

IN THE MATTER between **Northwest Territories Housing Corporation**, Applicant,
and **Janice Mandeville**, 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,
regarding a rental premises located within the **village of Fort Simpson in the Northwest
Territories.**

BETWEEN:

NORTHWEST TERRITORIES HOUSING CORPORATION

Applicant/Landlord

- and -

JANICE MANDEVILLE

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 43(3)(a) of the *Residential Tenancies Act*, the respondent must comply with her obligation not to disturb the landlord's or other tenants' possession or enjoyment of the rental premises or residential complex.

DATED at the City of Yellowknife in the Northwest Territories this 29th day of February
2016.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Northwest Territories Housing Corporation**, Applicant,
and **Janice Mandeville**, Respondent.

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:

NORTHWEST TERRITORIES HOUSING CORPORATION

Applicant/Landlord

-and-

JANICE MANDEVILLE

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	February 23, 2016
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories, by teleconference
<u>Appearances at Hearing:</u>	Hilda Gerlock, representing the applicant Janice Mandeville, respondent Pat Waugh, court worker, for the respondent
<u>Date of Decision:</u>	February 23, 2016

REASONS FOR DECISION

An application to a rental officer made by Fort Simpson Housing Authority on behalf of Northwest Territories Housing Corporation as the applicant/landlord against Janice Mandeville as the respondent/tenant was filed by the Rental Office October 14, 2015. The application was made regarding a subsidized public housing residential tenancy agreement for a rental premises located in Fort Simpson, Northwest Territories. The applicant served a copy of the filed application on the respondent by registered mail signed for November 4, 2015.

The applicant alleged the respondent had repeatedly and unreasonably disturbed other tenant's possession or enjoyment of the residential complex and sought an order for termination of the tenancy agreement and eviction. Evidence presented is listed in Appendix A attached to this order.

A hearing scheduled for December 10, 2015, was adjourned sine die pending notification from the applicant requesting rescheduling. That notice was received January 25, 2016. The hearing was rescheduled for February 23, 2016, by teleconference. Ms. Hilda Gerlock appeared representing the applicant. Ms. Janice Mandeville appeared as respondent and Ms. Pat Waugh, court worker, appeared with Ms. Mandeville.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between the parties for subsidized public housing commencing April 1, 2012. The rental premises comprises one unit in a duplex, known in the applicant's inventory as FSP-16; the municipal address for this unit is 10114A - 94 Avenue. The landlord rents out both units of the duplex; the other unit is known in the applicant's inventory as FSP-17. I am satisfied a valid tenancy agreement for subsidized public housing is in place between the parties in accordance with the *Residential Tenancies Act* (the Act).

Disturbances

The applicant's representative testified that they have received numerous complaints over the last two years of disturbances by the respondent and/or her guests. The following comprised part of the application package:

- five written complaints from one neighbour dated between July 22, 2013, and September 9, 2015;
- four written notices from the applicant to the respondent regarding complaints dated between March 20, 2014, and May 4, 2015;
- a written log of verbal complaints received by the applicant between February 9 and August 17, 2014.

The neighbour resides in their own home across the back alley from the respondent's rental premises. The neighbour is not a tenant of the landlord.

The applicant's written notices to the respondent do not articulate whether the complaints were received from the respondent's neighbours or the other tenant in the residential complex.

The written log contains one confirmed observation by the applicant's representative of a party at the rental premises; the rest of the entries either indicate a complaint from a neighbour or do not articulate whether a neighbour or a tenant made the complaint.

The applicant's representative testified that the previous tenant in FSP-17 had made numerous verbal complaints regarding disturbances coming from FSP-16. That tenant vacated the rental premises in September 2014. There have been no formal complaints of disturbances – verbal or otherwise – by the new tenant in FSP-17 against FSP-16.

Other than the single incident mentioned in the written log, the applicant's representative had no direct knowledge or observation of disturbances from the respondent's rental premises. She did indicate that her staff have experienced and observed numerous disturbances from the respondent's rental premises, however, she did not have any evidence to support her allegation at hearing.

