

IN THE MATTER between **EBM**, Applicant, and **NREIT**, 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:

EBM

Applicant/Tenant

-and-

NREIT

Respondent/Landlord

REASONS FOR DECISION

<u>Date of the Hearing:</u>	March 29, 2017
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	EBM, applicant CDM, on behalf of the applicant BL, representing the respondent RP, representing the respondent
<u>Date of Decision:</u>	June 12, 2017

REASONS FOR DECISION

An application to a rental officer made by EBM as the applicant/tenant against NREIT as the respondent/landlord was filed by the Rental Office December 12, 2016. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The applicant personally served the filed application on the respondent December 13, 2016.

The applicant/tenant alleged the respondent/landlord had disturbed the tenant's enjoyment and possession of the rental premises and residential complex by failing to adequately address complaints of disturbances, the respondent/landlord had failed to adequately secure the residential complex from unauthorized entry, the respondent/landlord had entered the rental premises without proper notice, and the respondent/landlord had failed to return the security deposit in accordance with the *Residential Tenancies Act* (the Act). An order was sought for the return of the security deposit, an abatement of rent, and early termination of the fixed-term tenancy agreement.

A hearing was scheduled for March 29, 2017, in Yellowknife, Northwest Territories. EBM appeared as applicant with CDM appearing with her as joint tenant. BL and RP appeared representing the respondent.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between the parties commencing November 1, 2016. The parties agreed the tenant physically moved into the rental premises November 11, 2016. The tenancy agreement was for a fixed-term from November 1, 2016, to October 31, 2017. The parties agreed the tenant vacated the rental premises December 1, 2016. I am satisfied a valid tenancy agreement was in place between the parties in accordance with the Act.

Security deposit

The landlord submitted a resident ledger representing the charges and payments received against the tenant's rent account. The rent was established at \$1,565 due the first of each month. A security deposit of \$782.50 was paid on October 21, 2016, an amount equal to half a month's rent. A credit of \$50 was given the tenant on November 1, 2016, and a credit of \$150 was given the tenant on November 2, 2016, both pursuant to section 14 of the tenancy agreement. The balance of rent for November was paid November 1, 2016. The rent for December was charged on December 1, 2016. The \$50 credit was reversed on December 7, 2016, due to the tenant's early termination of the tenancy agreement, also pursuant to section 14 of the tenancy agreement. Late payment penalties of \$2.00 were charged for failing to pay the December 2016 rent. The security deposit including interest totalling \$782.56 was credited to the rent account December 1, 2016.

Monthly pet fees of \$50 were charged by the landlord. Section 14.1(1) of the Act limits how much a landlord may require from a tenant for a pet security deposit to an amount not exceeding 50 percent of one month's rent. A monthly pet fee is not the same thing as a pet security deposit. The imposition of a monthly pet fee could result in more than half a month's rent being collected over time, and there is no indication that the fee would be returned at the end of the tenancy. The pet security deposit provided for under the Act is an amount held in trust until the end of the tenancy against any damages that might be caused by the pet. If no damages are caused by the pet then that pet security deposit would be returned in full with interest at the end of the tenancy. I find the monthly pet fee contrary to the Act and will not include those charges in my consideration of amounts owing.

The tenant was provided with a move out statement by email on December 9, 2016. The move out statement itemized the charges against which the security deposit was retained, which included \$100 in pet fees, \$1,565 for December rent, and \$2 for late payment of December's rent. Section 18(3) of the Act requires a landlord to return a security deposit and itemized statement of account to a tenant within 10 days of the day that the tenant vacates the rental premises. I am satisfied the landlord complied with this obligation, having established that the tenant vacated the rental premises December 1, 2016, and the landlord provided the move out statement to the tenant December 9, 2016.

The tenant disputed the landlord's retention of the security deposit against the rent for December. Section 18(4) of the Act permits a landlord to retain the security deposit against "arrears of rent owing from a tenant to the landlord in respect of the rental premises". Arrears of rent means money that is already owing, not money that will become due in the future.

A period of this tenancy is the first to the last day of a month – November 1st to 30th is one period of the tenancy. A tenancy usually ends on the last day of a period of the tenancy, and it is the last of the period (month) that a tenant is expected to move out of the rental premises when the tenancy is terminated. The tenant in this case did not move out of the rental premises until December 1st.

Section 51(1) of the Act sets out that a tenant in a fixed-term tenancy agreement may terminate the tenancy agreement on the last day of the fixed-term period by giving the landlord at least 30 days' written notice. The last day of the fixed-term period in this case was October 31, 2017, which means the tenant's only option for terminating the tenancy agreement without the landlord's agreement in writing would have been to give written notice no later than October 1, 2017, for a termination date of October 31, 2017. The tenant did notify the landlord of her intention to vacate the premises on December 1, 2016, by email on

November 23, 2016, but this was neither notice given in accordance with the Act (s. 51(1)), nor was it given in a reasonable amount of time for the landlord to make efforts to secure a new tenant. By vacating the rental premises December 1, 2016, the tenant effectively abandoned the rental premises and the tenant remains liable for the rent for the term of the tenancy agreement either until the last day of the fixed-term (October 31, 2017) or until the landlord secures a new tenant for the rental premises, whichever comes first. The landlord did successfully secure a tenant for the rental premises for January 1, 2017.

