File #16963

IN THE MATTER between **NV**, Applicant, and **JJ**, 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**, Rental Officer,

BETWEEN:

NV

Applicant/Tenant

-and-

JJ

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing:	June 17, 2020
Place of the Hearing:	Yellowknife, Northwest Territories
Appearances at Hearing:	NV, Applicant JJ, Respondent
Date of Decision:	June 24, 2020

REASONS FOR DECISION

An application to a rental officer made by NV as the Applicant/Tenant against JJ the Respondent/Landlord was filed by the Rental Office on May 11, 2020. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was sent to the Respondent by registered mail delivered on May 28, 2020.

The Applicant claimed that the Respondent had wrongfully terminated the tenancy and an order was sought for compensation under subsection 33(3) of the *Residential Tenancies Act* (the Act).

A hearing was scheduled for June 17, 2020, by three-way teleconference. Appearing at the hearing were Janice Laycock, Rental Officer, NV as the Applicant, and JJ, as the Respondent.

At the hearing it was clarified that the Applicant was seeking an order under subsection 30(4)(d) of the Act, however, it was not clear what compensation the Applicant was seeking. The Applicant was asked to provide information on their current tenancy including showing what the increase in the costs were. The Applicant was asked to provide this information to the Rental Office by June 24, 2020. I agreed to consider that information in my final decision on this application.

Additional information was provided to the Rental Office by the Applicant on June 24, 2020, along with a statement that they had also served the Respondent with this information.

Tenancy agreement

The Applicant testified, and the Respondent agreed, that there was a verbal tenancy agreement between the parties for the Applicant to rent a room in the Respondent's home on a weekly basis at the rate of $150 per week. The tenancy began on April 11, 2020, and ended on May 1, 2020, after the Respondent gave a notice of termination on April 24, 2020.

The Applicant testified they knew that notice alone was not sufficient to terminate their tenancy agreement with the Respondent, but vacated the rental premises anyway because they were concerned that the Landlord wasn't following restrictions established by the Chief Public Health Officer in response to the COVED-19 pandemic.

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At the hearing I explained that a Landlord cannot terminate a tenancy agreement by notice alone and that the termination was not in accordance with the Act. Sections 50 to 62.1 of the Act set out when a tenancy agreement can be terminated by either a Tenant or a Landlord. Under section 50, a Landlord and Tenant can agree in writing to terminate a tenancy agreement. Subsection 54(1) of the Act allows a Landlord to give notice of termination of at least 10 days in situations where (a) the Tenant has repeatedly caused disturbances, or (b) damages, or (d) has not complied with a Rental Officer order, or (e) the agreement has been frustrated, or (f) safety is seriously impaired, or (g) the Tenant has failed to pay the rent. Under subsection 54(4) the Landlord who provides such notice shall make an application to a Rental Officer for an order to terminate the tenancy agreement.

I am satisfied that a valid tenancy agreement was in place and that this tenancy was not terminated in accordance with the Act.

Application of the Residential Tenancies Act

The Respondent asserted that the tenancy did not fall under the Act. In their opinion, they had agreed to the Applicant's tenancy during the COVED-19 restrictions and public health emergency because the Applicant was in need of temporary housing, and under paragraph 6(2)(e) living accommodation established to temporarily shelter persons in need does not fall under the Act.

At the hearing I told the Respondent that I felt that the housing arrangement between the parties does fall under the Act, citing definitions in the Act that would apply to their circumstance. Further to that explanation I add the following:

Subsection 6(1) sets out the application of the Act: "Subject to this section, this Act applies only to rental premises and to tenancy agreements, notwithstanding any other Act or agreement or waiver to the contrary."

The definition of Landlord, rental premises, tenancy agreement and Tenant are included in section 1 of the Act:

> “Landlord” includes the owner, or other person permitting occupancy of rental premises, and his or her heirs, assigns, personal representatives and successors in title and a person, other than a Tenant occupying rental premises, who is entitled to possession of a residential complex and who attempts to enforce any of the rights of a Landlord under a tenancy agreement or this Act, including the right to collect rent;

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> "rental premises"are defined as a living accommodation or land for a mobile home used or intended for use as rental premises and includes a room in a boarding house or lodging house;
>
> "tenancy agreement"means an agreement between a Landlord and a Tenant for the right to occupy rental premises, whether written, oral or implied, including renewals of such an agreement;
>
> "Tenant" means a person who pays rent in return for the right to occupy rental premises.

