

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

**KR**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:** May 2, 2019

**Place of the Hearing:** Yellowknife, Northwest Territories

**Appearances at Hearing:** RV, representing the Applicant  
DD, representing the Applicant

KR, Respondent  
DK, Witness for the Respondent  
AK, Witness for the Respondent  
KR, Witness for the Respondent

**Date of Decision:** May 22, 2019

### **REASONS FOR DECISION**

An application to a rental officer made by IHA on behalf of the NTHC as the Applicant/Landlord against KR as the Respondent/Tenant was filed by the Rental Office February 28, 2019. The application was made regarding a residential tenancy agreement for a rental premises located in Inuvik, Northwest Territories. The filed application was personally served on the Respondent March 29, 2019.

The Applicant alleged the Respondent had repeatedly and unreasonably caused disturbances, failed to comply with a last chance agreement not to cause further disturbances, and failed to vacate the rental premises after being served with a termination notice. An order was sought for eviction and compensation for use and occupation of the rental premises.

A hearing originally scheduled for April 3, 2019, was cancelled due to the Applicant's failure to provide proof of serving the Respondent with the filed application and notice of the hearing at least five business days before the hearing date. The hearing was re-scheduled to May 2, 2019, by three-way teleconference. RV and DD appeared representing the Applicant. KR appeared as Respondent, with DK, AK, and KR appearing as witnesses on the Respondent's behalf.

#### *Tenancy agreement*

The parties agreed and evidence was presented establishing a residential tenancy agreement between them for subsidized public housing commencing December 1, 2017. The tenancy was formed using multiple one-month fixed-term tenancy agreements, with the last agreement for the fixed-term of January 1 to 31, 2019. The parties agreed that occupancy of the rental premises has been continuous and uninterrupted. I am satisfied a valid residential tenancy agreement for subsidized public housing is in place in accordance with the Act.

#### *Disturbances*

The Applicant entered into evidence tenant complaint forms documenting complaints of disturbances allegedly being caused by the Respondent.

The first documented complaint was received by the Applicant from a neighbouring tenant on April 13, 2018, regarding an incident occurring on April 9, 2018, of people crying, fighting, and shouting in the stairwell with a young child. The Respondent was blamed for the stairwell fight, but there was no clear indication of whether or not the Respondent was actually involved in the stairwell fight nor of how the Respondent might be responsible for the persons fighting in the stairwell. A “first warning” letter was delivered to the Respondent on April 13, 2018. The Respondent appealed the warning to the Board of Directors, who agreed to rescind the first warning letter.

The building caretaker notified the Applicant on June 4, 2018, of a disturbance involving the Respondent which occurred on June 3, 2018, in which a fight took place in the hallway between the Respondent and two other people. The caretaker reported that he asked the Respondent to be quiet or the police would be called, and that there were no further disturbances after that. The Applicant issued a “first warning” letter to the Respondent on June 4, 2018.

On June 5, 2018, the Applicant received a complaint from a neighbouring tenant of a disturbance occurring that day at 2:00 a.m. during which she was woken up from an “argument, yelling, banging, and sounded like stuff being thrown around and into the hallway.” The caretaker was allegedly called, and he was believed to have called the RCMP. No report of the disturbance was provided by the caretaker, nor was an incident report provided by the RCMP. The Respondent was blamed for the disturbance, despite there being no clear indication or observance of the Respondent’s involvement in it. The Applicant issued a “final warning” letter to the Respondent on June 5, 2018.

On June 25, 2018, the Applicant received a complaint from a neighbouring tenant of a “big party” occurring June 23 and 24, 2018, at the Respondent’s unit. It should be noted here that the complaining tenant resides in an apartment across the hall, on a different floor, and on the opposite end of the building to the Respondent’s apartment. The Applicant issued a termination notice to the Respondent on June 25, 2018, indicating they were “not entering into a new fixed term lease with” the Respondent because of “noise and disturbance”, and that

the Respondent was expected to vacate the rental premises on or before June 30, 2018. The Respondent appealed the notice to the Board of Directors and was heard by them on July 19, 2018. The Board of Directors approved the appeal, rescinded the termination notice, and entered into a last chance agreement with the Respondent conditional on there being no further disturbances in the Respondent's housing unit for one (1) year or the Respondent will receive Notice of Termination of the Respondent's Residential Tenancy Agreement.

On August 21, 2018, the Applicant received a complaint from a neighbouring tenant (the one that resides in the apartment on the opposite end of the building) of partying, yelling, screaming, and lots of guests, occurring from August 18 to 19, 2018. The Applicant issued a termination notice to the Respondent on August 21, 2018, indicating they were "not entering into a new fixed term lease with" the Respondent because of "noise and disturbance", and that the Respondent was expected to vacate the rental premises on or before August 31, 2018. The Respondent appealed the notice to the District Director of the NTHC Beaufort Delta District Office, who conducted a review of the incident which led to the issuance of the termination notice. The District Director determined that "due to there not being sufficient detail in some of the documentation" she was retracting the termination notice and reinstating the last chance agreement.

