

IN THE MATTER between **NTHC**, Applicant, and **AW**, 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:

NTHC

Applicant/Landlord

-and-

AW

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: September 9, 2020

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: AB, representing the Applicant
BB, representing the Applicant
JAT, witness for the Applicant

Date of Decision: September 9, 2020

REASONS FOR DECISION

An application to a rental officer made by YHA on behalf of the NTHC as the Applicant/Landlord against AW as the Respondent/Tenant was filed by the Rental Office June 5, 2020. 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 July 22, 2020.

The Applicant alleged the Respondent had repeatedly failed to pay rent in full when due, had accumulated rental arrears, and had repeatedly and unreasonably caused disturbances. An order was sought for payment of the rental arrears, termination of the tenancy agreement, and eviction.

A hearing scheduled for July 14, 2020, was cancelled due to the Applicant's failure to serve the filed application and notice on the Respondent in advance of that date. The hearing was re-scheduled and heard September 9, 2020, by three-way teleconference. AB and BB appeared representing the Applicant. JAT appeared as a witness for the Applicant. AW was served notice of the hearing by registered mail delivered August 17, 2020. The Respondent did not appear at the hearing, nor did anyone appear on the Respondent's behalf. The hearing proceeded in the Respondent's absence pursuant to subsection 80(2) of the *Residential Tenancies Act* (the Act).

Tenancy agreement

Evidence was presented establishing a residential tenancy agreement between the parties for subsidized public housing commencing May 22, 2019. A notice to terminate the tenancy was given to the Tenant by the Landlord on March 16, 2020, for a termination date of March 27, 2020, due to repeated and unreasonable disturbances pursuant to paragraph 54(1)(a) of the Act. The Tenant did not vacate the rental premises as requested and the Applicant did not make the application to a rental officer required under subsection 54(4) of the Act. Consequently, the termination of the tenancy as given in the notice did not take. I am satisfied a valid tenancy agreement is in place in accordance with the Act.

Rental arrears

The Applicant claimed in their application rental arrears accumulated after March 27, 2020, at the unsubsidized maximum rent of \$1,625 per month. The lease balance statement provided in the application package reflected subsidized rental arrears accumulated as of May 31, 2020, in the amount of \$175.50 representing approximately three months' subsidized rent.

Given the determination at hearing that the tenancy had not yet been terminated in accordance with the Act, and my refusal to back date the termination date of the tenancy, I find the claim for unsubsidized rent unreasonable. Certainly the threat of unsubsidized rent should be a deterrent to Tenants from breaching the terms of their tenancy agreement, however, the very nature of subsidized public housing is to provide housing to people with low income. This means that even if an order were granted for unsubsidized rental arrears the Landlord would be unlikely to recover the monies from the Tenants. I am also of the opinion that the threat of unsubsidized rent before the tenancy has been terminated in accordance with the Act should not be used when the alleged breach is unrelated to the payment of rent or the reporting of household income in order to assess the rent subsidies. If the tenancy had already been terminated in accordance with the Act and the Tenant failed to vacate in accordance therewith, then I would be in a position to recognize the unsubsidized rent for the overholding period that the Tenant remained in occupancy of the rental premises. In this case, the tenancy has not yet been terminated in accordance with the Act, and the primary issue is about disturbances, not about rental arrears or reporting of household income.

An updated lease balance statement was not provided prior to the hearing, but the Applicant testified that the unsubsidized rental arrears to date are down to \$24.50. It was agreed that an order for payment of such an amount would be unnecessary given the security deposit could be retained against the rental arrears, and any subsequent claim for damages would require a separate application.

Disturbances

The Applicant provided documentation in the application package supporting a repeated pattern of disturbances occurring since February 2020. The Applicant's witness, another Tenant residing in the rental premises located directly above the Respondent's rental premises, provided testimony substantiating the repeated occurrences and nature of the disturbances throughout the Respondent's tenancy.

The disturbances occurred at all hours of the day and night, and included incidents caused by the Respondent and persons permitted in the rental premises and residential complex by the Respondent of: yelling; screaming; banging on walls, doors and windows; public intoxication; partying; public urination in common areas; harassment; fighting; gaining entry to the rental premises through the window; assaults; threats; and accusations. There have been two incidents in which a fire occurred in the rental premises due to the Respondent's negligence – once last August and then again this past August.

The Applicant confirmed that the Witness is not the only Tenant in the building that they have received complaints from regarding the Respondent and his guests. The Witness confirmed that she and her other neighbours in the residential complex are afraid for their safety, have had their enjoyment and possession of their rental premises significantly interfered with, and are exhausted from constantly being on high alert against the Respondent and his guests.

I am satisfied the Respondent and persons he has permitted in the rental premises and residential complex have repeatedly and unreasonably caused significant and substantial disturbances throughout the tenancy. I find the Respondent has failed to comply with his obligations under section 43 of the Act, subsection 12(c) of the written tenancy agreement, and paragraph 6 of the written house rules not cause disturbances.

Termination of the tenancy agreement and eviction

In light of the repeated and unreasonable pattern of significant disturbances, I am satisfied termination of the tenancy agreement and eviction are justified. An order will issue terminating the tenancy September 15, 2020, and evicting the Respondent from the rental premises September 16, 2020.

Adelle Guigon
Rental Officer