

IN THE MATTER between **NTHC**, Applicant, and **BM**, 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-

BM

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	November 20, 2020
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	PS, representing the Applicant KW, representing the Applicant BM, Respondent AH, Advocate for the Respondent
<u>Date of Decision:</u>	November 27, 2020

REASONS FOR DECISION

An application to a rental officer made by YHA on behalf of the NTHC as the Applicant/Landlord against William John McNeely as the Respondent/Tenant was filed by the Rental Office September 21, 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 September 30, 2020, and an addendum to the application was served on the Respondent by registered mail delivered October 21, 2020.

The Applicant alleged the Respondent was responsible for disturbances and had committed illegal acts in the rental premises and residential complex. An order was sought for termination of the tenancy agreement and eviction.

The hearing was scheduled for October 27, 2020, by three-way teleconference. PS and KW appeared representing the Applicant. BM appeared as Respondent with AH appearing as his advocate. The Respondent requested an adjournment because they had not had an opportunity to review the video evidence that was included in the application and addendum. The requested adjournment was agreed to by all parties and set to November 17, 2020.

The hearing reconvened on November 17, 2020, by three-way teleconference with the same four people appearing. The Respondent again requested an adjournment after claiming that at least one of the videos appeared to be tampered with, despite neither the Respondent nor his Advocate being able to view the videos themselves. The Advocate was unable to play the videos on her Mac computer, and the Respondent did not have a computer to play the video on so asked his step-father to look at the video. The step-father – who was not present at the hearing – told the Respondent the video played fast and looked like it was tampered with. Given that the videos were considered compelling evidence to the claims made, and having viewed the videos myself and found no evidence of tampering, I determined it was necessary for the Respondent to view the videos in order to give a full and proper defence. It was pointed out to both the Respondent and Advocate that there was ample opportunity for either of them to notify the Rental Office in advance of the hearing to address the barrier to their ability to view the video. A short adjournment to the afternoon of November 19, 2020, was granted, and arrangements were made for the Respondent and Advocate to view the videos at the NWT Rental Office prior to the hearing.

The hearing was held on November 19, 2020, by three-way teleconference with the same four people present.

Preliminary matters

The application to a rental officer identified William John McNeely as the Tenant. The written tenancy agreement identified BM as the Tenant. The parties agreed at hearing to amend the application to reflect BM as the Respondent/Tenant. The style of cause going forward will be NTHC v. BM.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them for subsidized public housing commencing March 29, 2017. I am satisfied a valid tenancy agreement is in place in accordance with the *Residential Tenancies Act*.

Disturbances

The Applicant provided two notices issued to the Respondent alleging disturbances associated from his rental premises. The notices are both dated May 29, 2019, and appear to reference the same allegations. The description in the notice of the disturbances occurring “last weekend” is: “... loud yelling ... fighting carried on out in the common areas and stairwells [where] the damages have been noted by the RCMP, photos on file.”

A printout of the Applicant’s associated notes related to the Respondent’s tenancy was provided. The associated notes reflect logs kept by the Landlord that are not usually shared with the Tenant. The associated notes include:

- one entry from October 2017 regarding complaints of disturbances apparently admitted to at the time by the Respondent with a commitment to resolve the issue;
- three entries from late May 2019 regarding a shooting incident which occurred on May 26, 2019, in which other Tenants apparently implicated the Respondent’s involvement;
- one entry from June 2020 regarding a conversation with a Tenant complaining about the Respondent, alleging the Respondent was dealing drugs from his rental premises, implying the Respondent was involved in two shooting incidents in the building, suggesting the victim of the second shooting had been renting a room from the Respondent, claiming “lots of action in the building” related to the Respondent’s premises, claiming disturbances related to persons yelling from outside to be let into the building or otherwise finding their way in, and alleging an individual who has been pulling the fire alarms is a guest of the Respondent; and
- one entry from September 2020 regarding observations from video surveillance recorded September 26, 2020.

Ten City Guard Patrol and Security Services incident reports from September 25th, October 17th, and November 8th, 2020, were submitted in support of the allegations of disturbances. Of those 10 reports, one from September, three from October, and one from November make vague mention that persons found loitering in the building were waiting for the Respondent.

A surveillance video was entered into evidence in support of the allegations of disturbances. It was date stamped September 26, 2020, and covered a time period from 19:17 hours to 22:30 hours (7:17 p.m. to 10:30 p.m.). While there appeared to be approximately 12 visitors to the Respondent's rental premises who left after a short period of time, there were also at least 4 people who did not leave and at least 3 people who did not gain entry to the rental premises (i.e. the door was not answered for them). There is no evidence in the video that any of the Respondent's visitors caused a disturbance. There is substantial evidence in the video of repeated disturbances being caused by the Respondent's neighbour, which the RCMP appeared in respond to.

