2013, regarding complaint of September 25, 2013
- Exhibit 25: Applicant's note to file dated September 30, 2013, regarding complaint of September 25, 2013
- Exhibit 26: Applicant's warning correspondence dated September 23, 2013, regarding complaints of September 21, 2013
- Exhibit 27: Applicant's note to file dated September 23, 2013, regarding complaints of the weekend of September 21, 2013
- Exhibit 28: Applicant's note to file dated September 23, 2013, regarding complaints of September 21, 2013
- Exhibit 29: Applicant's note to file dated September 12, 2013, regarding complaints of September 10, 2013
- Exhibit 30: Applicant's warning correspondence to respondent dated January 10, 2014, regarding complaints of January 9, 2014
- Exhibit 31: Applicant's note to file dated January 10, 2014, regarding complaints of January 9, 2014
- Exhibit 32: Applicant's warning correspondence to respondent dated December 31, 2013, regarding complaints of December 31, 2013
- Exhibit 33: Applicant's note to file dated December 31, 2013, regarding complaints of December 31, 2013
- Exhibit 34: Applicant's warning correspondence to respondent dated December 30, 2013, regarding complaints of December 26 and 29, 2013
- Exhibit 35: Applicant's note to file dated December 30, 2013, regarding complaints of December 26 and 29, 2013
- Exhibit 36: Applicant's note to file dated December 30, 2013, regarding complaints of December 30, 2013
- Exhibit 37: Applicant's warning correspondence to respondent dated December 11, 2013, regarding complaints of December 11, 2013
- Exhibit 38: Applicant's note to file dated December 11, 2013, regarding complaints of December 11, 2013
- Exhibit 39: Applicant's warning correspondence to respondent dated December 5, 2013, regarding complaints of December 4, 2013
- Exhibit 40: Applicant's note to file dated December 5, 2013, regarding complaints of December 4, 2013
- Exhibit 41: Applicant's written request to the Rental Office to amend the application to include a request for payment for damages and prohibiting the tenant from doing further damage
- Exhibit 42: Statement of account dated January 21, 2014, for October 16, 2013, to January 7, 2014
- Exhibit 43: Client aged detail as of January 21, 2014, for December 15, 2011, to January 7, 2014

- Exhibit 44: Applicant's outstanding rental arrears correspondence to respondent dated January 20, 2014
- Exhibit 45: Applicant's outstanding rental arrears - 45 days correspondence to respondent dated January 6, 2014
- Exhibit 46: Applicant's outstanding rental arrears - 30 days correspondence to respondent dated December 11, 2013
- Exhibit 47: Applicant's outstanding rental arrears correspondence to respondent dated November 25, 2013
- Exhibit 48: Statement of account dated November 12, 2013, for October 16 to November 1, 2013
- Exhibit 49: Statement of account dated October 21, 2013, for October 1 to October 16, 2013
- Exhibit 50: CD-R of surveillance videos taken on or between December 29, 2013, and January 9, 2014
- Exhibit 51: Statutory declaration of Adam Swanson regarding Exhibit 50
- Exhibit 52: Applicant's details of work performed to repair tenant damages
- Exhibit 53: Applicant's statement of reasons for two maintenance staff to attend units
- Exhibit 54: E-mail dated January 31, 2014, to Adam Swanson from Yannick Gagnon
- Exhibit 55: Respondent's reply to Exhibits 50 to 54