Section 4 of the tenancy agreement establishes that the rent for a given month is due on the first of the month. As already established, the tenant neither gave adequate notice of her intention to vacate, nor did she vacate on the last day of a period of the tenancy. The tenant vacated on December 1st, the day the rent for December was due. It may be a technicality, but the December rent not being paid on the day it was due resulted in rental arrears against which the landlord is entitled to retain the security deposit. I am satisfied the landlord essentially complied with their obligations respecting the security deposit.

However, the balance owing as claimed by the landlord in the resident ledger and move out statement does require adjustment due to the disallowance of the pet fees. After deduction of \$150 worth of pet fees from the balance, I find the tenant liable to the landlord for December's rent in the remaining amount of \$784.44.

Improper entry

The tenant testified that on Friday, November 11th a security officer entered the rental premises without her permission while she was unpacking; he apologized, stating he was unaware someone had moved into the rental premises. The tenant testified that on Sunday, November 13th, a maintenance worker also entered the rental premises without knocking and without notice. The worker was as surprised to see the tenant as the tenant was to see the

worker, apologized, stating he didn't know there was anyone occupying the premises, and immediately left. The tenant found both experiences emotionally disturbing. The landlord's representative did not dispute the occurrence, acknowledging that they had failed to notify both security and their maintenance officers before the end of the day Friday that there were tenants occupying the rental premises. An apology was extended to the tenant and no further incidents of improper entry occurred.

I am satisfied the landlord improperly entered the tenant's rental premises without notice, however, I am also satisfied that these were isolated incidents which were apologized for and were not repeated. I am not satisfied the tenant is entitled to compensation for this breach, nor am I satisfied that the breach was of a significant enough nature to warrant an order for the landlord to comply with their obligations respecting proper notice of intention to enter.

Secured residential complex

On November 7, 2016, security personnel patrolling the building reported to the landlord that the main front door was hard to open. On November 10, 2016, security personnel patrolling the building reported to the landlord that the main front door security device (lock) was non-operational. The landlord testified that a replacement door and security device were ordered, with an anticipated delivery date of approximately three weeks. Efforts to temporarily repair the lock were ineffective as outside parties continuously forced the door and damaged the temporary repairs. The permanent replacement door and security device were installed December 2, 2016.

The landlord testified that security personnel were assigned to the residential complex during the period the door was inoperative. The tenant testified that she observed no security personnel guarding the main door during the day and only periodically during the night.

The security company confirmed by correspondence that they had been retained by the landlord to provide security at their buildings since September 2014 and that they “have been assigned to monitor and secure all their building including” the tenant’s residential complex “covering the months of November and December 2016.” All the security reports provided into evidence reflect the officers’ shifts as ranging from approximately 7:00 p.m. to Midnight and Midnight to 7:00 a.m. There is no supporting evidence to suggest security personnel was on duty between 7:00 a.m. and 7:00 p.m. Although the evidence does not specifically identify that security personnel were exclusively assigned the one residential complex during their shifts, the written reports reflect the status of the building every 30 minutes which suggests it is unlikely that the officers patrolled more than the one building during a shift. I am not satisfied that there was security personnel monitoring the main front door between 7:00 a.m. and 7:00 p.m.

The issue at hand with respect to the security devices on the main door of the residential complex is about whether or not the building was secured against unauthorized entry at all times. This is the main source of dissent from the tenant. The tenant argued that the main front door was not working properly when she moved in (true), that it had not been effectively repaired while she was residing there (true), and that as a result her enjoyment and possession of the premises was compromised as she was unable to feel secure in the residential complex. This argument is supported by the observations and security reports of repeated unauthorized entries to the residential complex during the three-week period the respondent resided there.

By failing to have security personnel monitoring the main front door for the three-week period that the door was not secured, I am satisfied the landlord failed to comply with their obligation to ensure the residential complex was reasonably secure from unauthorized entry. The landlord did have the main front door repaired within a reasonable period of time, and as such I am not satisfied that the landlord failed to comply with their obligation to effect repairs.

The tenant was entitled to feel safe and secure in her rental premises and the residential complex. By failing to ensure access to the residential complex was properly monitored, the landlord failed to ensure the tenant's enjoyment and possession of the residential complex. As a result, I am satisfied the tenant is entitled to compensation equivalent to 10 percent of the rent for November amounting to \$156.50. I am not satisfied the tenant is entitled to compensation for December's rent nor am I satisfied an order for the landlord to repair the main front door is necessary because the main front door was repaired December 2nd.