The Applicant's representatives testified that they have received numerous complaints from other Tenants claiming the Respondent is causing disturbances and is dealing drugs from his rental premises. However, there is no substantive evidence to support these allegations, nor is there evidence showing that the Landlord has communicated the complaints to the Tenant in an attempt to confirm the allegations and/or resolve the issue.

The exception is the associated notes log from October 2017 referencing an email communication which the Respondent apparently acknowledged at the time, and the notice from May 2019 after an apparent shooting incident in the building after which other Tenants pointed to the Respondent as being involved. Reference was also made at hearing to a shooting incident which occurred in the building in March 2020. Neither of the two shooting incidents occurred at or from the Respondent's rental premises, yet implications were made that the Respondent was somehow involved in them. The Respondent disputed having any involvement in either of the shooting incidents, and there is no evidence to support that he did. That incident from May 2019 occurred at approximately 1:00 a.m., so it seems unlikely that any of the other Tenants actually saw where the shooters came from, let alone that they came from the Respondent's rental premises. There was no detailed information provided regarding the March 2020 incident, other than an acknowledgement that it occurred in a neighbouring premises and that the victim did not survive the shooting. There is no evidence that the Landlord even spoke to the Respondent about the March 2020 incident.

There were no further documented complaints against the Respondent since May 2019, until a Tenant made the referenced complaint in June 2020. There is no evidence that the Landlord approached the Respondent to discuss those allegations or attempt to resolve them.

The means of access to the residential complex is either by key/FOB issued only to Tenants and authorized occupants or by using a buzzer system. A person wanting to enter the residential complex must push the button for a rental premises at the entrance to the building to ask the occupant to 'buzz' them in. The button at the entrance is programmed to call the Tenant's phone – either a landline or a cell phone – and through the phone the Tenant unlocks the entrance door permitting the person to enter the building. The buzzer system is not monitored and does not track which apartment is letting people into the building and when.

The Respondent testified that he lost his phone in July and had to get a replacement. He notified the Landlord numerous times to transfer the programming for the buzzer system to his new phone, but the Landlord has not followed through. In effect, the Respondent has not been able to buzz anyone into the building since July. The persons attending the Respondent's premises have been getting into the building either by the Respondent going downstairs to let them in, or through other unidentified means, or because they also live in the building and have access as Tenants.

The Respondent confirmed that he has family living in other apartments in the building who come to visit him and check on his well-being. The Respondent does not know how other welcomed visitors have been getting into the building when he does not know they are coming to go downstairs and let them in, let alone how unwelcomed persons are getting in.

The Respondent provided context to the video surveillance from September 26th, confirming the individual causing the notable disturbances was his neighbour, that many of the recorded visitors permitted in his own residence were friends and family, and that others were friends and family specifically checking on his well-being after hearing of his neighbour's disturbances.

The incident reports from the security patrols substantiate that there have been several, and some repeated, individuals found in the residential complex who were loitering and causing disturbances and should not have been there. However, the reports are vague in identifying the grounds for alleging the Respondent permitted any of those people into the building. None of them were found or observed entering or exiting the Respondent's premises; they were found in various areas in the building, including the common area on the Respondent's floor. There is some suggestion that the individuals told the security guard they were waiting for the Respondent, but there also appears to be some assumptions made by the security guard about who the individuals were waiting for and what they were waiting for. The question remains as to how the individuals gained access to the building given the Respondent had not already let them into his premises and they were found loitering in various areas of the building. Clearly the Respondent could not have granted any of the individuals access if he wasn't in the building himself, the Respondent did not let them into his premises, and the Respondent could not have granted access to the building through his phone because the Landlord had not changed the buzzer programming to the Respondent's new phone.

Tenants are permitted to have as many visitors as they wish, as long as they do not cause disturbances. High traffic to and from the rental premises does not in and of itself cause disturbances, although it could contribute to disturbing incidents. In this case, although there were a number of visitors on September 26th as evidenced by the video surveillance, there was no disturbing behaviour exhibited by any of those visitors to the Respondent's premises. Nor is there any evidence to prove that the Respondent permitted most of the visitors and any of the loiterers into the residential complex. I am not satisfied that there is sufficient evidence to substantiate disturbances being caused by the Respondent or persons the Respondent has permitted into the residential complex or the rental premises.

Illegal activities

The Applicant submitted into evidence video surveillance date stamped September 3, 2020, and time stamped from 7:33 a.m. to 7:46 a.m. The video shows two individuals entering the building, proceeding to the 4th floor, attempting to damage one of the video surveillance cameras, gaining access to the Respondent's rental premises, leaving the building, blocking the back entrance door open, returning to the building with a hammer, and breaking both video surveillance cameras on the 4th floor. Because the video shows the two vandals entering the Respondent's rental premises, the Applicant claimed the Respondent was responsible for the vandals' criminal activity.

