

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

CM

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	June 28, 2018
<u>Place of the Hearing:</u>	Hay River, Northwest Territories
<u>Appearances at Hearing:</u>	AS, representing the applicant CM, respondent
<u>Date of Decision:</u>	June 28, 2018

REASONS FOR DECISION

An application to a rental officer made by HRHA on behalf of the NTHC as the applicant/landlord against CM as the respondent/tenant was filed by the Rental Office April 20, 2018. The application was made regarding a residential tenancy agreement for a rental premises located in Hay River, Northwest Territories. The filed application was served on the respondent by registered mail signed for May 25, 2018.

The applicant alleged the respondent had repeatedly failed to pay rent when due, had accumulated rental arrears, had caused damages to the rental premises, and had repeatedly caused disturbances. An order was sought for payment of rental arrears, payment of future rent on time, payment of costs of repairs, compliance with their obligation not to cause damages and prohibition from causing further damages, compliance with their obligation not to cause disturbances and not to breach that obligation again, termination of the tenancy agreement, eviction, and compensation for use and occupation of the rental premises.

A hearing was scheduled for June 28, 2018, in Hay River. The Rental Officer appeared by telephone. AS appeared representing the applicant. CM appeared by telephone as the respondent.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them for subsidized public housing commencing December 15, 2017. I am satisfied a valid tenancy agreement is in place in accordance with the *Residential Tenancies Act* (the Act).

Rental arrears

The statements of account and client aged details (rent documents) 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 \$80 per month.

The monthly rent is regularly paid on the respondent's behalf by Income Support. At the time that the application to a rental officer was made, the rent for April had not yet been processed. It is generally accepted practice with most local housing organizations providing subsidized public housing that, despite the tenancy agreement specifying the rent is due the first of the month, the landlord is happy if the rent gets paid within the month that it's due. As of the hearing date for this application, all subsidized rents had been paid in full within the months they were due and as a result the respondent does not currently carry any rental arrears.

Damages

The applicant's representative testified and evidence was presented establishing that the exterior door had been damaged twice: the first time on or about February 25, 2018, for which the respondent was charged \$212 to repair; the second time on or about March 23, 2018, for which the respondent was charged \$185.50 to repair. The respondent did not dispute either of these charges, accepting responsibility for them. The respondent confirmed that no payments had yet been made against these charges, but made a commitment to have them paid in full.

I am satisfied the respondent is responsible for the claimed damages. I find the respondent liable to the applicant for costs of repairs in the total amount of \$397.50.

Disturbances

The applicant's representative testified and evidence was presented regarding complaints received from other tenants of continuous, all-night partying, loud music, noise, yelling, derogatory comments, and heavy traffic occurring over several days during the weeks of March 12 and March 26, 2018. Implications were made in the complaints that this disturbing behaviour had occurred on several previous occasions since commencement of the tenancy. No further disturbances were reported after the last warning notice was issued to the respondent on April 5, 2018.

The respondent did not dispute that the reported disturbances occurred, nor did she dispute her responsibility for them. The respondent admitted that the reason the disturbances seemed to have ceased is because she had been arrested in late April, spent a brief period of time in custody, and then was arrested again in early May at which time she was released on a recognizance with her mother as a surety. The recognizance further required the respondent to reside at her mother's residence and comply with a curfew for the duration that the recognizance remains in effect or until otherwise ordered by the Court. In essence, there have been no further disturbances from the rental premises because the respondent has not been living at the rental premises.

I am satisfied the reported disturbances were caused by the respondent or persons the respondent permitted on the rental premises, and that the nature of the disturbances interfered with the landlord's and other tenants' enjoyment or possession of the rental premises or residential complex. I find the respondent has repeatedly failed to comply with her obligation not to cause disturbances.

Utilities

Paragraph 8 of the written tenancy agreement sets out the respondent's responsibility to pay all utilities associated with the rental premises. On May 22, 2018, the applicant received notification from Northland Utilities Limited (NUL) that the electricity to the respondent's rental premises would be cut off because the electricity bills had not been paid. The respondent did not dispute this claim and made a commitment to pay her utilities arrears and make sure the utilities were paid as required going forward.

I find the respondent has failed to comply with her obligation to pay the utility bills for the rental premises.

Uncleanliness and occupancy

When the applicant received the notice from NUL a work order was prepared and maintenance personnel immediately attended the rental premises to ensure no damages were caused as a result of the electricity being cut off. When they attended there was no one home to answer the door. As all previous efforts to contact the respondent had been unsuccessful, the maintenance personnel entered the premises in order to remove perishables from the refrigerator and freezer, thus taking actions to avoid damages to those appliances. When they entered they found garbage had been left out for a lengthy enough period of time to attract a substantial amount of bugs and insects; it appeared to them that the respondent had not been occupying the rental premises for some time. The maintenance personnel removed the garbage and emptied the perishables from the fridge and freezer, and then left the premises.

The applicant's representative testified that correspondence which had been mailed to the respondent throughout April had been returned to the applicant marked as "moved/unknown" by Canada Post. Repeated telephone calls to the respondent throughout the months of April and May went unanswered, and then the respondent's telephone number was disconnected. Upon receiving the notice from NUL and observing the condition of the rental premises, the applicant's representative reached out to the respondent's mother to try and get a hold of the respondent. The respondent's mother indicated that the respondent was at the mother's house, and she agreed to pass a message to the respondent to get in contact with the applicant.

