

IN THE MATTER between **SO**, Applicant, and **JM**, 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:

SO

Applicant/Tenant

-and-

JM

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: July 2, 2020, and July 7, 2020

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: SO, Applicant
CH, on behalf of and witness for the Applicant
JA, witness for the Applicant

JM, Respondent
WT, on behalf of and witness for the Applicant

Date of Decision: July 24, 2020

REASONS FOR DECISION

An application to a rental officer made by SO as the Applicant/Tenant against JM as the Respondent/Landlord was filed by the Rental Office May 28, 2020. The application was made regarding a residential tenancy agreement for a rental premises located in Inuvik, Northwest Territories. The filed application was served on the Respondent by email deemed received June 22, 2020, pursuant to subsection 4(4) of the *Residential Tenancies Regulations* (the Regulations).

The Tenant alleged the Landlord had disturbed the Tenant's enjoyment and possession of the rental premises, and had improperly evicted the Tenant from the rental premises. An order was sought for compensation for losses suffered as a direct result of the alleged breaches.

A hearing was held on July 2, 2020, and continued on July 7, 2020, by three-way teleconference. SO appeared as the Applicant/Tenant with CH appearing as her representative and witness on both days, with JA appearing on July 7, 2020, as a witness for the Applicant/Tenant. JM appeared as the Respondent/Landlord with WT appearing as his representative and witness on both days.

Tenancy agreement

Evidence was presented in the form of a written tenancy agreement establishing a residential tenancy agreement between them to rent a room in the Respondent's house commencing October 1, 2019. The tenancy agreement was signed by both parties on November 25, 2019.

The Landlord disputed the tenancy agreement was valid because he claimed his intention was to provide temporary housing to the Tenant at the behest of his wife and daughter to help the Tenant out, and that the only reason they did up a written tenancy agreement was so that the Tenant could receive income support to pay her rent.

The *Residential Tenancies Act* (the Act) provides the following clarification respecting residential tenancy agreements:

Section 1 defines "tenancy agreement" as meaning "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".

Subsection 2(1) says: "For the purposes of this Act, the relationship of landlord and tenant created under a tenancy agreement is one of contract only and does not create any interest in land in favour of the tenant." [emphasis mine]

Subsection 2(4) says: "A tenancy agreement takes effect on the date the tenant is entitled to occupy the rental premises."

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

Subsection 9(1) says: "A tenancy agreement may be oral, written or implied."

Subsection 10(1) says: "A tenancy agreement is deemed to include the provisions of the form of a tenancy agreement set out in the regulations and, subject to subsection 12(1), any provision of a tenancy agreement that is inconsistent with the provisions of the form of tenancy agreement set out in the regulations has no effect."

Despite the Landlord's intentions, the parties clearly entered into an oral tenancy agreement when they agreed to a monthly rent for a room with shared common areas and the Tenant took occupancy of the rental premises. The oral tenancy agreement was reinforced with the written tenancy agreement. I am satisfied a valid residential tenancy agreement was in place in accordance with the Act.

Disturbances

The Tenant testified that, at least during the last few months of the tenancy, the Landlord's daughter would be verbally abusive and threatening towards her when intoxicated. The daughter's actions made the Tenant feel unsafe and insecure. The Tenant claims the situation became intolerable in mid-April and the Tenant felt it necessary for her own well being to stay at a friend's B&B for a few nights. The nature of the abuse and threats included yelling and threatening to kick the Tenant out of the house.

In her application, the Tenant identified the specific nights in question as April 13th to 15th, and she provided a sales receipt from the B&B reflecting those dates. However, during the course of the hearing, when she was confronted with the fact that the daughter had been sent to hospital for several days starting on April 12th, the Tenant acknowledged referencing the incorrect dates and amended them to April 10th to 12th.

Section 34 of the Act prohibits the Landlord from disturbing a Tenant's possession or enjoyment of the rental premises or residential complex. While the daughter is not the named Landlord, nor is she technically a Tenant as defined in the Act, it is reasonable to presume that she represents her father as the Landlord in the household. The Landlord would ultimately be responsible for addressing and remedying any disturbances that arise. I note that the Landlord's daughter did not appear at the hearing to speak to the allegations.

While I believe it is likely that the Landlord's daughter was verbally abusive towards the Tenant, thereby disturbing the Tenant's enjoyment of the rental premises contrary to section 34, I cannot be satisfied the disturbance was of significant enough of a nature to necessitate temporary alternate accommodations. Additionally, the Tenant's and the B&B owner's credibility come into question with respect to the dates referenced in the sales receipt. The incorrect dates used suggest that the B&B owner was simply providing the Tenant with what she asked for rather than proving whether the Tenant actually resided at the B&B and what, if anything, she actually paid to stay there. The Tenant's claim for compensation for three nights' stay at a B&B in mid-April is denied.

Improper termination of the tenancy agreement

In effect, the parties agreed that the Tenant vacated the rental premises on April 29th when asked to do so by the Landlord. Where they disagree is whether the tenancy was ended in accordance with the Act.