On December 21, 2018, the Respondent reported to the Applicant that an acquaintance of his had made his way into the apartment building with a female individual at approximately 4:30 a.m. The acquaintance knocked on the Respondent's door, who let him in only because the acquaintance had some tools there, and when the acquaintance got too loud the Respondent asked him to leave, which he did. Shortly thereafter, the Respondent heard a lot of noise and banging, yelling, and swearing in the hallway, so he called the RCMP. The RCMP attended and found the acquaintance passed out and bleeding in the stairwell.

A neighbouring tenant filed a complaint with the Applicant on January 4, 2019, which included reference to her observations of the incident on December 21, 2018. That tenant saw the Respondent's acquaintance leave the Respondent's apartment and immediately get into a fight with a third male individual. Other than the acquaintance coming out of the Respondent's apartment, the Respondent was not alleged to have been involved in the fight. This complaint was not stamped received by the Applicant until January 11, 2019.

No action was taken by the Applicant against the Respondent in relation to the December 21, 2018, incident.

On January 8, 2018, the Applicant received a complaint from a neighbouring tenant alleging that “loud sounds like partying”, stomping, lots of guests, arguing, and fighting had been taking place at all hours the entire week of January 1 to 8, 2019. A similar complaint was received from another neighbouring tenant on January 9, 2018, reporting partying , drinking, loud music, and cursing occurring on and off for about a week. The Applicant issued a termination notice to the Respondent on January 9, 2019, indicating that they “are not entering into a new fixed term lease with” the Respondent due to “noise and disturbance”, and that they expected the Respondent to vacate the rental premises on or before January 31, 2019.

On April 8, 2019, the Applicant received a complaint from a neighbouring tenant of a loud party at the Respondent’s unit, and alleging that when she approached the Respondent to keep the noise down he called her names and accused her of being one of the people complaining about him. The neighbour alleged that the Respondent kept calling her and harassing her, and that she ended up contacting the RCMP.

No investigative inquiries were made by the Applicant regarding the above mentioned disturbances to verify the likelihood that the Respondent was actually responsible for any of them before issuing the warning and termination notices. The Applicant’s representatives had no direct knowledge of any of the allegations, and they did not call any witnesses or submit any sworn affidavits.

The Respondent disputed that he was responsible for any of the claimed disturbances. He testified that he is committed to raising his three children in a clean and respectful environment, and does not want to do anything to risk losing them or their home. He is closely monitored by his family and Social Services due to his admitted past behaviour. He has successfully re-educated himself and has recently secured a full-time position with the Northwest Territories Power Corporation, which he also does not want to jeopardize. He testified that he has too much at stake in his life to be having parties and causing disturbances.

With respect to the June 23 to 24, 2018, allegations, the Respondent submitted an affidavit sworn by SK. SK is one of the tenants residing in the residential complex, and he stated that he had observed the Respondent throughout the weekend with his children, that he did not observe any parties occurring at the Respondent's rental premises, and that he did observe parties happening at two other apartments in the building throughout the weekend.

With respect to the January 1 to 8, 2019, allegations, the Respondent brought three witnesses. The first and third of those witnesses were his family: his mother and his sister. They testified that the Respondent had been travelling with his mother back and forth between Inuvik and Fort McPherson throughout the Christmas break until about mid-way through the first week of January, and then was working the rest of the week and at his sister's with his children most of the rest of the time. They agreed that the Respondent was never at his apartment for long enough to have caused the disturbances that were complained of. They also verified that had they observed or even suspected any illicit or inappropriate behaviour from the Respondent that they would have immediately taken action to report him and to remove his children. They reported that the Respondent hasn't been in any trouble for a long time, and that it was extremely unlikely that he would be responsible for the disturbances complained of.

The Respondent's second witness was a sober friend and cousin who had been staying at the Respondent's apartment throughout January 1 to 8, 2019. He testified that he was there every day, that there was no noise whatsoever coming from the Respondent's apartment while he was there, and that if there had been anything going on during the brief periods the Respondent was there that he would have called the RCMP because of the presence of the

Respondent's three children. The second witness testified that there were disturbances coming from the third floor of the building, not the second floor where the Respondent resides. He testified to observing the two tenants who filed the complaints of disturbances against the Respondent being intoxicated and loud, but chose not to complain to the Applicant about them. The Applicant's representatives confirmed that they did not receive any complaints against those two other tenants.

