

IN THE MATTER between **YHNI**, Applicant, and **KM**, 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:

YHNI

Applicant/Landlord

-and-

KM

Respondent/Tenant

REASONS FOR DECISION

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| <u>Date of the Hearing:</u> | August 21, 2019 |
| <u>Place of the Hearing:</u> | Yellowknife, Northwest Territories |
| <u>Appearances at Hearing:</u> | AAM, representing the Applicant KM, Respondent SE, Witness for the Respondent |
| <u>Date of Decision:</u> | September 17, 2019 |

REASONS FOR DECISION

An application to a rental officer made by YHNI as the Applicant/Landlord against KM as the Respondent/Tenant was filed by the Rental Office June 18, 2019. 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 June 26, 2019.

The Applicant alleged the Respondent had repeatedly failed to pay rent in full 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 the rental arrears, payment of costs for repairs, termination of the tenancy agreement, and eviction.

A hearing was scheduled for August 21, 2019, in Yellowknife. AAM appeared representing the Applicant. KM appeared as Respondent, with SE appearing as a witness for the Respondent.

Tenancy agreement

Evidence was presented establishing a residential tenancy agreement between the parties commencing September 1, 2016. I am satisfied a valid tenancy agreement is in place in accordance with the *Residential Tenancies Act* (the Act).

Rental arrears

A rent ledger was included in the application package reflecting monthly rents, late payment penalties, and payments received between March 1, 2017, and June 12, 2019. The parties agreed that the rent account had a zero balance as of February 28, 2017. The ledger did not include any entries for May to November 2017, from which I infer that the monthly rents for that period were paid in full and on time. Late payment penalties were calculated in accordance with the Act.

The Respondent provided Income Assistance Financial Case Reports for July 2018 to June 2019 which reflect amounts paid by Income Assistance directly to the Applicant on behalf of the Respondent for rent. The Respondent confirmed that no additional payments were made against the rent account other than those made by Income Assistance. The Respondent was reminded that it is the Tenant's responsibility to ensure that the rent is paid in full and on time each and every month. This is true even when (and especially when) an agency such as Income Assistance is making payments on the Tenant's behalf.

Most but not all of the payments made by Income Assistance were equal to the monthly rent. Two payments were not recorded in the rent ledger: \$1,940.81 paid in August 2018 and \$303.57 paid in January 2019. Two other payments were recorded incorrectly in the rent ledger: the payment for May 2019 was recorded as \$1,625.22 where the actual payment amount was \$1,629.22, and the payment for June 2019 was recorded as \$1,566 where the actual payment amount was \$1,599.28. I have adjusted the ledger to include the missing and correct payments. The rents for July and August 2019 were also added to the ledger balance. There is no evidence that any payments were received in July and August 2019, either from Income Assistance or from the Respondent.

The adjusted rent ledger shows that either insufficient payments were received in seven of the last 24 months of the tenancy, and no payments were received in February 2018, October 2018, July 2019, and August 2019. Late payment penalties were added to the ledger for the months of July and August.

I am satisfied the adjusted rent ledger accurately reflects the status of the Respondent's rent account as of August 21, 2019. I find the Respondent has repeatedly failed to pay the rent in full when due and has accumulated rental arrears in the amount of \$9,427.91. That amount represents approximately five months' rent.

Damages

The Applicant claimed the Respondent or persons permitted on the rental premises by the Respondent had damaged the front window twice in 2017. The discussions during the hearing also referred to the incidents occurring in 2017, however, the invoice and receipt for the repair of the window is dated in 2018. I believe the parties both mis-remembered the year of the incident given the damages themselves and the months in which they occurred were undisputed.

