

IN THE MATTER between **JW**, Applicant, and **JM**, 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:

**JW**

Applicant/Landlord

-and-

**JM**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:** April 25, 2017

**Place of the Hearing:** Yellowknife, Northwest Territories

**Appearances at Hearing:** JW, applicant  
JM, respondent

**Date of Decision:** April 25, 2017

### **REASONS FOR DECISION**

An application to a rental officer made by JW as the applicant/landlord against JM as the respondent/tenant was filed by the Rental Office January 24, 2017. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was personally served on the respondent February 2, 2017.

The applicant alleged the respondent had accumulated rental arrears, had failed to pay the security deposit, and had caused damages to the rental premises. An order was sought for payment of rental arrears, payment of the security deposit, payment of costs for repairs, termination of the tenancy agreement, and eviction.

A hearing was scheduled for April 25, 2017, in Yellowknife, Northwest Territories. JW appeared as applicant. JM appeared as respondent.

#### *Tenancy agreement*

The parties agreed and evidence was presented establishing a residential tenancy agreement between them for one room and shared facilities commencing October 5, 2016. I am satisfied a valid tenancy agreement is in place in accordance with the *Residential Tenancies Act* (the Act).

#### *Rental arrears*

The applicant withdrew his request for payment of rental arrears as the respondent has not accumulated rental arrears.

#### *Security deposit*

The written tenancy agreement identifies a security deposit of \$300 was due to be paid in full by December 31, 2016. The parties agree that to date only \$26.24 has been paid against the security deposit. I find the respondent has failed to comply with his obligation to pay his security deposit in full and has an outstanding amount owing of \$273.76 for the security deposit.

### *Damages*

The applicant's application made references to claims for damages, however, no damages have specifically been identified and no costs for repairs have been claimed. The applicant alluded to expecting to find damages when the respondent vacates the rental premises, but until and unless damages occur which can be attributed to the respondent's wilful or negligent conduct in accordance with section 42 of the Act, the applicant's request is denied.

### *Disturbances*

The applicant testified to disturbances caused by the respondent's late night intoxicated behaviours. The applicant claims that the behaviours have caused him to be especially concerned for the safety and well-being of himself and other tenants in the house.

A detailed written accounting of events which transpired between 3:00 a.m. and 4:00 a.m. on October 22, 2016, was provided and elaborated on by the applicant. The incident in question involved the respondent returning to the premises in an intoxicated state, being very loud in both voice and movement, causing a framed picture to fall from the wall and break, creating a mess in the kitchen, disturbing the landlord in his prayer room, and waking at least two other tenants. The respondent did not dispute the events occurred as described in this instance and he apologized for his behaviour. The respondent indicated he did not realize the sentimental value the applicant held for the framed picture which was broken and agreed to have it professionally repaired.

The applicant provided a written record of late night disturbances attributed to the respondent, claiming in all instances the respondent was intoxicated. Incidents in October, November, January, February, and March were not detailed, their descriptors simply being more than 15/20/10/12 times or "more days drunk but witnessed by others".

On January 19, 2017, the applicant entered the respondent's room with the intention of recovering dishes. Upon entry, the applicant identified a plate with cigarette ashes on it and a garbage bag with beer cans and cigarette butts in it. The household rules and terms of the tenancy agreement specify that smoking and drinking alcohol is not permitted within the rooms or the house. The respondent disputed the assumption that because there were cigarette butts and ashes and empty beer cans found in his room that he must be smoking and drinking in the premises. He explained that he used the plate not to put lit cigarettes out on, but to roll partially used cigarettes into whole cigarettes. The respondent admitted to having smoked in the house briefly at the start of the tenancy, but has not smoked in the house since mid-October when he was reminded of the no-smoking rule. The respondent also explained the presence of the empty beer cans as coming from his walks up on the hill by the house. He has never had a drink of alcohol while in the house. I am inclined to believe the respondent's explanations on both counts. The photograph of the plate that the applicant provided does not show any burn markings suggesting cigarettes were butted out on it; it only appears to be dirty with ashes and perhaps food stains. The photograph of the garbage bag that the applicant provided does show several empty beer cans, but that does not necessarily mean the respondent drank them, let alone drank them in the premises.

By a written notice dated March 5, 2017, one of the applicant's other tenants complained of disruptive behaviours late at night involving police attendance and people screaming. The disturbances are described as occurring over the last five years during this tenant's occupancy and that if they don't stop the tenant will have to find another place to live. The tenant's complaint is very generalized, and does not identify any specific incidents or any specific tenants causing the disturbances. While I can be satisfied that this tenant has been repeatedly disturbed by other tenants' behaviours, I cannot be satisfied that the other tenants' behaviours specifically includes anything done by the respondent.

On March 18, 2017, at approximately 3:00 p.m., the smoke alarm in the kitchen was activated. The applicant responded, discovering the toaster oven had been left on, tin foil had not been used to catch the drippings, and the residue inside had burst into flames. At hearing was the first time the respondent was made aware of the toaster oven fire, let alone that he was being held responsible for it. The respondent does remember using the toaster oven, but does not recall whether or not he used tin foil or whether or not he remembered to turn the oven off. The respondent accepted responsibility for the toaster oven fire.

On March 27, 2017, at approximately 5:45 p.m., the applicant testified that he entered the kitchen and caught the respondent in the applicant's private cupboard. The applicant accused the respondent of trying to steal food from him. There was no evidence that any food was stolen. The respondent explained that he had opened the door to the applicant's cupboard in search of a can of tuna that the respondent had left on the counter which was no longer there. The respondent had no intention of stealing anything from the applicant. I am not satisfied that the opening of a cupboard door constitutes either an unreasonable breach of a house rule or a criminal act. The respondent offered a reasonable explanation for why he was looking in the applicant's cupboard.

