

IN THE MATTER between **NPR Limited Partnership**, Applicant, and **Maureen McNeely and Michael Cotchilly**, 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, **Adelle Guigon**, Deputy Rental Officer, regarding a rental premises located within the **city of Yellowknife in the Northwest Territories**.

BETWEEN:

NPR LIMITED PARTNERSHIP

Applicant/Landlord

- and -

MAUREEN MCNEELY and MICHAEL COTCHILLY

Respondents/Tenants

ORDER and EVICTION ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 43(3)(d) and 46(2)(c) of the *Residential Tenancies Act*, the tenancy agreement between the parties will terminate on October 31, 2015, and the respondents must vacate the rental premises on or before that date.
2. Pursuant to section 63(4)(a) of the *Residential Tenancies Act*, the respondents will be evicted from the rental premises known as C206, 900 Lanky Court, in Yellowknife, Northwest Territories, on November 15, 2015.

3. Pursuant to section 63(4)(b) of the *Residential Tenancies Act*, the respondents must compensate the applicant for use and occupation of the rental premises at a rate of \$56.05 for each day they remain in the rental premises after October 31, 2015.

DATED at the City of Yellowknife in the Northwest Territories this 28th day of October 2015.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **NPR Limited Partnership**, Applicant, and **Maureen McNeely and Michael Cotchilly**, Respondents.

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

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BETWEEN:

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Applicant/Landlord

-and-

MAUREEN MCNEELY and MICHAEL COTCHILLY

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	October 7, 2015
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	Aya Burshan, representing the applicant Maureen McNeely, respondent Chester Alan, with the respondent
<u>Date of Decision:</u>	October 26, 2015

REASONS FOR DECISION

An application to a rental officer made by Northern Property Limited Partnership as the applicant/landlord against Maureen McNeely as the respondent/tenant was filed by the Rental Office August 12, 2015. The application was amended to include Michael Cotchilly as a joint respondent/tenant on September 11, 2015. The application was made regarding a residential tenancy agreement for the rental premises known as C206, 900 Lanky Court, in Yellowknife, Northwest Territories. The applicant personally served a copy of the amended application on the respondents September 11, 2015.

The applicant alleged the respondents had repeatedly and unreasonably disturbed other tenants' enjoyment and possession of the rental premises and residential complex and had permitted illegal activities to occur within the rental premises. An order was sought to terminate the tenancy agreement and evict the tenants. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for October 7, 2015, in Yellowknife, Northwest Territories. Ms. Aya Burshan appeared representing the applicant. Ms. Maureen McNeely appeared as respondent with Mr. Chester Alan assisting her. Mr. Michael Cotchilly was personally served with notice of the hearing on September 28, 2015. Mr. Cotchilly did not appear at hearing, nor did anyone appear to represent him. The hearing proceeded in Mr. Cotchilly's absence pursuant to section 80(2) of the *Residential Tenancies Act* (the Act).

Preliminary matters

The application identified the landlord as Northern Property Limited Partnership. The written tenancy agreement identified the landlord as NPR Limited Partnership. Ms. Burshan confirmed that the two entities are of the same organization, but agreed that the application should reflect the landlord as that indicated in the written tenancy agreement. The application and style of cause going forward will identify the landlord as NPR Limited Partnership.

Tenancy agreement

The written lease entered into evidence establishes a residential tenancy agreement between the parties for the rental premises known as C206, 900 Lanky Court, in Yellowknife, Northwest Territories. Ms. McNeely and Mr. Cotchilly are clearly identified as joint tenants, and both of them have signed the agreement. The tenancy commenced August 1, 2011. I am satisfied a joint tenancy agreement is in place between the parties in accordance with the Act.

Disturbances and illegal activities

Ms. Burshan presented evidence and testimony establishing that repeated disturbances had occurred within the residential complex over the past year originating from the respondents' rental premises, both by the respondents and their guests, which have prevented other tenants from enjoying their rental premises. The degree of disturbances culminated on August 5, 2015, when the RCMP conducted a drug raid on the respondents' premises which resulted in violence, damages, and the discovery of illegal drugs within the rental premises.

The landlord gave the respondents written notice on August 6, 2015, of their intention to seek an order terminating their tenancy primarily due to the respondents permitting illegal activities to occur within their rental premises (s. 46 of the Act).

Additional complaints from other tenants of significant disturbances originating from the respondents' rental premises were received subsequent to the drug raid up to the hearing date. These disturbances included yelling, swearing, banging on doors, and fighting. Many tenants have expressed concern for their personal safety and that of their families.

The landlord had construction contractors, as well as their own maintenance staff, doing work on the residential complex, and were storing their tools in a secured electrical shed on site. This shed was broken into and duffel bags containing power and other tools were stolen on August 19, 2015.

