

IN THE MATTER between **NTHC**, Applicant, and **ML**, 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-

ML

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	January 23, 2018
<u>Place of the Hearing:</u>	Fort Resolution, Northwest Territories
<u>Appearances at Hearing:</u>	MU, representing the applicant EAM, representing the applicant ML, respondent
<u>Date of Decision:</u>	January 23, 2018

REASONS FOR DECISION

An application to a rental officer made by FRHA on behalf of the NTHC as the applicant/landlord against ML as the respondent/tenant was filed by the Rental Office October 17, 2017. The application was made regarding a residential tenancy agreement for a rental premises located in Fort Resolution, Northwest Territories. The filed application was served on the respondent by registered mail signed for December 6, 2017.

The applicant alleged the respondent had failed to pay rent, had accumulated rental arrears, and had repeatedly and unreasonably disturbed the landlord's and other tenants' enjoyment or possession of the rental premises or residential complex. An order was sought for payment of rental arrears, payment of future rent on time, compliance with obligations not to cause disturbances, termination of the tenancy agreement, and eviction.

A hearing was scheduled for January 23, 2018, in Fort Resolution. The Rental Officer appeared by telephone. MU and EAM appeared representing the applicant. ML appeared as respondent.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them for subsidized public housing commencing June 7, 2017, for a fixed-term to September 30, 2017. I am satisfied a valid tenancy agreement is in place in accordance with the *Residential Tenancies Act* (the Act).

Rental arrears

The lease balance statements entered into evidence represent the landlord's accounting of monthly assessed rents and payments received against the respondent's rent account. All rents have been subsidized and are currently assessed at \$75 per month. No payments or insufficient payments were received for three of the eight months of the tenancy. Since filing of the

application to a rental officer, the respondent has resolved the accumulated rental arrears and currently carries a credit of \$80 on her rent account. Given this credit, the applicant's representatives withdrew the request for an order for payment of rental arrears, requesting only an order for payment of future rent on time.

The respondent did not dispute the accuracy of the landlord's accounting, accepting responsibility for her prior defaults.

I am satisfied the lease balance statements accurately reflect the current status of the respondent's rent account. I find the respondent has previously failed to pay the full amount of her rent when due.

Disturbances

The applicant's representatives testified to receiving multiple complaints since commencement of the tenancy to as recently as the first week of December 2017 of partying, loud music, and underage drinking at the rental premises, including the attendance of RCMP on occasion. Included in the application package were three notices sent to the respondent regarding the reported disturbances and two notices sent to the respondent terminating the tenancy. Although the applicant's representatives referenced having multiple notes, text messages, and photographs regarding the alleged disturbances since filing of the application, none of those things were entered into evidence.

The respondent did not dispute the majority of the reported complaints, although there were a few that she questioned her responsibility for. The respondent acknowledged the disturbances and accepted responsibility for them. She testified that she should be more responsible and that she understands the seriousness of being homeless. The respondent admitted to being an alcoholic, which is a contributing factor to the disturbances which have occurred. She has started participating in drug and alcohol counselling. Additionally, one of her adult sons has moved in with her, to whom she has made a commitment to make positive changes in her lifestyle. Both parties agreed that there have been no further disturbances reported since the respondent's son started residing with her in mid-December.

I am satisfied that there have been repeated disturbances occurring throughout the respondent's tenancy for which the respondent accepts responsibility. I find 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 or residential complex.

Termination of the tenancy agreement and eviction

The applicant's representatives claimed that the tenancy agreement was terminated September 30, 2017, in accordance with subsection 51(3) of the Act by a notice dated August 29, 2017. That notice indicated that the landlord would not enter into a new fixed-term tenancy agreement and directed the respondent to deliver up possession of the rental premises by September 30, 2017. The repeated disturbances were given as the reasons for terminating the tenancy. A second notice reminding the respondent to vacate the rental premises by September 30, 2017, was sent September 26, 2017. The respondent did not vacate the rental premises, and the applicant's representatives deny that the tenancy agreement was reinstated.

The respondent testified that while she did receive the August 22, 2017, warning notice regarding complaints of disturbances, she did not receive the notices regarding termination of the tenancy agreement. When queried, the applicant's representatives indicated that all the notices were sent to the respondent by regular mail.

Subsection 71(1)(b) of the Act requires notices to be served on or given to the tenant must be served or given by registered mail, not regular mail. Subsection 71(5) of the Act says that a notice served or given by registered mail is deemed to have been served on the seventh day after mailing. Subsection 51(3) of the Act says a subsidized public housing landlord may terminate a fixed-term tenancy agreement by giving the tenant a notice of termination not later than 30 days before that date.

While the applicant may have sent a notice to the respondent to terminate the fixed-term tenancy pursuant subsection 51(3) of the Act, they failed to comply with the service requirements specified under subsection 71(1)(b) of the Act which rendered the August 29th notice ineffective as it was not served on the respondent in compliance with the Act. As such, the tenancy agreement was not terminated September 30, 2017, at which time it automatically renewed as a month-to-month tenancy in accordance with subsection 49(1) of the Act.

The applicant's representatives made note of these deficiencies, but still requested termination of the tenancy agreement and eviction due to the repeated pattern of disturbances. Given the recent developments with the respondent's son moving in, the respondent's commitment to change her lifestyle, and there having been no further disturbances since mid-December, the applicant's representatives were responsive to a conditional termination and eviction order dependent on no further disturbances occurring. The respondent appreciated the offer and reinforced her commitment to continued responsible behaviour.

Under the circumstances of the repeated disturbances, I am satisfied termination of the tenancy agreement and eviction are justified. In consideration of recent developments, I am satisfied the applicant's suggested conditional termination and eviction is reasonable.

Orders

An order will issue:

- requiring the respondent to pay her rent on time in the future;
- requiring the respondent to comply with her obligation not to cause disturbances, and not to cause disturbances again;
- terminating the tenancy agreement April 30, 2018, unless no further verified disturbances caused by the respondent are reported to the applicant; and
- evicting the respondent from the rental premises May 1, 2018, if the termination of the tenancy agreement becomes effective.

Adelle Guigon
Rental Officer