

IN THE MATTER between **SD**, Applicant, and **LGL**, 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:

SD

Applicant/Tenant

-and-

LGL

Respondent/Landlord

REASONS FOR DECISION

<u>Date of the Hearing:</u>	January 22, 2020
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	SD, Applicant CT, representing the Respondent MM, for the Respondent
<u>Date of Decision:</u>	February 26, 2020

REASONS FOR DECISION

An application to a rental officer made by SD as the Applicant/Tenant against LGL as the Respondent/Landlord was filed by the Rental Office October 7, 2019. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was served on the Respondent by email deemed received October 28, 2019.

The Tenant alleged the Landlord had interfered with the provision of heat, had interfered with the Tenant's enjoyment of the rental premises, had repeatedly failed to provide notice of intent to enter the rental premises, had harassed the Tenant, and had failed to return the security deposit. An order was sought for the termination of the tenancy agreement, for the return of the security deposit, and for compensation for losses suffered as a direct result of the Landlord's interference with the Tenant's enjoyment of the rental premises.

A hearing scheduled for November 13, 2019, was postponed at the Landlord's request. The hearing was re-scheduled and held on January 22, 2020. SD appeared as Applicant. CT appeared by telephone representing the Respondent, with MM appearing in person for the Respondent.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them. The agreement was for a fixed-term from June 1, 2019, to May 31, 2020. Evidence was presented establishing that the parties had agreed in writing on September 27, 2019, to terminate the tenancy agreement on October 1, 2019. I am satisfied a valid tenancy agreement was in place in accordance with the *Residential Tenancies Act* (the Act). I am satisfied that the tenancy agreement was terminated October 1, 2019, in accordance with section 50 of the Act.

Rental premises

The rental premises consisted of one bedroom with a shared living room, kitchen, bathroom, and laundry room in a four-bedroom unit located on the upper floor of a house.

Security deposit

The Tenant withdrew her request for an order to return the security deposit, acknowledging that the Landlord had already returned it.

Vital service

The Tenant provided evidence that she notified the Landlord on July 9, 2019, that the furnace was not heating the rental premises. The night time temperature during the month of July had been unusually cold. The Landlord confirmed that the furnace had been turned off for the summer because it is not usually needed. However, it appears that the Landlord did not turn the furnace back on until the Airbnb client complained that the premises was too cold.

Section 33 of the Act prohibits a Landlord from withholding or deliberately interfering with the supply of a vital service, including heat. While I can appreciate the Landlord's intent to conserve energy by turning the furnace off during the summer months, in doing so they are also preventing the Tenant from having heat when it is necessary. By the Landlord's own admission, the system they are using in the rental premises is programmed to self adjust within a set temperature range based on movement indicating a person's presence. The temperature settings can also be adjusted as needed by the Tenants, overriding the programmed settings for a period of time. This system to my mind precludes any justification for turning the furnace off at all.

By turning the furnace off, the Landlord deliberately interfered with the supply of heat to the rental premises. By failing to turn the furnace back on as soon as possible, the Landlord withheld the reasonable supply of heat to the rental premises. Given the Tenant's statutory right to the vital service and that she was not provided with heat for a period of time, I am satisfied the Tenant did not receive the full services due to her under the tenancy agreement and that consequently the Tenant is entitled to a 25 percent abatement of rent.

Other than the reference by the Landlord that they turn the furnace off "for the summer months", I do not know exactly when the furnace was turned off. Given the Tenant did not complain that the premises was cold in June, I will presume for the purposes of this case that the furnace was turned off on or about July 1st. It is unclear exactly when the furnace was turned back on, but I can infer that it was likely at least a few days after the Tenant complained to the Landlord. I am satisfied that it is more likely than not that the furnace was turned off for the first two weeks of July 2019. I find the Landlord liable to the Tenant for interfering with the provision of a vital service for a two-week period and must compensate the Tenant in the amount of \$118.75 $((\$950 \times 0.50) \times 0.25)$.

Disturbances

There are effectively three types of disturbances the Tenant identified which interfered with her enjoyment of the rental premises. The first type of disturbance was the above referenced interference with the provision of heat.