In my opinion the definitions are consistent with the premises, parties, and relationship of the parties in this situation: the Respondent was the owner who permitted the Applicant to occupy the rental premises in exchange for rent.

As the Respondent stated at the hearing there are some exemptions to the Act, such as paragraph 6(2)(e), which says: "This Act does not apply to ... (e) living accommodation established to temporarily shelter persons in need". Although the tenancy ended up being for a short period of time and was entered into during a public health emergency, the housing provided by the Landlord was not specifically established to temporarily shelter persons in need. Based on testimony at the hearing, the Respondent is an individual who regularly rents out rooms in her home. In my opinion this is market rental accommodation and the Act would apply. I believe this is consistent with the Rental Office decision in Jacqueline Sitter v. Centre for Northern Families (Rental Officer Order #10-10633, February 9, 2009).

Compensation

Under the Act there are two potential breaches that could lead to an application for compensation to the Applicant:

1. the tenancy was terminated based on notice alone and is a breach of subsection 34(1) of the Act; or

2. a potential breach by the Respondent of their obligations under subsection 30(1)(b).

Breach of subsection 34(1) – quiet enjoyment

The Act does not allow termination of a tenancy agreement by the Landlord based on notice alone. As discussed previously if the Tenant and the Landlord do not come to an agreement on termination, the Landlord would need to make an application to the Rental Office.

Also, under subsection 34(1) of the Act "No Landlord shall disturb a Tenant's possession or enjoyment of the rental premises or residential complex." I think that it could be argued that by texting the Applicant and telling them to move out in one week, the Respondent breached this provision of the Act. Further, under paragraph 34(2)(c) of the Act where a Rental Officer determines that a Landlord has breached subsection 34(1) the Rental Officer may make an order "requiring the Landlord to compensate the Tenant for loss suffered as a direct result of the breach".

Following the hearing, the Applicant provided additional information on the costs for their current rental premises. Based on the information provided they are paying the same rent as before and although they had to buy firewood, they did not provide enough details for me to determine if they suffered a loss as a result of moving.

Although I believe that compensation could be considered, the Applicant did not provide sufficient information either at the hearing or later of additional costs related to their current tenancy that would justify an order for compensation.

Breach of paragraph 30(1)(b) – obligation to comply with health and safety standards

According to the Applicant, the main issue leading up to their decision to vacate the rental premises was the Respondent's breaches of the restrictions imposed by the Chief Public Health Officer during the public health emergency in the Northwest Territories. According to "Public Health Order - COVID-19 Prohibition of Gatherings and Closures of Certain Business (effective April 11, 2020)" under the authority of the Public Health Act, S.N.W.T. 2007, c.17, the Chief Public Health Officer prohibited gatherings in an indoor location, whether private or in public, "except persons who are members of the same household."

At the hearing and in their application, the Applicant testified that during the period when the public health order was in force, the Respondent was allowing guests into the rental premises who were not members of the household. The Applicant worried about her health and possible enforcement of the public health order and she thought that the Respondent was aware of her discomfort, although she did not raise the issue directly with the Respondent.

Under paragraph 30(1)(b) of the Act, a Landlord shall "ensure that the rental premises, the residential complex and all services and facilities provide by the Landlord comply with all health, safety and maintenance and occupancy standards required by law." According to the Applicant the Respondent was breaching their obligation, and under paragraph 30(4)(d) of the Act, on the application of a Tenant the Rental Officer can make an order "requiring the Landlord to compensate the Tenant for the loss that has been or will be suffered as a direct result of the breach."

The Act also assigns an obligation on the Tenant to notify the Landlord of a breach. Subsection 30(5) requires that the "Tenant shall give reasonable notice to the Landlord of any substantial breach of the obligation imposed by subsection (1) that comes to the attention of the Tenant." Based on the testimony of both parties, the Applicant did not tell the Respondent about their concerns during the tenancy, and as a result the Respondent did not have an opportunity to remedy the breach.

I find that the Applicant breached their obligation under 30(5) and as previously stated did not provide information to substantiate a claim of compensation. I deny their claim for compensation under paragraph 30(4)(d) of the Act.

Janice Laycock
Rental Officer