The applicant's representative confirmed that no further disturbances have been recorded against the respondent since December 10, 2015.

The respondent neither confirmed nor denied that disturbances occurred from her rental premises.

The question was raised with regard to the reason for the adjournment of the hearing in December, the respondent and the court worker indicating they were given the impression that the applicant would be supportive of the respondent's efforts to change her behaviour and were willing to give the respondent another opportunity to comply with her obligations as a tenant. The applicant's representative had no information in her file regarding this claim. The note in the rental office file simply referred to adjourning the matter *sine die* pending notification from the applicant to reschedule the hearing. The respondent's claim may very well have been the case, however, I have nothing to specifically corroborate it.

Documents which were received by the Rental Office on December 10, 2015, from the respondent include:

- correspondence from Poundmaker's Lodge Treatment Centre confirming the respondent's acceptance to a treatment program commencing January 6, 2016;
- a letter of support from Martina Norwegian, Sub-Chief of Liidlu Kue First Nation, dated December 9, 2015;
- an email from Ariaah Thomas printed December 10, 2015;
- a territorial court child apprehension order dated September 21, 2015.

The above listed documents do suggest that efforts were being made by the respondent to address her addictions and alter her lifestyle choices in order to facilitate remaining in her home and regaining custody of her teenage child. She has the support of community leaders and her own child. The respondent confirmed that she has successfully completed the treatment program at Poundmaker's Lodge, having just returned home February 17th, and she has successfully regained custody of her child who is now living at home with her.

Section 43(1) of the Act says that a tenant shall not disturb the landlord's or other tenants' possession or enjoyment of the rental premises or residential complex.

Having nothing more than one direct observation from the applicant's representative of a disturbance in evidence at this hearing, and that disturbance being recorded in August 2014, I am not satisfied the landlord's possession or enjoyment of the rental premises or residential complex has been sufficiently disturbed to justify termination of the tenancy agreement. Had the applicant

been able to provide direct evidence of the respondent and/or her guests disturbing the landlord's possession or enjoyment of the rental premises, or even of the respondent and/or her guests interfering with the landlord's ability to maintain the rental premises, then their case may have been stronger.

The complaints made by the respondent's neighbour may very well speak to whether or not disturbances or excessive noise has come from the respondent's rental premises and in that respect, on a balance of probabilities, I am comfortable making the determination that the respondent and/or her guests have caused disturbances. However, I do not have any authority or jurisdiction to consider complaints from anyone other than the landlord or other tenants in the residential complex. The neighbours who are not tenants to the landlord may seek recourse through the Village of Fort Simpson's Noise By-law.

The other current tenant in the duplex, unit FSP-17, has not made any formal complaints regarding disturbances. The last complaint on record from an 'other tenant' was recorded in September 2014, prior to that tenant vacating unit FSP-17.

Based on the totality of the evidence presented in this case, and in consideration of the respondent's recent successful efforts to improve her lifestyle, I am satisfied the respondent has failed to comply with her obligation not to disturb the landlord's or other tenants' enjoyment or possession of the rental premises, but I am not satisfied termination of the tenancy agreement and eviction are justified.

Order

An order will issue requiring the respondent to comply with her obligation not to disturb the landlord's or other tenants' possession or enjoyment of the rental premises.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

Exhibit 1: Written noise complaints dated: September 9, 2015; July 23, 2015; May 1, 2015; September 29, 2014; July 22, 2013

Exhibit 2: Applicant's correspondences to respondent dated: May 4, 2015; September 29, 2014; June 21, 2014; March 20, 2014;

Exhibit 3: Applicant's notes to file regarding complaints dated from February 9 to August 17, 2014

Exhibit 4: Residential tenancy agreement dated April 1, 2012

Exhibit 5: Incomplete printing of an email from Aariah Thomas printed December 10, 2015

Exhibit 6: Poundmaker's Lodge Treatment Centres correspondence confirming respondent's acceptance to treatment program commencing January 6, 2016

Exhibit 7: Letter of support from Martina Norwegian, LKFN Member, dated December 8, 2015

Exhibit 8: Territorial Court order file number T2CW2005000004 dated September 21, 2015