Airbnb

The second type of disturbance was with the letting out of the master bedroom in the rental premises as an Airbnb unit. The Tenant was informed when she entered into the tenancy agreement that her roommates would be young professionals, including a short-term rental. Although the age and profession of some of the roommates could be debated as falling within the definition of “young professionals”, that was not really the issue at hand.

The master bedroom, which has its own ensuite bathroom, was being advertised on and let out through the Airbnb platform. There were two different occupants in each of June and July, and then multiple occupants for short periods of time each throughout August and September. The Landlord did not tell the Tenant about the manner in which the master bedroom was being let out or the nature of the occupants. Until the Tenant complained in late August of not knowing who was coming and going and when, the Landlord did not notify the Tenant when Airbnb clients were checking in. The Tenant repeatedly expressed her concern for the disturbances caused by the Airbnb clients’ comings and goings, and expressed her concern for her personal safety and comfort.

The Landlord argued that short-term rentals included Airbnb units, and that by notifying the Tenant that one of the rooms was for short-term rentals they had notified her by implication that there would be Airbnb clients or at least that there would be a regular change of roommates.

In the context of residential rental premises, the Landlord’s suggestion that Airbnb units are defined as short-term rentals is incorrect. Short-term rentals in the context of residential rental premises are no different from long-term rentals in that they are for the rental of residential accommodations for a continuous periodic time frame by the same occupant – residential tenancy periods are usually week-to-week, month-to-month, or year-to-year. Tenants in residential tenancy agreements enjoy security of tenure, which means their tenancy cannot be terminated by the Landlord without cause. Airbnb rentals are not short-term residential tenancies. Airbnb rentals are transient living accommodations similar to a hotel, motel, or inn, and those types of rentals are exempt from the Act specifically because they are transient and not meant for persons who are residing (living) in the community. Tenants in Airbnb rentals do not benefit from security of tenure.

Accommodating an Airbnb unit within a rental premises shared by residential tenants is inappropriate and unfair to the residential tenants. It creates an insecure and potentially unsafe environment for the residential tenants, and effectively interferes with the residential tenants’ reasonable enjoyment and possession of the rental premises. The residential tenants are not just renting a bedroom in the rental premises; they are each renting a bedroom, and sharing the living room, kitchen, bathroom, and laundry room. The residential tenants have a right to be comfortable and safe in the rental premises, and to be able to make it their home. The constant traffic of transient strangers in the rental premises diminishes the residential tenants’ ability to enjoy their home. The residential tenants’ did not agree to live in a bed-and-breakfast or motel-type establishment; they agreed to live in a residential premises.

I am satisfied that when the Tenant moved into the rental premises in June that the master bedroom was being let out as an Airbnb unit. I am satisfied that three of the four bedrooms in the rental premises were being rented out as residential rental premises under a residential tenancy agreement. I am satisfied that the inclusion of an Airbnb rental in the rental premises and resulting revolving door of Airbnb clients disturbed the Tenant's enjoyment and possession of the rental premise. However, to be fair, the Airbnb clients in June and July did not cause any disturbances and the Tenant did not find out the master bedroom was being let out as an Airbnb unit until August when the referenced revolving door started. Therefore, while I am satisfied the letting out of the master bedroom as an Airbnb unit inherently creates disturbances, I am only satisfied that the Tenant's enjoyment and possession was actually disturbed by the Airbnb clients throughout August and September.

Entry without notice

The third type of disturbance was with respect to the Landlord entering the rental premises without either the Tenant's consent or advance written notice to the Tenant. At least one instance was related to replacing the stove; some instances were related to showing the rental premises to prospective Tenants; some instances were in connection to attending to the above referenced Airbnb clients; and one instance was exceptional in nature.

As mentioned, after the Tenant's August 23rd email to the Landlord requesting compliance with their obligation to notify the Tenant of the Landlord's intention to enter the rental premises the Landlord began sending text notifications to the Tenant when new Airbnb clients were scheduled to arrive. Technically those text messages were not in complete accordance with the Act, but at least some kind of half-hearted effort was made by the Landlord to comply with the Act. Subsection 26(3) of the Act says:

26. (3) A landlord who intends to exercise the right to enter under subsection (2) shall give written notice to the tenant at least 24 hours before the first time of entry under the notice, specifying the purpose of the entry and the days and the hours during which the landlord intends to enter the rental premises.

