

IN THE MATTER between **NTHC**, Applicant, and **VC**, 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 **Janice Laycock**, Deputy Rental Officer,

BETWEEN:

NTHC

Applicant/Landlord

-and-

VC

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: June 5, 2019

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: JS for the Applicant

Date of Decision: June 5, 2019

REASONS FOR DECISION

An application to a rental officer made by the Yellowknife Housing Authority on behalf of the NTHC as the Applicant/Landlord against VC as the Respondent/Tenant was filed by the Rental Office April 30, 2019. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was served by registered mail on the Respondent deemed served on May 24, 2019.

The Applicant claimed that the Respondent had repeatedly disturbed the landlord or other tenant's possession of the rental premises or residential complex. An order was sought for termination and eviction.

An in-person hearing was scheduled for June 5, 2019 in Yellowknife. Janice Laycock, Deputy Rental Officer appeared and JS appeared representing the Applicant. The Respondent did not appear, nor did anyone appear representing them. The hearing proceeded in their absence as provided for under subsection 80(2) of the *Residential Tenancies Act*.

Tenancy Agreement

Evidence was presented establishing a tenancy agreement for subsidized public housing commencing on April 1, 2012 and continuing month to month. I am satisfied a valid tenancy agreement is in place in accordance with the *Residential Tenancies Act*.

Disturbances Caused by the Tenant

The Applicant testified and evidence was presented relating to disturbances believed to be caused by the Respondent. Included in the evidence were emails between the property owner NV and the Applicant, emails and letters to the Respondent from the Applicant and a video made by the adjacent tenant who the Applicant testified had made a number of complaints to NV.

The video and other evidence relate to alleged disturbances in 2019 on the following dates: January 26, Feb 11, Feb 26, Feb 27, March 1,2,3, March 17, March 26 and April 4. The Applicant testified that this tenant had a past history of causing disturbances and the Applicant had followed up on these incidents with notices and/or phone calls. However, there was no documentation in the application of historical complaints and very little documentation of follow up activity. The evidence documented in the application file mainly relates to four specific incidents:

1. **Feb 11, 2019 complaint** - Email from NV to the Applicant on February 11, 2019, that they received a complaint that the tenant in G113 was fighting in the hallway and that security tried to intervene without success. This email was forwarded by the Applicant to the Respondent on Feb 12, 2019. On Feb 14 the Respondent replied to the email denying responsibility for the disturbance, saying that the caretaker for the building (who lives above them) can confirm this.

There is no video evidence of this incident. At the hearing the Applicant testified that they are not responsible for the staff at the building and had not followed up with the caretaker to confirm the Respondent's version of events.

2. **Feb 27, 2019 complaint** - Email from NV to the Applicant on February 28, 2019, about a complaint received relating to Respondent's guests sitting in hall outside apartment and making noise. The video for that date shows people outside apartment door talking loudly and then leaving. It is not clear from the video that the Respondent was part of the disturbance or allowed people into the building. There is no evidence that this complaint was raised with the Respondent.
3. **March 1, 2, 3 complaint** - Email from NV to the Applicant on March 4, 2019, "kindly receive the second warning for unit G113 Lanky Court as per our telephone conversation." No detail provided in email as to the reason for the "second warning". Letter to Respondent from Applicant, sent by email on March 5, 2019, referring to several complaints regarding noise disturbances and disturbing behaviour, "this last past weekend, March 1, 2, 3, 2019"..."complaints note that there was loud yelling, arguing and a physically fighting in the common area." There is no video evidence, and there is no response from Respondent on the file.

4. **March 17, 2019 complaint** - Email from NV to the Applicant on March 19, 2019, about another complaint of a girl coming from the Respondent's apartment and then crying in the hallway. According to the email security was called, the girl left the premises. This email also references several reports of what "seems to be domestic abuse". Video on March 17, 2019, shows woman crying and leaving apartment suggesting that this incident was related to the Respondent or someone they permitted into the building. This complaint was forwarded to the Respondent as part of a "Notice of Termination of Tenancy" dated March 20, 2019. There is no response from the Respondent on the file.

In the review of the evidence received it was suggested to the Applicant that a log of the complaints would have been very helpful in this case and in the future. A log with supporting documents would help provide a clear history of the complaints as well as necessary evidence and could include:

- date/time of incident;
- who reported and how;
- detailed description of the incident that led to the complaint;
- supporting evidence of the incident including written or emailed testimony from the complainant, security staff, along with a description of any video and the video, etc.;
- follow up calls, email or other communication with the complainant, tenant and their response (if any);
- any further action taken.

I also pointed out to the Applicant that in reviewing this case it was necessary to determine not only that disturbances had occurred but that these were caused by the Respondent or someone they had allowed into the rental premises or the residential complex (*Residential Tenancies Act* subsection 43(2)).

The emails and letters provided as evidence by the Applicant claim that the disturbances are caused by the Respondent, but in three of the four incidents this claim is not supported by direct witness testimony or clear video evidence. Even though according to the testimony of the Applicant, the building is secure and requires a key or to be let in, it is possible that a disturbance in the common area was caused by other tenants or someone allowed in by other tenants.

In the absence of direct witness testimony from either the complainant or building security, and without video evidence, and specifically the videos taken on March 17, March 26, and April 4th, I would not have been able to conclude that disturbances were caused by the Respondent or people that they allowed into the rental premises or complex. The video for March 17, supports the details of the complaint made by NV and the videos from March 26 and April 4th, 2019 show a number of disturbances caused by people coming and going from the apartment, ending with the arrival of the RCMP.

Based on the evidence and testimony of the Applicant I am satisfied that the Respondent or someone they allowed into the building is responsible for disturbing the landlord's or other tenants' possession or enjoyment of the rental premises or residential complex.

Termination and Eviction

I am satisfied that the Respondent is responsible for disturbances at their rental premises or complex. However, considering the lack of evidence of previous complaints or direct evidence of some of the current complaints, as well as lack of follow-up with the Respondent on the most recent incidents documented in the video, I believe that a conditional termination and eviction is justified.

Order

An order will be issued:

- requiring the Respondent to comply with their obligation to not disturb the landlord's or other tenants' possession or enjoyment of the rental premises or residential complex, and not to breach their obligation again (p. 43(3)(a) and 43(3)(b)); and
- terminating the tenancy agreement between the parties on September 30, 2019, if there are any further complaints received and verified by the Applicant, relating to disturbances caused by the Respondent or a person permitted by the Respondent to enter the residential complex or premises (p. 43(3)(d) and ss. 83(2)); and
- evicting the Respondent from the rental premises on or after October 1, 2019 if the termination of the tenancy agreement becomes effective (p. 63(4)(a) and ss. 83(2)).

Janice Laycock
Deputy Rental Officer