

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

RT

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: July 4, 2018

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: AB, representing the applicant
RT, respondent
DT, on behalf of the respondent

Date of Decision: July 4, 2018

REASONS FOR DECISION

An application to a rental officer made by YHA on behalf of the NTHC as the applicant/landlord against RT as the respondent/tenant was filed by the Rental Office May 10, 2018. 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 May 24, 2018.

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

A hearing was scheduled for July 4, 2018, in Yellowknife. AB appeared representing the applicant. RT appeared as respondent with DT appearing on his behalf.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them for subsidized public housing commencing November 2, 2015. I am satisfied a valid tenancy agreement is in place in accordance with the *Residential Tenancies Act* (the Act).

Rental arrears

The lease balance statement and statement of account (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 were last assessed at \$80 per month. All subsidized rents have been paid in full when due.

The applicant is claiming the maximum rent of \$1,625 for May and June 2018 due to a notice of termination of the tenancy agreement given to the respondent to take effect April 30, 2018, as a result of the claims of repeated disturbances. While that termination notice was validly given, I am not satisfied that it is justified and therefore will not be ordering it. Further explanation of my rationale for this finding will follow later in these reasons. The tenancy agreement continues uninterrupted and the respondent remains eligible for rent subsidies in May and June. The applicant's request for payment of unsubsidized rental arrears for May and June is denied, and I find the respondent has complied with his obligation to pay his subsidized rent in full when due.

Disturbances and damages

At least 17 complaints of disturbances occurring at the respondent's rental premises by persons permitted there by the respondent were complained of by other tenants and the building caretaker to the applicant between January 11 and July 4, 2018. The disturbances consisted of repeated knocking on the window to be let in, partying, noises, intoxication, fighting, strong smell of cigarette smoke, aggressive confrontations, and heavy traffic to and from the premises. Allegations without substantive evidence have been made regarding drug transactions out of the rental premises. Many of the complaints include uncertainty as to who the actual tenant living in the rental premises actually is given the number of people attending the premises.

Some of the complaints were very generalized and included more than just this respondent's rental premises. Two of the complaints, which included damages being caused, were not identified as being caused by persons permitted on the premises – one was in fact a break-and-enter causing damage. The other was regarding an intoxicated individual who became angry when he was not let into the premises, used a fire extinguisher on the property, and pulled the fire alarm.

A last chance agreement had been entered into between the parties on February 26, 2018, on the condition that no further disturbances occur. The respondent admitted at hearing that he did not actually understand what the last chance agreement was about when he signed it.

The respondent acknowledged that he did permit many of his friends to come by his place, and that they were the source of the disturbances complained of, but he did not seem to understand until it was explained during the hearing that as the tenant he is responsible for the actions of the persons he let into the premises. It was explained at hearing that the respondent had recently suffered the loss of his mother and the frequent visitors were his way of coping and keeping from being alone. He acknowledged he needed to move past that, and be far more selective in the types of 'friends' he allows to visit him. The respondent was adamant at hearing that no further disturbances would be heard from his rental premises. He promised not to permit the undesirable elements into the premises, not to answer knocking at his window for access, to call the police if anyone knocking at his window became insistent, and to notify the landlord whenever such incidents occurred. The respondent understood the importance of not letting anyone into the building that he could not trust to behave themselves and be quiet.

With respect to the fire extinguisher incident, the respondent confirmed that although he had let that individual into his premises before, he did not let that person into the building on that date, which is why the individual became angry. The applicant claimed the costs associated with re-filling the fire extinguisher and the fire alarm response fees. That claim is denied given that the respondent cannot be held liable for the actions of persons he did not permit to enter the premises.

With respect to the heavy smoke complained of on several occasions, the respondent admitted that he is an extremely heavy smoker, but thought he had a right to smoke in his premises. It was clarified that if the tenancy agreement does not prohibit smoking in the rental premises then, yes, the tenant is permitted to smoke in the rental premises. However, when the

smoking is so extensive that it results in smoke transferring into the common hallways and neighbouring tenants' apartments it can interfere with other tenants' enjoyment or possession of the rental premises or residential complex, also known as a disturbance, which is prohibited under the written tenancy agreement and the Act. Once explained, the respondent understood the distinction and completely appreciated it. He acknowledged that he had COPD and was on oxygen anyway, so he really shouldn't be smoking so much, if at all. He agreed to try to cut down how much he was smoking, and it was suggested that even if he smoked near an open window or on the balcony instead of inside the rental premises it may help.

I am satisfied that the respondent is responsible for causing disturbances related to excessive smoking in the rental premises, and I am satisfied that the respondent is responsible for the actions of his guests causing disturbances. I find the respondent has repeatedly and unreasonably disturbed the enjoyment and possession of the rental premises and residential complex for the landlord and other tenants.

Termination of the tenancy agreement and eviction

The repeated pattern and nature of disturbances occurring since January 2018 to as recently as this week cannot be ignored, however, given the respondent's explanation for how they occurred, why they occurred, and who actually caused the disturbances, I am not satisfied unconditional termination of the tenancy is justified. Whether or not the respondent is capable of following through on his promise not to permit undesirable 'friends' into the premises is an uncertainty, and the nature of the disturbances which have occurred to date are a notable concern. I believe the respondent now understands the seriousness of the situation that has arisen for which he must take immediate action to rectify and prevent from recurring. A conditional termination and eviction order will issue dependent on no further reports of disturbances verified as being caused by the respondent or persons permitted in the premises by the respondent being received by the applicant.

Orders

An order will issue:

- requiring the respondent to comply with his obligation not to cause disturbances and not to breach that obligation again;
- terminating the tenancy agreement August 31, 2018, unless no further reports of disturbances verified as caused by the respondent or persons permitted on the premises by the respondent are reported to the applicant; and
- evicting the respondent from the rental premises September 1, 2018, if the termination of the tenancy agreement becomes effective.

Adelle Guigon
Rental Officer