Disturbances

The tenant testified that within days of moving into the rental premises she noticed cigarette smoke entering her premises which disturbed her enjoyment, including waking her from sleep. She first notified the landlord of the problem by email November 16th. The next evening the tenant reported smelling marijuana throughout the lobby and first level of the residential complex. Continued disturbances from cigarette and marijuana smoke permeating the rental premises and residential complex were reported on November 19th, 21st, 22nd, 23rd, and 25th.

The landlord first and only direct email reply to the tenant's concerns was made November 21st. The concerns regarding the allegations of marijuana use in the residential complex were addressed only as they pertain to being an illegal activity by distributing a notice to all tenants regarding the issue and requesting information regarding the source. The landlord noted that without direct evidence of who might be conducting the illegal activity there was little they could do about it, and also noted that some tenants have medical marijuana licences making it legal for them to smoke the product in their rental premises. The landlord also acknowledged both that smoking is not prohibited in the rental premises and that the smoke does travel between units through the ventilation ductwork and plumbing. The landlord further acknowledged that there is a "zero-tolerance policy for smoking in the common area of the building" but enforcement options are limited and dependent on being able to identify the tenants who breach the policy.

The written tenancy agreement does not make any reference to the rental premises being non-smoking or to the residential complex being non-smoking. No evidence was provided to support the landlord's indication that the tenants of the residential complex had been notified that smoking was prohibited in the common areas.

To my mind this issue is not about whether or not smoking is permitted in the rental premises or residential complex. Nor is this issue about whether or not the rental premises and residential complex are in a good state of repair, fit for habitation, and in compliance with health, safety, maintenance and occupancy standards required by law. This issue is about whether or not the tenant's enjoyment and possession of the rental premises and residential complex was interfered with by the landlord's action or failure to act.

Certainly it was other tenants smoking that created the undesirable environment for the applicant/tenant, but there were no prohibitions on the other tenants from smoking in the building. It falls then to the landlord to ensure that the building's air handling system adequately redirects the smoke outside the building and /or the individual units are adequately sealed to reduce the migration of smoke-infested air between them. The landlord made no apparent effort to consider either of those solutions to the problem expressed by the applicant/tenant. By failing to take adequate actions to address the tenant's complaint, the landlord facilitated the disturbance to the tenant's enjoyment and possession of the rental premises and residential complex.

I am satisfied that the tenant's enjoyment and possession of the rental premises and residential complex was disturbed by the presence of second-hand smoke and that the landlord failed to take adequate actions to address the disturbance. I find the tenant entitled to compensation for the disturbance equal to 25 percent of the rent for November 2016 in the amount of \$391.25.

Other disturbances

The tenant testified to and provided copies of emails reporting incidents of loud banging, fighting, shouting, arguing, and threatening behaviour from other tenants and persons in the residential complex. It appears from the security reports provided that most of the reported incidents were confirmed by the security officers and attended to by them. Occasionally, RCMP attended as well.

I am satisfied that the repeated incidents occurring over the short period of time that the tenant occupied the rental premises contributed to the disturbance of the tenant's enjoyment and possession of the rental premises and residential complex. I am also satisfied, however, that the landlord's security officers made adequate and appropriate efforts to address those disturbances as they occurred. I am not satisfied that further compensation to the tenant is warranted.

Termination of the tenancy agreement

As part of her application, the tenant requested release from the fixed-term tenancy agreement as a result of the repeated disturbances to her peace and enjoyment of the rental premises and residential complex.

As identified above when speaking of the security deposit, the tenant gave the landlord eight days' written notice of her intention to vacate the rental premises and the reasons why she was effectively breaking her lease. The landlord is obligated to mitigate their losses by re-rent the premises as soon as possible after a tenant abandons a rental premises. The landlord did secure a new tenant for January 1, 2017. To my mind, eight days' notice is not a sufficient period of time to expect a landlord to successfully secure a new tenant.

While I can certainly appreciate the tenant's concerns for her safety, security, and well-being at the rental premises under the circumstances of the nature of the disturbances reported, and while I am satisfied of the landlord's responsibility to provide a safe, secure, and enjoyable rental premises, I am not satisfied that the landlord was given adequate opportunity to come up with solutions, let alone act on such solutions, which might have provided for a more enjoyable experience for the tenant. I am not satisfied early termination of the tenancy agreement was justified.

The tenant entered into a 12-month fixed-term tenancy agreement, chose to terminate that tenancy agreement early, and by doing so remained liable for the rent until the end of the fixed-term period or until the landlord secured new tenants, whichever came first. In this case, the landlord was able to secure new tenants for January 1, 2017, so the applicant/tenant is only liable for one month's rent.

Orders

After disallowing the pet fees claimed by the landlord, the amount of rental arrears for December 2016 which remain outstanding is \$784.44. The compensation granted the tenant for the insecure residential complex in the amount of \$156.50 and for disturbances caused by smoke migration in the rental premises and residential complex in the amount of \$391.25 will be applied against the December rental arrears.

An order will issue requiring the tenant to pay to the landlord rental arrears in the amount of 236.69.

Adelle Guigon
Rental Officer