

IN THE MATTER between **NTHC**, Applicant, and **TP**, 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**, Rental Officer,

BETWEEN:

NTHC

Applicant/Landlord

-and-

TP

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: March 9, 2017

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: AB, representing the applicant
BB, representing the applicant
EN, on behalf of the applicant
AP, respondent
TA, on behalf of the respondent

Date of Decision: March 9, 2017

REASONS FOR DECISION

An application to a rental officer made by YHA on behalf of the NTHC as the applicant/landlord against TP as the respondent/tenant was filed by the Rental Office November 18, 2016. The application was made regarding a subsidized public housing residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The applicant personally served a copy of the filed application on the respondent November 23, 2016.

The applicant alleged the respondent had repeatedly disturbed other tenants' enjoyment and possession of the rental premises and residential complex. An order was sought for the respondent to comply with his obligation not to disturb other tenants' enjoyment and possession of the rental premises and residential complex, for the respondent not to breach that obligation again, for termination of the tenancy agreement, and for eviction.

A hearing was scheduled for March 9, 2017, in Yellowknife, Northwest Territories. AB and BB appeared representing the applicant, with EN appearing as a witness for the applicant. AP appeared as respondent with TA from Integrated Case Management appearing as a witness and in support of the respondent.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them for subsidized public housing commencing September 1, 2015. I am satisfied a valid tenancy agreement is in place between the parties in accordance with the *Residential Tenancies Act* (the Act).

Disturbances

The respondent's rental premises is an apartment located within a building owned and operated by another landlord, NAR (NAR). The applicant has a contract with NAR to rent individual apartments throughout their various buildings in the community which they then rent out to individuals under their housing programs. NAR continues to rent out other apartments within the same buildings directly to their own tenants. As such, not all tenants in the same residential complex have the same landlord. The primary complainant of the disturbances to be discussed is a tenant of NAR.

During the months of July and August 2016 multiple complaints of disturbances originating from the respondent's rental premises were received by NAR from some of their tenants in the residential complex. As the respondent is not a tenant of NAR, they appropriately forwarded the complaints to the applicant to address.

On October 5, 2016, I responded to a complaint made by one NAR tenant under section 44 of the Act. After investigating the complaint I made a finding confirming that the above mentioned disturbances had occurred and that the respondent was responsible for them, but that the applicant had appropriately responded to the complaints of disturbances by notifying the respondent and working with him to reduce, if not resolve, the issues. I found that the respondent was a vulnerable member of society who was being taken advantage of by other parties. With the applicant's help and encouragement, the respondent has been accessing resources, such as the Integrated Case Management team, to address his personal issues, learn how to manage outside sources of contention, and how to respond appropriately when issues arise. Between the end of August and my findings in October, matters had resolved dramatically and the number and nature of the disturbances had significantly decreased. I received confirmation from both the applicant and NAR that both parties were satisfied with the results.

All subsequent complaints were received from the one tenant of NAR's.

On November 5, 2016, NAR's tenant complained to them of arguing occurring in the respondent's rental premises. The security officer on patrol at the time also heard the disturbances. He called the RCMP upon request of the neighbour. RCMP attended and diffused the situation. The respondent did not dispute that this incident occurred as reported.

On November 12, 2016, NAR's tenant reported a fist fight occurring in the fourth floor hallway, and of "partying and fighting 24/7" from two different apartments. The allegations were general, and she admitted she could not identify which apartment, if any, the fist fight originated from, nor could she confirm which apartment the partying and fighting was occurring from on any given night. The security report from that evening agreed that four apartments, including the respondent's, were the "noisiest units in building" and have more visitors than the rest of the units, but did not specify any particular disturbances on any particular evening as originating from the respondent's premises. I am not satisfied there is enough evidence to support the respondent's sole responsibility for the general disturbances referenced, nor is there any evidence to support whether or not the respondent permitted any of the disturbing parties into the residential complex, let alone his rental premises.