The Respondent's second witness was also able to testify about the incident occurring April 7, 2019, as he was in fact visiting the Respondent when the incident occurred. He testified that while he was there a third-floor neighbour (who happens to be one of the complaining tenants and the third witness's ex-girlfriend) yelled for him to come see her. He refused. He wanted nothing to do with her, and just wanted to spend time with his cousin. She came down to the Respondent's apartment and started banging on the door and yelling to see the second witness, but was told to leave. When she did not, the Respondent called the RCMP, who attended and had a conversation with the third-floor neighbour. At no time was that person permitted into the Respondent's rental premises and at no time did either the Respondent or the second witness engage with the third-floor neighbour other than to tell her to go away.

When given the opportunity, the Applicant's representatives chose not to cross-examine any of the Respondent's witnesses. They also did not object to the submission of SK's sworn affidavit.

I found the Respondent and his witnesses credible and believable. No reliable information was provided to contradict any of their testimonies. The Applicant, as previously mentioned, had no direct knowledge of any of the alleged disturbances, let alone who may or may not have been involved in causing the disturbances, nor did they present any compelling evidence to suggest the Respondent was likely to have been responsible for them. Nor am I impressed with the Applicant's failure to even try to verify the legitimacy of the complaints directed against the Respondent.

Subsections 43(1) and 43(2) of the *Residential Tenancies Act* (the Act) prohibit the Tenant from disturbing the Landlord's or other tenants' enjoyment or possession of the rental premises or residential complex, and holds the Tenant responsible for the actions of persons that the Tenant permits to enter the residential complex or rental premises. In subsection 12(c) of the written tenancy agreement, the Tenant agrees to conduct himself and require other occupants and persons who are permitted by the Tenant on the premises to conduct themselves in a manner that will not disturb the Landlord's or other tenants' possession or enjoyment of the premises or residential complex.

I am not satisfied that the Respondent is responsible for any of the mentioned disturbances that have been alleged against him, and therefore, I do not find the Respondent in breach of his obligations regarding disturbances under either the Act or the written tenancy agreement.

*Termination of the tenancy agreement and eviction*

The Applicant's representatives made no mention at the hearing of what section of the Act they were relying on to substantiate the termination of the tenancy agreement and justify the requested eviction order. Neither were any sections of the Act referenced anywhere in any of the termination notices that were issued to the Respondent.

Subsection 51(4) of the Act states that a subsidized public housing tenancy agreement that is for a fixed term of 31 days or less after the commencement of the agreement terminates on the last day of the fixed term. While the most recent tenancy agreement was for 31 days (January 1 to 31, 2019), the tenancy itself commenced December 1, 2017, and continued uninterrupted since then despite several 31-days-or-less fixed-term tenancy agreements being entered into during that period.

There is no apparent rhyme or reason that I can see which makes subsection 51(4) relevant when a tenancy is permitted to continue beyond the first 31-days-or-less fixed-term period. Repeatedly entering into new tenancy agreements with no differences in the terms and conditions is a redundant and unnecessary act. Subsidized public housing landlords already benefit from subsections 51(3) and 51(5) of the Act, which provide for a subsidized public housing landlord to give a tenant at least 30 days' written notice to terminate a tenancy agreement. And all landlords benefit from subsection 54(1) of the Act, which provides for a landlord to terminate a tenancy agreement by giving a tenant at least 10 days' written notice to terminate a tenancy agreement where specific situations arise, including where a tenant has repeatedly and unreasonably disturbed the landlord's or other tenants' enjoyment or possession of the residential complex. The Applicant could have easily exercised either of subsections 51(3), 51(5), or 54(1) to terminate the tenancy agreement, as long as the reason for terminating the tenancy agreement was justified.

In my opinion, despite the repeated 31-days-or-less fixed-term tenancy agreements, and because of the continuous tenancy enjoyed by the Respondent and permitted by the Applicant, and because of the clear indication in the last chance agreement to permit the tenancy to continue for at least one year as long as no further breaches occur, this subsidized public housing tenancy agreement is effectively a periodic (month-to-month) tenancy agreement. In which case, subsection 51(4) of the Act does not apply. This finding renders the January 9, 2019, termination notice as valid under paragraph 54(1)(a) of the Act.



Subsection 54(4) of the Act requires the Landlord who gives a tenant notice to terminate under subsection 54(1) to make an application to a rental officer for an order to terminate the tenancy agreement. I accept that the application which has been filed and which I am making these considerations under inherently includes a request for an order to terminate the tenancy agreement, in addition to the request for an eviction order and for compensation for use and occupation of the rental premises.

Given my finding that the Respondent has not repeatedly and unreasonably disturbed the Landlord's or other tenants' enjoyment or possession of the residential complex, I am not satisfied that termination of the tenancy agreement is justified. The Applicant's request for an order terminating the tenancy agreement, evicting the Respondent, and requiring the Respondent to pay compensation for use and occupation of the rental premises is denied. The existing subsidized public housing tenancy agreement continues uninterrupted, including the Tenant's entitlement to rent subsidies applied in accordance with section 7 of the written tenancy agreement.

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Adelle Guigon  
Rental Officer