

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

ER

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	November 27, 2018
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	AS, representing the Applicant ER, Respondent
<u>Date of Decision:</u>	November 27, 2018

REASONS FOR DECISION

An application to a rental officer made by HRHA on behalf of the NTHC as the Applicant/Landlord against ER as the Respondent/Tenant was filed by the Rental Office October 26, 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 November 15, 2018.

The Applicant alleged the Respondent had repeatedly and unreasonably disturbed the landlord's and other tenants' enjoyment and/or possession of the rental premises, and had failed to comply with a rental officer order not to permit their dogs to cause disturbances and not breach that obligation again.

An expedited hearing originally scheduled for November 15, 2018, was cancelled due to untimely service of the filed application and notice of attendance on the Respondent. The hearing was re-scheduled to November 27, 2018, by three-way teleconference. AS appeared representing the Applicant. ER appeared as Respondent.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them for subsidized public housing commencing October 1, 2016. I am satisfied a valid tenancy agreement is in place in accordance with the *Residential Tenancies Act* (the Act).

Previous order

Rental Officer Order Number 15654 issued August 30, 2017, required the Respondent to comply with his obligation not to permit his dogs to cause disturbances and not to breach that obligation again, terminated the tenancy agreement October 31, 2017, unless no further complaints of verified disturbances caused by the Respondent's dogs were reported to the Applicant, and evicted the Respondent from the rental premises November 1, 2017, if the termination of the tenancy agreement became effective.

Disturbances

At the time that the last rental officer order was issued the Respondent owned two dogs: a smaller dog and a larger German Shepard. Both dogs were found to behave in an intimidating and aggressive manner, and both dogs had the means to escape the fenced yard of the rental premises.

The Respondent testified that he gave up the smaller dog when the last rental officer order was issued, and there had been no problems he was aware of with the German Shepard since, until the incident initiating this application. The Applicant's representative confirmed that there had been no complaints received since the smaller dog was given up, until the incident initiating this application.

Paragraph 16 of the house rules specify that where the landlord has provided permission for pets the tenant is responsible for controlling their pets in a manner that will not disturb other tenants or nearby residents' quiet enjoyment, and that the tenant must leash and control their pets at all times when outside of the rental premises. The tenant must also adhere to all Town of Hay River bylaws.

The Applicant's representative testified that on October 24, 2018, he and the Manager of HRHA were driving around town viewing the condition of the yards to their rental premises in preparation for the winter season. As they were passing the Respondent's rental premises they observed the German Shepard and several puppies roaming off-leash in the back yard. The Applicant's representative approached the front door of the house with the intention of reminding the Respondent of the requirement to either keep the dogs leashed to a dog run or otherwise secured in a cage. Before he could knock on the door, the German Shepard made to attack the Applicant's representative, growling with teeth exposed and lunging at him. The Applicant's representative was able to keep the dog at bay by raising his leg and yelling loudly. The dog did not let up until the Respondent's spouse came out of the house and pulled the German Shepard back inside. The Respondent's spouse did not acknowledge the seriousness of the German Shepard's actions and the risk of harm the Applicant's representative had been exposed to.

After filing the application to a rental officer, the Applicant's representative and the Respondent had a meeting at which the Applicant offered to withdraw the request to terminate the tenancy agreement on the condition that the Respondent give up the German Shepard and agreed not to keep any dogs on the rental premises for the duration of the tenancy. The Respondent agreed to consider the offer with his spouse. The Respondent testified that his spouse was unwilling to part with the German Shepard.

The parties agreed that except for the issues with the dogs the Respondent is a very good tenant. The Applicant would not have cause for, and would not be pursuing, termination of the tenancy agreement were it not for the aggressiveness of the dogs being kept at the rental premises.

The Respondent explained that the German Shepard and her pups are usually kept in a cage when they're in the yard, with a padlock used to secure the latch. The Respondent admitted that the padlock is not locked, rather it is left unlocked while hooked through the latch. The Respondent believes that the neighbouring child, who considers one of the pups to be hers, likely opened the cage allowing the dogs to escape. The Respondent also argued that because the Applicant's maintenance personnel had not completed repairs to the fence gate he could not secure the gate closed and that's why the dogs were able to leave the fenced yard.

Whether or not the neighbouring child released the dogs from the cage does not negate the Respondent's responsibility for ensuring the dogs are properly secured. He knew the neighbouring child had an affinity for the dogs, so it was his responsibility to ensure the padlock was locked in order to prevent anyone else from letting the dogs out.

Whether or not the fence gate was properly repaired also does not negate the Respondent's responsibility for ensuring the dogs are properly secured. There are other means to do this, the cage he was using being just one. A leashed dog-run is another means that could have been used which would have allowed the dogs some freedom of movement in the yard without loss of control.

I find the Respondent did not take adequate efforts to ensure his dogs were properly secured. The aggressive response of the German Shepard to the Applicant's representative's lawful presence at the rental premises constitutes yet another disturbance for which the Respondent must be held responsible. I find the Respondent has failed to comply with his obligation not to cause disturbances, and failed to comply with a rental officer order to comply with his obligation not to permit his dogs to cause disturbances again.

Termination of the tenancy agreement and eviction

The extreme nature of the German Shepard's behaviour towards the Applicant's representative on October 24, 2018, may very well have been the result of a mother protecting her pups, but it was an unnecessary and preventable occurrence which could have resulted in physical harm to the Applicant's representative in addition to psychological harm. Despite there having been no reported issues with the German Shepard in several months, this significant incident is an example of why the previous rental officer order was issued, and that order was very clear that no further disturbances by the dogs would be tolerated.

To my mind, the Applicant's offer to allow the tenancy to continue as long as no dogs are kept at the rental premises is reasonable. The Respondent acknowledged that he would have to find a place for the dog because there was no place else for him and his family to live. He suggested the dog might be able to live with a friend of his who has a dog-mushing team.

I am satisfied that conditional termination of the tenancy agreement and eviction are justified under the circumstances. The termination and eviction orders will be conditional on the Respondent no longer being in possession of any dogs at the rental premises.

Orders

An order will issue:

- terminating the tenancy agreement December 15, 2018, unless the Respondent is no longer in possession of any dogs at the rental premises; and
- evicting the Respondent from the rental premises December 16, 2018, if the termination of the tenancy agreement becomes effective.

Adelle Guigon
Rental Officer