On November 13, 2016, NAR's tenant reported a "ruckuss" at the respondent's rental premises. The complainant attended the respondent's rental premises to request that they keep the noise down only to discover the respondent had been stabbed in the face. The respondent called the police to report the incident, and an ambulance attended to tend to the respondent's injuries. The security report confirms the attendance of the police and ambulance, but the security officer did not witness the attack. At hearing, the respondent testified that someone knocked at his door and when he answered a stranger attacked him with a knife, cutting his lip before running away. The respondent did not permit the attacker either into the building or his apartment. I am not satisfied the respondent is responsible for the disturbance created as a result of being attacked by a stranger.

On November 17, 2016, NAR's tenant complained to them of an incident from the previous evening in which she alleges she could hear the respondent arguing with someone after 11:00 p.m. and called security. She claims security attended and the respondent denied that any argument occurred, that they were only watching television. The complainant claims the respondent became verbally abusive towards her while the security guard was there, accusing her of harassing him, at which time the complainant called the police. The complainant claims the police attended and had independent conversations with the respondent and the complainant and security. There is no evidence which supports the complainant's claims with regard to this date: neither a police report nor a security report.

Between approximately December 9, 2016, and January 6, 2017, the respondent attended a treatment facility outside the community. No disturbances originating from the respondent's premises were reported during this time.

No complaint was received, but security reported hearing noises coming from the respondent's premises during a patrol at approximately Midnight on January 17, 2017. The respondent was asked to keep the noise down. The respondent did not dispute this occurrence.

While on patrol at approximately 4:30 a.m. on January 17, 2017, security received a complaint from NAR's tenant of noises coming from the respondent's premises. Security did not witness the alleged disturbances, but responded to the complaint by attending the premises and asking the respondent to stop making noise. At hearing, the respondent disputed that there was any noise coming from his apartment at that time. He testified that he was sleeping when the security officer knocked on his door, told the officer so, and even permitted him to check the premises for any other persons. I am not satisfied of disturbances occurring at the respondent's premises in this instance.

No complaint was received, but security reported hearing arguing coming from the respondent's premises at approximately 12:45 a.m. on February 14, 2017, during his patrol. He inquired at the premises what was going on, to which the respondent and his female companion replied everything was okay. Security later observed the female companion leaving the building.

No complaint was received, but security reported at approximately 3:09 a.m. on March 2, 2017, observing five males enter the building from the “broken side door” who were later observed by security leaving the respondent’s premises while listening to music. Security subsequently reported at approximately 3:30 a.m. the same morning that the same five males were kicked out of another apartment (not the respondent’s) with a female, after which two of the males started provoking the security officer. When the security officer called the police the two males “ran to hide themselves in” the respondent’s premises, returning after the police left. I am not satisfied that the act of hiding in the respondent’s premises necessarily caused a disturbance for which the respondent is responsible. Certainly the disturbance observed at the other apartment and provoking the security guard can constitute disturbances, but there is no evidence that the respondent permitted the disturbing parties to enter the residential complex and there is no evidence that the disturbing parties caused any disturbances while at the respondent’s premises. I am not satisfied the respondent is responsible for any of the disturbances which occurred in these two instances.

While on patrol, security came across the respondent and NAR’s tenant arguing in the hallway. After having them calm down he heard NAR’s tenant complain that the respondent was fighting with his girlfriend in his premises, which woke her up, and then while she was looking for the security guard the respondent threatened her. The respondent complained to the security officer that NAR’s tenant was harassing him. At hearing, the respondent did not dispute that he and his girlfriend did have an argument on this night. He reiterated his complaint that NAR’s tenant was harassing him, citing two instances when she specifically told him she was going to get him evicted.

After August 2016 there is no evidence to support that any more than the one NAR tenant has filed any complaints to NAR regarding the respondent. Of the 10 reported incidents occurring between November 5th and March 3rd, four have been verified as the respondent’s responsibility and which he does not dispute. The remaining six incidents cannot be verified as the respondent’s responsibility.