The landlord had given the respondents 24-hours written notice of their intention to do an inspection of the rental premises that same day, August 19th. They attended the rental premises as scheduled and began their inspection, noting significant damages to the premises including large holes in the walls, damages to the apartment and closet doors, and writing on the walls. They also found the stolen tools in the closet. Photographs were taken throughout the inspection, including of the tools. At the conclusion of the inspection, the landlord contacted the RCMP to report the location of the stolen tools, which were retrieved by the RCMP and returned to their rightful owners.

Ms. McNeely testified that she was not present during much of the complaints and that Mr. Cotchilly was the primary cause of the issues. She stated that Mr. Cotchilly moved out in late-August, but has continued to return to the premises demanding entry, which she has refused. Mr. Cotchilly has not had keys to the rental premises for some time, which is why he could not let himself into the apartment; the two exterior doors to the residential complex do not lock properly and haven't for quite some time, which is how Mr. Cotchilly was able to get into the building.

With respect to the stolen tools, Ms. Cotchilly stated that she was not aware that her guest had taken the tools and hid them in her apartment. Her young son saw them there and told Ms. McNeely about them. Ms. McNeely told her guest to remove them from the rental premises, but he refused. The RCMP arrived before she could "get rid of them."

Determinations

Section 43 of the Act specifies that a tenant shall not disturb the landlord's or other tenants' enjoyment of the rental premises or residential complex, and the tenant is responsible for disturbances caused by persons they permit in the rental premises. There is clear and substantial evidence that Ms. McNeely, Mr. Cotchilly, and/or their guests have repeatedly caused significant disturbances to the other tenants in the building by fighting, yelling, swearing, and banging the walls and doors. Mr. Cotchilly's absence from the rental premises does not absolve him from his responsibilities under the tenancy agreement, nor does it remove his right to attend the residential complex. The tenancy agreement was never assigned from the joint tenants to a sole tenant. As

such, his actions and behaviour – whether Ms. McNeely permitted Mr. Cotchilly into the residential complex and rental premises or not – are both tenants' responsibility to answer for and both tenants are liable for the consequences. I am satisfied the respondents have repeatedly and unreasonably disturbed the landlord's and other tenants' enjoyment and possession of the rental premises and residential complex.

Section 46 of the Act specifies that a tenant shall not commit an illegal act or carry on an illegal trade, business, or occupation, or permit another person to do so, in the rental premises or in the residential complex. The RCMP have confirmed to the landlord that illegal drugs were found in the rental premises when they conducted their raid. Additionally, the tools which were found in the rental premises were confirmed to be stolen property. Both of these constitute criminal activities under the Criminal Code: possession of illegal drugs and possession of stolen property. Whether Ms. McNeely was an active participant or not, illegal activities were permitted to occur twice in one month in the rental premises. I am satisfied the respondents have failed to comply with their obligation not to permit illegal activities to occur within the rental premises and residential complex.

Each of the above identified breaches of the Act in this case are significant in nature, creating an uncomfortable and stressful situation for all the other tenants in the residential complex as well as the landlord. The landlord has a zero tolerance policy regarding illegal activities, and rightly so.

Ms. McNeely has suggested eviction would create undue hardship on her because she is caring for her youngest child and has nowhere else to go. However, there has been no noticeable decrease in the level of disturbances since Mr. Cotchilly apparently moved out. I must consider the greater good in this instance and acknowledge that it is unlikely the disturbances will be resolved any time soon. I am satisfied that termination of the tenancy agreement and eviction are justified.

Orders

An order will issue: terminating the tenancy agreement between the parties on October 31, 2015, and requiring the tenants to vacate the rental premises; evicting the tenants from the rental premises on November 15, 2015; and requiring the tenants to compensate the landlord for use and occupation of the rental premises at a rate of \$56.05 for each day they remain there after October 31, 2015.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Applicant's correspondence to respondent dated August 6, 2015
- Exhibit 2: CBC website article posted August 6, 2015
- Exhibit 3: Resident ledger dated August 7, 2015
- Exhibit 4: Lease made September 6, 2011
- Exhibit 5: Edgeyk.com website article posted August 6, 2015
- Exhibit 6: Email from Michael Clouston to Tirzah del Valle dated August 18, 2015
- Exhibit 7: Set of eight photographs of rental premises
- Exhibit 8: Email from Aya Burshan to the Rental Office dated August 20, 2015
- Exhibit 9: Affidavits of Kim Kendall and Scott Lefrancois affirmed October 6, 2015
- Exhibit 10: Emails from Logan Sutherland to Aya Burshan dated October 2 and October 3, 2015
- Exhibit 11: Email between Jeffery Hemeon to Aya Burshan dated September 28, 2015
- Exhibit 12: Set of 24 photographs