

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

FN

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: May 3, 2018

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: Jacklyn Smith, representing the applicant
Aya Burshan, representing the applicant

FN, respondent
IKN, witness for the respondent

Date of Decision: May 18, 2018

REASONS FOR DECISION

An application to a rental officer made by YHA on behalf of the NTHC as the applicant/landlord against FN as the respondent/tenant was filed by the Rental Office January 4, 2018. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was served on the respondent by email deemed received February 5, 2018, pursuant to subsection 4(4) of the *Residential Tenancies Regulations* (the Regulations). An addendum to the application was served on the respondent by email confirmed received April 27, 2018.

The applicant alleged the respondent had been permitting an unauthorized occupant to reside with her. The applicant further alleged the respondent had committed an illegal act in the rental premises. An order was sought for payment of unsubsidized rental arrears, termination of the tenancy agreement, and eviction.

A hearing was scheduled for May 3, 2018, in Yellowknife. Jacklyn Smith and Aya Burshan appeared representing the applicant. FN appeared as respondent, with IKN appearing as a witness.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them for subsidized public housing commencing December 30, 2013. I am satisfied a valid tenancy agreement is in place in accordance with the *Residential Tenancies Act* (the Act).

There have been three rental premises during the course of this tenancy. The respondent transferred from the first premises to the second premises on February 2, 2016, and from the second premises to the third (current) premises on March 17, 2017.

Unauthorized occupant

Applicant's submissions

The applicant's representative testified that she first heard that KS, who will be referred to going forward as the respondent's ex-boyfriend, was living with the respondent during a conversation with the respondent's neighbour. The neighbour told the applicant's representative that the ex-boyfriend was the neighbour's cousin, that the ex-boyfriend had been together with the respondent for four years, and that the ex-boyfriend had moved into the respondent's current premises with her. The neighbour refused to make a sworn statement to this effect, citing fear of repercussion from the respondent, the ex-boyfriend, and her extended family. The neighbour did not testify at the hearing, presumably for the same reason.

The applicant's representative made a note of the information she received. In the conduct of an inspection of the respondent's rental premises for unrelated purposes, the applicant's representative observed on the fridge an employment insurance envelope addressed to the ex-boyfriend at the second rental premises. She also noted male clothes hanging over the cupboard doors. These observations lent credence to the information the applicant's representative received from the neighbour.

The applicant's representative approached the respondent with her observations and asked the respondent to either add the ex-boyfriend to the tenancy agreement or provide evidence of where the ex-boyfriend lives. The respondent provided the following:

- a letter from Employment Insurance Commission dated March 22, 2018, addressed to the ex-boyfriend at a box number in Fort Good Hope;
- one page of the ex-boyfriend's 2017 assessment from Canada Revenue Agency dated April 25, 2018, and addressed to him at a box number in Fort Good Hope;
- the mailing address and telephone number information for the ex-boyfriend printed from his My Service Canada Account webpage identifying the box number in Fort Good Hope;

- a copy of the ex-boyfriend's bank customer details statement identifying the ex-boyfriend's address as a box number in Fort Good Hope, and that the box number has been the ex-boyfriend's address since May 1995.

The applicant's representative was not satisfied that these documents adequately established the ex-boyfriend's place of residence.

The applicant's representative spoke with the ex-boyfriend's ex-wife and daughter, both of whom asserted that the ex-boyfriend had left the ex-wife for the respondent and that the ex-boyfriend had been living with the respondent for four years now. The daughter told the applicant's representative that she had visited her father at the respondent's second and third premises. The ex-wife and daughter made written statements of their assertions, but those statements were not sworn. Neither the ex-wife nor the daughter testified at the hearing.

The applicant's representative submitted a copy of a vehicle registration certificate which they had on file from the respondent's second premises for parking stall purposes. The registration certificate named both the respondent and the ex-boyfriend as the registered owners of a vehicle with the second rental premises listed as their address. The registration certificate was issued August 28, 2015, and expired August 31, 2016.

The applicant's representative submitted a photo of the respondent and the ex-boyfriend, claimed to have been taken from a FaceBook page. The applicant's representative refers to comments attributed to the respondent saying "K is her man" and to the ex-boyfriend saying "she is his". The comments are not included with the screenshot of the photograph that was submitted.

Respondent's submissions

The respondent testified that the ex-boyfriend did not formally reside with her at any time. He would stay overnight at her place from time to time between shifts working at the mines, on his way to or from his home in Fort Good Hope. She confirmed that they were in a relationship for a period of time over the last four years, but that they were no longer in that intimate relationship and were now just acquaintances.

The respondent explained that the Employment Insurance envelope the applicant's representative saw at her place was old, and that she had permitted the ex-boyfriend to use her address while he was receiving employment insurance as he claimed to her that delivery was more consistent in Yellowknife and he could pick it up on his way through.

The respondent explained that the male clothing hanging over the cupboard doors belonged to her son, who would stay at her place on occasion when she travels. The respondent happened to have been travelling in Fort Simpson when the applicant's representative conducted the referenced inspection.

