

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

NTHC

Applicant/Landlord

-and-

AB

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	November 4, 2020
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	KAF, representing the Applicant
<u>Date of Decision:</u>	November 10, 2020

REASONS FOR DECISION

An application to a rental officer made by the WHA on behalf of the NTHC as the Applicant/Landlord against AB as the Respondent/Tenant was filed by the Rental Office on October 1, 2020. The application was made regarding a residential tenancy agreement for a rental premises located in Whati, Northwest Territories. The filed application was personally served on the Respondent on October 14, 2020.

The Applicant claimed that the Respondent had rental arrears, was disturbing other tenants, and was committing illegal activities in the rental premises. An order was sought for payment of rent owing, termination of the tenancy agreement, and eviction.

A hearing was scheduled for November 4, 2020, and notice was provided to both parties. The hearing proceeded by three-way teleconference. KAF attended the hearing representing the Applicant. No one appeared for the Respondent. As the Respondent was personally served with notice of the hearing October 14, 2020, the hearing proceeded in their absence under subsection 80(2) of the *Residential Tenancies Act* (the Act).

Previous order

Rental Officer Order #16810 dated February 27, 2020, ordered:

1. the Respondent to comply with their obligation not to disturb the landlord's or other tenant's enjoyment or possession of the rental premises or residential complex, and not to breach that obligation again; and
2. the Respondent to comply with their obligation to maintain the ordinary cleanliness of the rental premises and not to breach that obligation again.

Tenancy agreement

Evidence was presented establishing a tenancy agreement for subsidized public housing commencing on May 1, 2019, and continuing month to month. I am satisfied that a valid tenancy agreement is in place in accordance with the Act.

Rental arrears

The lease balance statement provided by the Applicant included a starting balance of \$77.00 and did not include information on charges and payments prior to July 2020. At the hearing a complete lease balance statement for the tenancy was requested and my decision was reserved pending receipt of that information. The revised statement was received at the Rental Office November 9, 2020, and a copy was provided to the Respondent. The statement showed charges and payments on the rental account up to and including November 1, 2020.

According to the statement, the Respondent's rent during this time was \$75 per month and after not paying rent for six months – from June to November 2020 – the total arrears are \$452. The Applicant testified that there was a \$2 error in the statement, and with that \$2 removed the Respondent owed \$450.

The Applicant testified that they had not received any notice from the Respondent concerning their inability to pay the rent due to the COVID-19 pandemic.

I am satisfied the lease balance statement accurately reflects the status of the Respondent's rent account and I find the Respondent currently has arrears totalling \$450.

Breach of obligation

According to the Applicant, the Respondent had been committing illegal activities in their rental unit. It was alleged that they had been smoking marijuana. At the hearing I clarified that smoking marijuana was no longer an illegal activity, but smoking may be a breach of the Respondent's tenancy agreement.

The Applicant testified that the house rules at the Respondent's residential complex included no smoking. Under subsection 45(1) of the Act, "where in a written tenancy agreement a tenant has undertaken additional obligations, the tenant shall comply with the obligations under the tenancy agreement and with the rules of the landlord that are reasonable in all circumstances." The tenancy agreement between the parties includes under section 19 "House Rules" and at the hearing I asked for a copy of the Rules.

In their email after the hearing the Applicant reported that they were working on house rules but did not currently have any rules aside from those in the written tenancy agreement and the Act.

Although smoking may be prohibited in the residential complex and the Applicant has provided evidence that the Respondent or their guests on at least six occasions in the last three months were smoking in the unit, without a prohibition in the tenancy agreement or rules established in writing as referenced in section 19 of the tenancy agreement I am unable to find the Respondent in breach of the tenancy agreement or the Act.

Disturbances

The Applicant testified and provided evidence that the Respondent or persons that they permitted to enter the rental premises have disturbed other tenants. They provided a series of complaints received by email from the building's caretaker:

- August 26, 2020 - 5:35 pm intoxicated and banging on door, 7:32 yelling, screaming and banging on walls;
- August 30, 2020 - 11:00 pm intoxicated and yelling in lobby;
- September 2, 2020 - 6:15 pm intoxicated, yelling, banging on tenant's door, RCMP called;
- September 3, 2020 - 3:15 yelling at another tenant who is moving in, 8:25 yelling in lobby and after this kept up, the RCMP was called;
- October 19, 2020 - 2:30 intoxicated and yelling and then throwing things in his unit; and
- October 20, 2020 - 9:30 pm music playing loud.

The Applicant also provided as evidence a letter from the RCMP in Whiti about the living situation in the residential complex and the impact of the Respondent's behaviour on other tenants as reported by the complex's caretaker. This letter does not include evidence of any specific disruptions but is in support of finding alternate housing for the Respondent.

The Applicant included in the evidence a copy of a Last Chance Agreement with the Respondent signed by all parties on September 1, 2020. This agreement told the Respondent that in addition to arrears for rent they also were in breach of their agreement because they had "disturbed the quiet enjoyment of other tenants and the landlord".

I am satisfied that the Respondent has continued to cause disturbances in breach with the Act and in contravention of the previous Rental Officer order.

Termination of the tenancy agreement and eviction

In light of the testimony and evidence given I am satisfied that the Respondent has repeatedly failed to pay the rent or arrears and continued to cause disturbances in breach of the Act and in contravention of the previous order. I find that termination of the tenancy agreement and eviction are justified.

At the hearing I indicated that I was willing to look at conditional termination and eviction orders, but wanted additional material and time to make my decision. After deliberating, I have determined that unconditional termination and eviction orders are appropriate in the circumstances and will order termination of the tenancy agreement on December 31, 2020, and eviction January 1, 2021.

Prior to December 31, 2020, I encourage the Respondent to pay their rent and arrears and to stop disturbing other tenants. By doing so they may show the Applicant that termination and eviction may not be necessary.

Orders

An order will be issued:

- requiring the Respondent to pay rental arrears in the amount of \$450 (p. 41(4)(a));
- terminating the tenancy agreement on December 31, 2020, and requiring the Respondent to vacate the rental premises on that date (p. 41(4)(c), p. 43(3)(d)); and
- evicting the Respondent from the rental premises known as C-3 Senior Nineplex in Whati, Northwest Territories, on or after January 1, 2021 (p. 63(4)(a)).

Janice Laycock
Rental Officer