

IN THE MATTER between **INUVIK HOUSING AUTHORITY**, Applicant, and
MARLENE NASOGALUAK, 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 **INUVIK, NT**.

BETWEEN:

INUVIK HOUSING AUTHORITY

Applicant/Landlord

- and -

MARLENE NASOGALUAK

Respondent/Tenant

EVICITION ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 63(4)(a) of the *Residential Tenancies Act*, the respondent shall be evicted from the premises known as MB62 - 12 Kingmingya Road, Inuvik, NT on March 31, 2014.

DATED at the City of Yellowknife, in the Northwest Territories this 28th day of
February, 2014.

Hal Logsdon
Rental Officer

IN THE MATTER between **INUVIK HOUSING AUTHORITY**, Applicant, and
MARLENE NASOGALUAK, 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:

INUVIK HOUSING AUTHORITY

Applicant/Landlord

-and-

MARLENE NASOGALUAK

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: February 12, 2014

Place of the Hearing: Inuvik, NT

Appearances at Hearing: Diana Tingmiak, representing the applicant
Marlene Nasogaluak, respondent

Date of Decision: February 28, 2014

REASONS FOR DECISION

The applicant alleged that the respondent had repeatedly disturbed other tenants in the residential complex. The applicant is a landlord of subsidized public housing. A notice of termination dated November 26, 2013 was served on the respondent terminating the tenancy agreement on December 31, 2013. The applicant stated that the respondent has remained in possession of the premises. The applicant sought an order evicting the respondent and requiring the payment of compensation for use and occupation of the premises since January 1, 2014.

The applicant provided testimony regarding eight alleged incidents of disturbance between April, 2010 and May 2013. During that period six written warnings were given to the respondent. Some of the alleged incidents occurred inside the respondent's premises and some were created by the respondent and her guests outside. The applicant alleged that the police attended the premises on several occasions responding to disturbance complaints. The applicant's representative had no direct knowledge of the incidents but stated that all of the incidents were reported by other tenants living in the adjoining buildings.

On May 30, 2013 a notice of termination was served on the respondent terminating the tenancy agreement on June 30, 2013. The respondent appealed to the Board of Directors of the Authority who agreed to reinstate the tenancy agreement provided there were no further disturbances.

The applicant alleged that there were further disturbances on November 22-23, 2013 involving

yelling, fighting and loud arguing inside and outside the premises. Another notice of termination dated November 26, 2013 was issued terminating the tenancy agreement on December 31, 2013. The applicant stated that there had been no reported disturbances since November 26, 2013

The respondent acknowledged that there had been some disturbances in the past but disputed four of the eight alleged incidents. She disputed the accuracy of another, stating that there was a loud party in the premises but that it did not go on as long as alleged. She also provided a handwritten note stating that neither Marlene or her daughter were at home during "on the 22nd". A second note stated that Marlene was at Verna Taylor's home when a complaint was made but does not have a date.

The premises consist of a single detached unit which is situated on a lot with another single detached unit. Both premises are operated as subsidized public housing by the applicant. There are two additional public housing units operated by the applicant on a single adjoining lot. In my opinion, this group of four public housing units and the two lots constitute a residential complex as defined in the *Residential Tenancies Act*.

"residential complex" means a building, related group of buildings or mobile home park, in which one or more rental premises are located and includes all common areas, services and facilities available for the use of tenants of the building, buildings or park.

All of the disturbance complaints originated with one or more of the tenants in the group of four public housing units. In my opinion, it is reasonable to consider the disturbances as breaches of 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.

Section 51(5) of the *Residential Tenancies Act* permits a landlord of subsidized public housing to terminate a monthly tenancy agreement provided it was preceded by a term agreement and renewed as monthly.

51. (5) Where a tenancy agreement for subsidized public housing is renewed as a monthly tenancy under subsection 49(1), a landlord may terminate the tenancy on the last day of a period of the tenancy, by giving the tenant a notice of termination not later than 30 days before that day.

Section 63(4) sets out two criteria that must be met in order to issue an eviction order. A rental office must find that the tenancy agreement was terminated in accordance with the Act and that the eviction is justified.

- 63. (4) A rental officer who terminates a tenancy or determines that a tenancy has been terminated in accordance with this Act, and who determines that an eviction is justified, may make an order**
- (a) evicting the tenant on the date specified for the termination of the tenancy 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.**

The applicant's November 26 notice meets the requirements of section 51(5) as well as the content requirements of section 55(3). Therefore, I must conclude that the tenancy agreement has been terminated in accordance with the Act.

In my opinion, in order to find that an eviction was not justified, a rental officer would have to

find that there was no breach of the Act or the tenancy agreement or that the breach was so trivial that no fair-minded landlord would have issued the notice of termination. To apply a higher criteria would contradict the intention of the statute.

I find some of the testimony of the respondent lacking credibility. In a warning letter dated June 10, 2013 the applicant alleged that the police attended the premises twice in the early morning of June 8 due to a party, argument and a fight. The respondent did not deny that the police attended the premises at 6:30 in the morning but stated that they were there to pick up someone to take them to the airport; not responding to a disturbance.

Even if one was to accept all of the respondent's defence, it remains a fact that there have been repeated disturbances and I am unable to consider them as trivial. In my opinion, the eviction is justified.

The respondent has a large family which may make finding other accommodation difficult. I also note that there have not been any disturbances since November 26. Given these facts I shall issue an eviction order to be effective on March 31, 2014.

No order for use and occupation shall be issued at this time as the landlord has not been charging

the full unsubsidized rent since the termination of the tenancy agreement and may or may not choose to do so in March. The landlord is granted leave to make a future application for this relief once the actual amounts are known.

Hal Logsdon
Rental Officer