The Tenant is claiming that she was told on April 28th by the Landlord and the Landlord's witness (who was a roommate in the rental premises) that the premises had been sold and she had to be out of the house the next day. The Tenant did not know what else to do, so she proceeded to pack her things. On April 29th the Landlord's witness helped her move her things out of the house, and the Tenant visited the local shelter. The Tenant decided not to stay at the shelter, despite them having room for her and welcoming her, and chose to return to the B&B to stay with her friend. She understood from her friend that she would have to pay the daily B&B rate of \$100. The Tenant testified that she stayed at the B&B from April 29th through to June 8th, and is claiming compensation for the full B&B costs of \$4,100 plus the return of her rent at the rental premises for all of April.

The Landlord denied speaking to the Tenant on April 28th at all. The Landlord's witness confirmed that he is the one who told the Tenant the property had been sold and she had to leave because they were all leaving the community on April 29th. The Landlord confirmed that he initially did not intend to leave with the Landlord's witness and his daughter because he did not want to leave the Tenant alone in the house. When the Landlord learned the Tenant had apparently voluntarily vacated the Landlord decided to leave with the Landlord's witness and his daughter. The Landlord confirmed that the agreement to sell the property had been completed on April 28th, but later the purchaser's financing fell through so the property has not in fact been sold. The Landlord returned to the community near the end of June.

The Landlord also testified that since at least January he had repeatedly reminded the Tenant that he would be selling the property and that she would have to find alternate accommodations as soon as possible. The Tenant assured the Landlord each time that she would or had found a new place to stay, but then those places fell through and she did not leave. None of these communications were in writing.

Section 50 of the Act provides for a Landlord and Tenant to agree in writing to terminate a tenancy agreement on a specific date. The Landlord and Tenant in this case did not exercise this option.

Subsection 52(1) of the Act provides for a Tenant to terminate a tenancy agreement by giving the Landlord at least 30 days' advance written notice to terminate the tenancy on the last day of a given month. The Tenant in this case did not give the Landlord any such written notice.

Section 58 of the Act provides for a Landlord to make an application to a rental officer to terminate a tenancy agreement if the landlord (a) needs the rental premises to live in themselves or (b) has entered into an agreement of sale and the purchaser requires vacant possession so that they can live there themselves. The Landlord in this case did not make an application to a rental officer to terminate the tenancy agreement.

Section 59 of the Act provides for a Landlord to make an application to a rental officer to terminate a tenancy agreement if the premises will be demolished, if the Landlord is changing the use of the rental premises to something other than a rental premises, or there will be repairs or renovations so extensive as to require a building permit and vacant possession of the rental premises. The Landlord in this case did not make an application to a rental officer to terminate the tenancy agreement.

While I am satisfied the Tenant was aware and repeatedly reminded that the Landlord wished the Tenant to vacate the premises and that he was attempting to sell the property, I am not satisfied the Landlord and Tenant agreed to end the tenancy on a specific date and I am not satisfied the tenancy was otherwise terminated in accordance with the Act. Despite the Tenant vacating on April 29th, I am satisfied that she vacated under duress and not voluntarily.

The Tenant was clearly pressured by the other occupants of the rental premises to leave immediately. Such actions by the Landlord and the other occupants constitute interference with the Tenant's lawful possession of the rental premises and as such the Landlord failed to comply with section 34 of the Act. The Tenant is entitled to compensation for losses suffered as a direct result of the Landlord's breach.

I am not satisfied the calculation of the Tenant's claim for compensation is reasonable in the circumstances. Given the Tenant did already pay the full rent for April to the Landlord and then would have had to pay the B&B for the nights of April 29th and 30th, I am prepared to grant the Tenant compensation for those two nights of \$200.

Despite not being given any kind of written notice from the Landlord, the Tenant had been aware for several months that she would need to find alternate accommodations. The Tenant's representative testified that they had made every effort to find suitable alternate accommodations since the end of April, but they were not successful and the Tenant ended up moving back to her home community of Ulukhaktok. While I can appreciate the efforts were unsuccessful during the pandemic times we have been experiencing, I find it difficult to believe that the Tenant was unable to find suitable alternate accommodations before the tenancy was improperly terminated given she was aware since at least January that she would need to find a place. Additionally, the Tenant chose to reside at a place she would have to pay rent for instead of at a shelter that had room for her where she would not have to pay rent.

Subsection 5(1) of the Act says: "Where a landlord or tenant is liable to the other for damages as a result of a breach of a tenancy agreement or this Act, the landlord or tenant entitled to claim damages shall mitigate his or her damages."

I am not satisfied that the Tenant took all reasonable actions to mitigate her losses, but I am satisfied that the Tenant is entitled to some compensation for the improper termination of her tenancy. I took the liberty of searching the website of the one major landlord in Inuvik for the starting rate for a one-bedroom apartment. That rate came out to \$1,350 per month. The monthly rent for the room at the rental premises was \$800. I am not prepared to grant the tenant the full costs of the B&B, nor am I prepared to grant costs beyond May 31st.

I am prepared to grant the Tenant the difference between the rent for one month for the room at the rental premises and the rent for one month for a one-bedroom apartment with the major local landlord; that difference is \$550. Including the \$200 allowed for the B&B for April 29th and 30th, the total compensation I am prepared to grant the Tenant for the Landlord's breach of section 34 is \$750.

Order

An order will issue requiring the Landlord to compensate the Tenant for losses suffered as a direct result of disturbing the Tenant's possession of the rental premises in the amount of \$750 (p. 34(2)(c)).

Adelle Guigon
Rental Officer