The exterior pane of the front window was broken in March 2018. The Landlord had it repaired in July 2018, and then it was broken again in September 2018. The window remains broken to date. The Applicant's representative claimed that the Respondent's guests caused the damages both times. The Respondent acknowledged that one of her guests had caused the damage in September 2018, but she disputes that she is responsible in any way for the damage caused in March 2018. The Respondent testified that the incident in March 2018 involved random people who were in the area, and who were not persons she had invited over or let into the premises. The Applicant's representative did not witness either incident, but claimed that the Respondent had told him in March 2018 that it was her guest who caused the damage. The Respondent disputed this claim.

I am not satisfied the Respondent is responsible for the window damage caused in March 2018. The Respondent is disputing her responsibility for it and the Applicant's representative has no direct knowledge or evidence of the circumstances of the incident. I am satisfied the Respondent is responsible for the window damage caused in September 2018, and as such I find the Respondent liable to the Applicant for the costs of repairing the window in the amount of \$1,080.56.

Disturbances

The Applicant's representative claimed that he has received numerous complaints throughout the Respondent's tenancy from neighbouring tenants and the caretaker of the building of disturbances originating from the Respondent's premises. He provided four police file numbers referencing incidents occurring in April, May, and June 2019 that the RCMP responded to. The Applicant's representative was unable to secure the related occurrence reports. My attempts to secure the occurrence reports were also unsuccessful, despite the Respondent's willingness to authorization the release of the reports. ATIPP applications could have been made to release the reports, however, it was agreed by all parties that doing so would result in an unreasonable delay in the rendering of my decision and without any guarantee that application would be successful.

The Respondent did not dispute that she did have a party in April that the RCMP had attended. She did dispute that any of the other three incidents occurring in May and June originated from her rental premises, citing them as involving other people in the street. Again, the Applicant's representative had no direct knowledge of what exactly happened or how it happened on the referenced dates, and the caretaker who might have observed the incidents was not presented as a witness.

The Respondent also admitted to having had not more than three parties at her rental premises since the tenancy began, and that there were other nights when she had company over to drink and socialize where things may have gotten loud. The Respondent disputed the Applicant's representative's assertion that those disturbances were occurring all the time.

While the exact number of occurrences cannot be assessed, it appears more likely than not that there has been a repeated pattern of disturbances occurring which have originated from the Respondent's rental premises. I am satisfied that the majority of those disturbances were related to socializing getting too loud at inappropriate hours, and that the few actual parties that occurred were much more significant. Despite the scope of the nature of the disturbances, the repeated pattern does appear. Section 43 of the Act specifically prohibits the Respondent and any person permitted on the premises by the Respondent from disturbing the Landlord's or other tenants' enjoyment or possession of the rental premises.

I find the Respondent has failed to comply with the obligation not to disturb the Landlord's and other tenants' enjoyment or possession of the rental premises by repeatedly causing or permitting others to cause a disturbance.

Termination of the tenancy agreement and eviction

Subsections 54(1)(a) and 54(1)(g) identify repeated and unreasonable disturbances and repeated failure to pay the rent in full when due as aggravating breaches of the tenancy agreement and the Act, and provides for termination of the tenancy with at least 10 days' notice as a consequence.

In light of the Respondent's repeated failure to pay the rent in full when due, the amount of rental arrears that have accumulated, and the repeated disturbances caused by the Respondent and her guests, I am satisfied termination of the tenancy agreement and eviction are justified.

Orders

An order will issue:

- requiring the Respondent to pay rental arrears in the amount of \$9,427.91 (p. 41(4)(a));
- requiring the Respondent to pay costs of repairing one window in the amount of \$1,080.56 (p. 42(3)(e));
- terminating the tenancy agreement September 30, 2019 (p. 41(4)(c), p. 43(3)(d));
- evicting the Respondent from the rental premises October 15, 2019 (p. 63(4)(a)); and
- requiring the Respondent to compensate the Applicant for use and occupation of the rental premises at a rate of \$65.75 for each day the Respondent remains in the rental premises after September 30, 2019, to a maximum of \$2,000 per month (p. 63(4)(b)).

Adelle Guigon
Rental Officer