At hearing, the respondent was responsive and willing to listen and learn. He acknowledged the behaviours for which he is responsible, but also reinforced the positive efforts he has made to keep undesirable persons from taking advantage of him. He does not understand the reasons for NAR's tenant's acrimony against him. All parties present at the hearing agreed that the results of the respondent's efforts have shown substantial positive improvement, not only in the level of disturbances but in the respondent's ability to protect himself from others who might cause him harm. It was agreed that as long as the respondent could continue to progress in this manner there was no reason he couldn't maintain his tenancy.

The obligation of the respondent not to disturb other tenants' or the landlord's enjoyment or possession of the rental premises was reinforced and explained further at hearing. It was clarified that the respondent was not responsible for the behaviour of persons he did not invite or let into the building or his apartment. It was further clarified that if he did not let someone into the building but did let them come into his apartment, then from that point until the person left the building the respondent would be responsible for that person's behaviour. It is hoped that this clarification will strengthen the respondent's motivation to stand firm against letting uninvited persons into his apartment.

I find the respondent responsible for repeatedly disturbing other tenants' enjoyment and possession of the rental premises.

Termination of the tenancy agreement and eviction

In light of the number of verified disturbances caused by the respondent but with consideration of the positive resolutions which have been shown, and by agreement with the parties, I am satisfied conditional termination of the tenancy agreement and eviction are justified dependent on no further disturbances being reported which can be verified as being the respondent's responsibility. It was agreed a lengthy period of time should be given the respondent to prove his commitment to complying with his obligations.

Security of the residential complex

During this hearing it came to my attention through direct testimony and documentary evidence that the exterior side entrance to the residential complex is damaged to the extent that it is no longer secured. Testimony of those present from both sides of the application confirmed that the side door has been damaged and insecure since at least June 2016 and remained so as of March 2, 2017. Several visits over the past several months by parties present at this hearing have found the side door damaged and insecure. While it is possible that NAR has had the side door repaired repeatedly during the period in question, there is no doubt that it has not remained repaired and currently remains damaged.

Section 30(1) of the Act requires a landlord to maintain the rental premises in a good state of repair. Section 40(1) requires a landlord to install on building entry doors devices necessary to make the residential complex reasonably secure from unauthorized entry.

NAR is the building owner and is ultimately responsible for maintaining the building in a good state of repair and for ensuring security devices are installed on the exterior doors. However, in this tenancy, the applicant is the landlord to the respondent and as such is responsible for ensuring sections 30(1) and 40(1) are complied with in order to protect their tenant. I cannot order NAR to effect the necessary repairs because they are not a party to this application and they are not a landlord to this respondent. I can order the applicant to effect the necessary repairs because they are a party to this application and the landlord as defined by the Act.

All parties present agreed that the ongoing lack of security of the side door is a contributing factor to the number of disturbances occurring in the residential complex as a whole, including with regard to the respondent. While the door has been damaged any unauthorized person has had access to the residential complex.

Based on the evidence and testimony presented, I am satisfied that the exterior side door to the residential complex is damaged and that the security device on that door is damaged and not functioning. I find the applicant/landlord has failed to comply with their obligation to maintain the residential complex in a good state of repair and has failed to comply with their obligation to install devices necessary to make the residential complex reasonably secure from unauthorized entry.

Orders

An order will issue: requiring the respondent to comply with his obligation not to disturb other tenants' enjoyment or possession of the rental premises and residential complex, and not to breach that obligation again; terminating the tenancy agreement September 30, 2017, unless no further complaints of disturbances are received by the landlord which are verified as being caused by the respondent or by persons permitted in the rental premises or residential complex by the respondent; and evicting the respondent from the rental premises October 1, 2017, if the termination of the tenancy becomes effective.

An order will also issue requiring the applicant to ensure the exterior doors to the residential complex are in a good state of repair, and that they are fitted with security devices which reasonably secure the residential complex from unauthorized entry.

Adelle Guigon
Rental Officer