On April 3, 2017, at approximately 5:35 p.m., the applicant complained that the respondent had entered and then exited the house with his boots on. There was no evidence presented suggesting that the action caused any damages or uncleanliness or unreasonably disturbed other tenants. The respondent simply walked into the house and back out without taking his boots off. I am not satisfied this constitutes a disturbance.

On April 11, 2017, at approximately 12:58 a.m., the applicant alleged the respondent was in an intoxicated state, banging and talking loudly. The respondent disputes that he was excessively noisy in this instance. No specific complaints were made by other tenants in the house regarding the respondent's behaviour.

On April 12, 2017, at approximately 12:06 a.m., the applicant alleged the respondent had returned to the house intoxicated, made some food, spoke loudly, and demanded the applicant look up some information for him on the computer. The applicant had been awake in the dining room at the time and was directly disturbed by the respondent's loud behaviour, asking that he speak softly in consideration of the quiet hours. The respondent disputes this incident as being disruptive, however, having heard the applicant's direct testimony in this regard I am satisfied that the respondent's behaviour in this instance was disruptive to the landlord's enjoyment of the premises.

The applicant claimed that on April 13, 2017, every tenant complained about the respondent's late night voice and demanded that something be done. The respondent disputed this claim, indicating that he has a good relationship with the other tenants and they would have no problem with confronting him about his behaviour if it were a problem. The respondent has not heard a single complaint directly from any of the other tenants.

On April 14, 2017, at approximately 2:45 a.m., the applicant alleged the respondent was stumbling around the kitchen, cooking, making a mess, and eating other people's food again. The respondent disputes that he created the described disturbances, nor was he notified of any complaints. Photographs of the kitchen counter show crumbs and food containers left out. There are no identifying marks of ownership visible on the food containers, so I cannot be satisfied that the respondent was eating other people's food. The applicant did not state he personally saw the respondent creating this mess, so I cannot be satisfied the respondent is to blame.

On April 17, 2017, at approximately 12:35 a.m., the applicant alleged the respondent came home banging on the walls, speaking and complaining loudly. The applicant indicated he directly observed the behaviour and spoke with the respondent. The respondent disputed the degree of disturbance alleged by the applicant, but did not dispute the incident occurred. I am satisfied the respondent disturbed the landlord's enjoyment of the premises in this instance.

In general, I am satisfied the respondent has caused some of the disturbances claimed by the applicant, but certainly not all of them. Regardless of the number or extent of disturbances, section 43 of the Act specifies that a tenant must not disturb the landlord's or other tenants' possession or enjoyment of the rental premises or residential complex. Being satisfied that the respondent has disturbed at least the landlord's enjoyment of the rental premises, I find the respondent has failed to comply with his obligation not to cause disturbances.

*Termination of the tenancy agreement and eviction*

The applicant has requested termination of the tenancy agreement and eviction primarily on the grounds that the respondent has repeatedly and unreasonably disturbed the landlord's and other tenants' enjoyment of the rental premises and residential complex. In a notice of termination of tenancy dated January 20, 2017, the applicant identified sections 54(1)(a), (c), (e), (f), and (g) of the Act as his reasons for terminating the tenancy.

Section 54(1)(a) is for repeatedly and unreasonably disturbing the landlord's or other tenant's possession or enjoyment of the residential complex. Although I have found the respondent has caused disturbances, I am not convinced they can be described as repeatedly occurring or substantially unreasonable.

Section 54(1)(c) was for failing to pay the security deposit in full, however, it was repealed in 2008, so 10-day notice to terminate a tenancy is no longer an option where the security deposit has not been paid.

Section 54(1)(e) is to terminate the tenancy agreement because it has been frustrated. Frustrated in this context is not because the relationship has been frustrated, but generally because the premises or some vital condition of the tenancy agreement can no longer be provided for. That is not the case here.

Section 54(1)(f) is for seriously impairing the safety of the landlord or other tenants of the residential complex by an act or omission of the tenant. There was one instance of a kitchen fire which the respondent accepted responsibility for. There has been no pattern of behaviour established suggesting the likelihood that another such incident will occur.

Section 54(1)(g) is for the tenant repeatedly failing to pay the full amount of rent when due. The respondent does not have any rental arrears, nor did the applicant choose to establish whether or not the respondent has been repeatedly late paying his rent.

The respondent expressed a desire to remain in the house, promising to bend over backwards to adhere to the terms of the tenancy agreement and the house rules.

I am not satisfied that termination of the tenancy agreement is justified either under section 43 of the Act or under section 54 of the Act. However, with reference to section 57(c) of the Act, I am satisfied that the applicant and respondent have personal differences which would make the continuation of the tenancy unfair to either of them and it is for that reason that I am prepared to order the termination of the tenancy agreement.

The applicant indicated he would be travelling for some periods of time over the next several months. The respondent requested he be given until the end of the summer to secure a new premises, indicating that he will attempt to secure a new premises before then. I do not think under the circumstances the respondent's request is unreasonable.

#### *Orders*

An order will issue:

- requiring the respondent to pay the outstanding security deposit of \$273.76;
- requiring the respondent to comply with his obligations not to cause disturbances and to follow the house rules; and
- terminating the tenancy agreement August 31, 2017.

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Adelle Guigon  
Rental Officer