As previously established, it turns out that the respondent had not abandoned the rental premises, rather she was under court order in the recognizance to reside at her mother's residence. There is no dispute from the respondent that she did not notify the applicant of this court-ordered requirement. The respondent testified that she had attended the rental premises three times since moving to her mother's residence: May 16th to retrieve some clothing and necessities, May 20th, and June 27th to clean the fridge. Otherwise she has not returned to the rental premises.

Paragraph 18 of the written tenancy agreement requires the tenant to notify the landlord in writing before leaving the rental premises unoccupied for any period of time. Paragraph 18 also specifies that the tenant remains responsible for any damages occurring during any period that the rental premises is left unoccupied.

Paragraph 12(a) of the written tenancy agreement and subsection 45(2) of the Act both require the tenant to maintain the ordinary cleanliness of the rental premises.

The respondent being ordered by the Court to reside with her mother is not the issue at hand under the Act. The issue at hand is that the respondent did not notify the applicant that she had been ordered to reside at her mother's residence and that the rental premises would remain unoccupied for an undefined period of time. The additional issue at hand is that the respondent did not take any actions for several weeks after her release from custody to maintain the rental premises and ensure no damages occurred during her absence. This includes the respondent's failure to ensure the utility bills were paid as required. And the final additional issue at hand is that the respondent did not leave the rental premises in an ordinary state of cleanliness.

Had the respondent notified the applicant that the rental premises would be unoccupied and why, at least then the applicant would have been in a position to keep an eye on the premises and to ensure the respondent understood her continued obligation to take care of the premises. Had the respondent communicated with the applicant at all they could have had discussions about the issues that had arisen and perhaps entered into a last chance agreement to resolve the issues. The question remains as to why the respondent did not at least clean up the garbage at the rental premises on one of the two occasions in May when she attended the rental premises. It seems to me that the Court order to reside at the respondent's mother's residence and to comply with a curfew did not prohibit the respondent from attending the rental premises outside of the curfew hours.

The respondent acknowledged her failure to communicate with the applicant and accepted responsibility for it.

I am satisfied the respondent has not been residing at the rental premises since at least May 11, 2018. I am satisfied the respondent did not notify the applicant that the rental premises would be unoccupied as of May 11, 2018, for an indeterminate period of time. I am satisfied the rental premises was left in an unclean condition. I find the respondent has failed to comply with her obligation to notify the landlord in writing that the rental premises would be unoccupied and has failed to comply with her obligation to maintain the ordinary cleanliness of the rental premises.

Termination of the tenancy agreement and eviction

The respondent testified that she was scheduled to return to Court in August for trial. A review of the Territorial Court docket confirmed the respondent is scheduled to return to Court August 8, 2018. The respondent does not know what the likelihood is of a custodial sentence being handed down if she is found guilty of the charges being tried, but reiterated that once she is released from the recognizance she intends to return to reside at the rental premises. She requested the tenancy not be terminated without giving her an opportunity to prove she could comply with her obligations under the tenancy agreement and at least until the trial was concluded.

The applicant's representative expressed a lack of faith in the respondent's ability to follow through on her promises. This was based on his previous experiences with the respondent. The applicant's representative reiterated the remedies being sought included termination of the tenancy agreement and eviction, but acknowledged the Rental Officer's discretion in determining whether or not those remedies are justified in the circumstances.

To my mind, each of the individual breaches of the tenancy agreement by themselves may not justify termination of the tenancy agreement and eviction, but considered collectively they do. Of particular concern is the rental premises being left unoccupied for such a lengthy period of time without notice and whether or not the disturbances will continue when the respondent returns to the rental premises. Additionally, what is one to do if the respondent is found guilty of the criminal charges she faces and is then sentenced to a period of incarceration? Is the rental premises to be left empty for an indeterminate period of time?

I am satisfied based on the collective breaches of the terms of the tenancy agreement that termination of the tenancy agreement and eviction is justified. To answer the above identified concerns while granting the respondent the requested opportunity to prove she can comply with her obligations, I am prepared to make the termination and eviction orders conditional on several requirements, including whether or not the respondent returns to reside in the rental premises within a given period of time.

Orders

An order will issue:

- requiring the respondent to pay costs of repairs in the amount of \$397.50;
- prohibiting the respondent from doing any further damage to the rental premises or residential complex;
- requiring the respondent to comply with their obligation to pay utilities and not to breach that obligation again;
- requiring the respondent to comply with their obligation not to disturb the landlord's or other tenants' enjoyment or possession of the rental premises or residential complex, and not to breach that obligation again;
- requiring the respondent to comply with their obligation to maintain the ordinary cleanliness of the rental premises;
- terminating the tenancy agreement September 30, 2018, unless:
 - ▶ the outstanding costs of repairs are paid in full;
 - ▶ no further damages are caused to the rental premises which can be attributed to the respondent's wilful or negligent actions or those of persons the respondent has permitted on the rental premises;
 - ▶ no further disturbances verified as being caused by the respondent or persons permitted on the rental premises by the respondent are reported to the applicant;

- ▶ no further breaches of the respondent's obligation to pay their utilities have occurred; and
- ▶ the respondent has re-commenced residing in the rental premises on or before September 15, 2018; and
- evicting the respondent from the rental premises October 1, 2018, if the termination of the tenancy agreement becomes effective.

Adelle Guigon
Rental Officer