Subsections 27(1)(a) and (b) also provide for a Landlord to enter the rental premises without giving advance written notice where an emergency exists or the tenant consents at the time of entry. If the Tenant is not there to consent to the entry then the Landlord is not permitted to enter the rental premises.

The text messages to the Tenant were not always given at least 24 hours before the first time of entry and did not specify the hours during which entry was expected. No notice was given when the Landlord entered the rental premises to replace the stove. No notice was given when the Landlord showed the non-Airbnb rooms to prospective tenants.

One incident occurring September 23, 2019, involved the Landlord entering the rental premises without consent. The Tenant testified that the Landlord had knocked on the door at approximately 8:00 p.m. and then entered the rental premises before anybody in the household answered the knock. When the Tenant's roommate went to investigate who had entered the rental premises, the Landlord approached her and demanded that she remove a personal piece of furniture from the living room. The Tenant was in the next room and heard the conversation between the Landlord and her roommate. Understanding that her roommate was uncomfortable and did not understand the reason for the Landlord's request, given the time of night, and given the Landlord gave no notice of his intention to attend the rental premises, the Tenant approached the Landlord, told him they could talk about this inconsequential matter another time, and asked him to leave. The Landlord became agitated at the Tenant's interruption and refused to leave, even after repeated requests to do so by both the Tenant and the Tenant's roommate. The Airbnb client then came out of her room and also asked the Landlord to leave. The Landlord again refused to leave, causing the Tenant to call the RCMP for assistance. The Landlord eventually left the rental premises before the RCMP arrived. The Tenant testified that statements were provided to the RCMP, who assured her they would make inquiries of the Landlord on the incident. An email from the Tenant's roommate was provided which corroborates the Tenant's description of the incident and confirms that they felt threatened by the Landlord's behaviour.

I will note at this point that I have been emphasizing throughout these reasons for decision that the rental premises does not consist solely of the bedroom assigned to the Tenant leading into the section 26 and 27 requirements. The Rental premises consists of the bedroom assigned to the Tenant – of which the Tenant has exclusive use – and of the shared living room, kitchen, bathroom, and laundry room. I repeat this to emphasize to the Landlord that the obligation to give notice to their Tenants of their intention to enter the rental premises is for access to the entire rental premises, not just the individual bedrooms.

I am satisfied that the Landlord repeatedly failed to provide the Tenant with adequate advance notice of his intention to enter the rental premises. I am satisfied that in doing so, the Landlord disturbed the Tenant's enjoyment and possession of the rental premises. I am satisfied that the Landlord's behaviour on September 23, 2019, not only contravened the Landlord's obligation not to enter the rental premises without either the Tenant's consent or without at least 24 hours advance written notice, but also made the Tenant feel threatened and unsafe, and consequently significantly disturbed the Tenant's enjoyment and possession of the rental premises.

Given the global repeated pattern of disturbances occurring during the months of August and September for which the Landlord is responsible, I find that the Tenant has not received the full benefits of the rental premises to which she was entitled and for which she was paying rent. Consequently, I find the Tenant entitled to a 20 percent abatement of rent for August and September in the total amount of \$380 $((\$950 \times 0.20) \times 2)$.

Additional compensation requested

Due to the above referenced disturbances, the Tenant claimed costs to purchase furniture for her new rental premises as compensation. The Tenant argued that the Landlord's rental premises was for a furnished unit, so she no longer possessed her own furniture. Her new rental premises is for an unfurnished unit, which clearly she had to purchase her own furniture for. This is an expense she claims she was not prepared or expecting to make when she moved to Yellowknife because she anticipated a longer residency in the Landlord's unit.

However, the tenancy agreement ended up being terminated by agreement between the Landlord and the Tenant, and regardless of the reasons for terminating the tenancy the Tenant would have had to purchase her own furniture no matter when she decided to move. Additionally, it is more likely than not that the rent for an unfurnished unit would be less than the rent for a similarly sized furnished unit. The Tenant's claim for compensation for furniture purchases is denied.

Orders

An order will issue requiring the Landlord to pay compensation to the Tenant for disturbances and interfering with the provision of a vital service in the total amount of \$498.75 (p. 34(2)(c), p. 33(3)(c)).

Adelle Guigon
Rental Officer