The Respondent provided context to what the videos showed, testifying that he did not and could not have buzzed the vandals into the building in the first instance (again, because his buzzer had not been reprogrammed to his new phone). The Respondent further explained that when the vandals knocked on his door they told him they were looking for one of their girlfriends and believed she was there. The Respondent told them she wasn't, but they did not believe him. Being concerned for his own safety if he refused the vandals, the Respondent permitted them to search his premises to prove the girlfriend was not there; otherwise he would not have let them in. The vandals were in the Respondent's premises for the four minutes recorded in the surveillance video doing a thorough search of the premises for the girlfriend. The vandals left when they were satisfied the girlfriend was not there, and suggested to the Respondent that they would check another unit in the building. The Respondent confirmed that the vandals did not return to his premises, but he did hear the subsequent banging in the hallway. He did not open his door to investigate, so he did not know that it was the vandals who had returned and damaged the surveillance cameras.

I am satisfied that the Respondent's explanation of the events of September 3rd are reasonable and contextually fit the visual story in the surveillance recording. There is no evidence to identify how the vandals gained access to the residential complex in the first instance, and their first stop was not to the Respondent's rental premises but to the video surveillance cameras. Clearly the vandals first goal was to

break the cameras; for what purpose has not been determined. I am not satisfied that the Respondent is responsible for the vandals' actions because I am not satisfied the Respondent permitted the vandals into the residential complex. I am satisfied with the Respondent's explanation for why the vandals were permitted into his rental premises, and that he felt compelled for his own personal safety that it was necessary in the circumstances, not because the vandals were welcome.

Allegations were also made that drug dealing was occurring from the Respondent's rental premises. Those allegations were based on unconfirmed complaints from another Tenant claiming the Respondent was selling weed, on unsubstantiated connections to the Respondent with two previous shooting incidents in the building alleged to involve drug dealers, and on the impression that numerous short-interval visits to the rental premises suggested drug trafficking. No evidence of documented or directly observed and confirmable drug dealing was provided. While short-interval visits may be sufficient to raise police suspicions of drug dealing, they are not evidence in and of itself of an illegal act. No one has come forward who has actually seen drug dealing activities at the rental premises, including the Applicant's representatives. I am not satisfied that there is sufficient evidence to establish that the Respondent or persons the Respondent has permitted in the rental premises or residential complex have committed an illegal act in the rental premises or residential complex.

Installation of additional lock

The Applicant's representatives testified that on September 18, 2020, in the course of conducting a wellness check on the Respondent with the RCMP and at the behest of the Respondent's ex-girlfriend, they discovered their access to the premises blocked by a sliding lock that had been installed on the inside of the door. The Applicant had not authorized the installation of an additional lock to the rental premises, nor would they have authorized a type of lock that they could not access from outside.

The Respondent admitted that he did install the lock and acknowledged that he failed to obtain the Landlord's permission before installing it. He explained that after the second shooting and believing insufficient actions were being taken by the Landlord to address the safety concerns in the building, the Respondent felt his safety was at risk and was compelled to mitigate that risk by installing the lock as an additional safety measure. He fully acknowledged his failure to request the Landlord's consent prior to installing the lock, and accepted responsibility for it.

Subsection 25(1) of the Act prohibits the Landlord and Tenant from altering the locking system on any door giving entry to the rental premises except by mutual consent.

Subsection 12(d) of the written tenancy agreement specifies that the Tenant shall not make any alterations or additions to the premises without the Landlord's prior consent.

I am satisfied the Respondent installed the interior sliding lock to the rental premises door without the Landlord's prior consent. While I can appreciate the Respondent's reasons for installing the lock, I do find the Respondent has failed to comply with his obligation not to alter the locking system under subsection 25(1) of the Act. It was not made clear at the hearing whether the sliding lock has yet been removed, so out of an abundance of caution an order will issue requiring the Respondent to comply with his obligation to give access to the rental premises to the Landlord by removing the sliding lock from the interior of the rental premises door, and not to breach that obligation again.

Termination of the tenancy agreement and eviction

The Applicant requested termination of the tenancy agreement and eviction based on a repeated pattern of causing disturbances, on illegal activities occurring in the rental premises, and on the improper installation of the sliding lock. Given my findings that there is insufficient evidence to establish that the Respondent has repeatedly caused disturbances or that the Respondent has committed or permitted the commission of illegal activities in the rental premises or residential complex, I am not satisfied termination of the tenancy agreement and eviction are justified. Nor am I satisfied that the Respondent's failure to comply with the obligation not to interfere with the Landlord's access to the rental premises justifies termination of the tenancy agreement and eviction. The Applicant's request for termination of the tenancy agreement and eviction are denied.

Order

An order will issue requiring the Respondent to comply with his obligation to give access to the rental premises to the Landlord by removing the sliding lock from the interior of the rental premises door, and not to breach that obligation again.

Adelle Guigon
Rental Officer