The respondent testified that it was difficult for her to obtain what documents she did from the ex-boyfriend. Two of the documents were provided to her from the ex-boyfriend's daughter. The respondent also submitted a signed letter from the ex-boyfriend's sister confirming that the ex-boyfriend lives with her and her family in Fort Good Hope when he's not at work or school. The sister's address is referenced in the letter as the same box number in Fort Good Hope as has been identified for the ex-boyfriend. The respondent also submitted an auto insurance quote dated effective January 25, 2016, addressed to the ex-boyfriend at the ex-wife's rental premises, and a copy of an envelope from a finance company addressed to the ex-boyfriend at the box number in Fort Good Hope.

The respondent believes the ex-wife's and daughter's written statements are coloured by their feelings against her, as they view the break-up of the ex-boyfriend and ex-wife as being caused by the respondent. The respondent and the respondent's witness testified that the ex-wife had recently falsely accused them of assaulting the ex-wife at the ex-wife's rental premises. The respondent and the respondent's witness testified that they were in Behchoko at the time of the alleged offence. The RCMP investigated the allegation and no charges were laid. This incident was presented to raise doubt as to the credibility of the ex-wife and the daughter's statements.

The respondent explained that the vehicle registration certificate was another example of her agreeing to help the ex-boyfriend out. She also testified that the previous program manager already asked her about the joint registration certificate when she provided it for the parking stall. The respondent confirmed that she had explained then as now that she was helping the ex-boyfriend buy a new vehicle by being a co-signer for him, hence the joint registration. The respondent is no longer the registered owner of that vehicle.

The respondent identified the FaceBook photo as having been taken a while back, and she reiterated that the ex-boyfriend was never her common-law partner.

Determinations

The neighbour's information has limited value due to the hearsay nature of it. While the neighbour may certainly have taken note of her cousin's comings and goings at the respondent's premises and made her own assumptions, that does not necessarily mean that the ex-boyfriend was living there.

To my mind, the documents provided by the respondent substantiate the ex-boyfriend's primary residence in Fort Good Hope. While I can certainly appreciate that a box number can be used by anyone, I am cognizant of the fact that Canada Post does not have home delivery service in Fort Good Hope, and that there is no recognized street addressing system in Fort Good Hope. That there are multiple official sources recognizing the ex-boyfriend's primary address in Fort Good Hope, and that the ex-boyfriend's sister corroborates that information, I am inclined to believe that the ex-boyfriend's primary residence is in Fort Good Hope.

The ex-wife's and daughter's statements have limited value as they are not sworn statements, and they were not made available to cross-examine. Additionally, there is an apparent bias in their perceptions regarding the relationship between the ex-boyfriend and the respondent. It has been acknowledged by the respondent that the ex-boyfriend would stay at her place in transit between home and work, so it does not seem unreasonable that the daughter would have visited her father at the respondent's rental premises when he was in town. This does not automatically mean that he was residing with the respondent.

I am not satisfied that the vehicle registration certificate necessarily proves that the ex-boyfriend was living with the respondent. I accept the respondent's explanation that she co-signed for the vehicle, making her a joint owner with the ex-boyfriend. I do not believe more than one address can be specified on a vehicle registration certificate.

The FaceBook entries alleged to be hearsay and of no value in determining whether or not the ex-boyfriend was living with the respondent.

The respondent's testimony was clear and consistent, and I have no reason to disbelieve the explanations offered.

Based on the evidence and testimony presented, I am satisfied the ex-boyfriend's primary residence was in Fort Good Hope. I am not satisfied that the respondent permitted an unauthorized occupant to reside with her during her tenancy. The applicant's request for payment of unsubsidized rental arrears is denied.

Illegal activities

The applicant's representative submitted that she received information in April 2018 from the ex-wife alleging that the respondent and the respondent's witness assaulted her in her rental premises on March 17, 2018, and that charges had been laid. By correspondence dated April 26, 2018, the applicant informed the respondent that they would be seeking termination of the tenancy agreement due to the alleged illegal act occurring in the rental premises.

Subsection 46(1) of the Act says:

"A tenant shall not commit an illegal act or carry on an illegal trade, business or occupation, or permit another person to do so, **in the rental premises or in the residential complex.**" [emphasis mine]

The respondent and respondent's witness testified that the RCMP had interviewed each of them regarding the allegations made by the ex-wife. They both denied the allegations, and provided the RCMP with alibis as they were in Behchoko for a hand games tournament on March 17th. They are not aware of any charges being laid against them.

Regardless of whether or not the respondent was involved in the alleged assault, the illegal act is alleged to have occurred at the *ex-wife's* rental premises, not at the respondent's rental premises. Even if the respondent were found guilty of the crime, she would not have breached a term of her tenancy agreement because the crime did not occur in *the respondent's* rental premises. The applicant's request for an order to terminate the tenancy agreement and evict the tenant is denied.

As there is no order to issue, only these reasons for decision will be produced.

Adelle Guigon
Rental Officer