

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

DC

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: November 18, 2020, and December 16, 2020

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: November 18, 2020:
PS, representing the Applicant
KW, representing the Applicant

December 16, 2020:
PS, representing the Applicant
KW, representing the Applicant
DC, Respondent
CC, Witness for the Respondent

Date of Decision: December 16, 2020

REASONS FOR DECISION

An application to a rental officer made by the YHA on behalf of the NTHC as the Applicant/Landlord against DC as the Respondent/Tenant was filed by the Rental Office October 20, 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 on October 27, 2020.

The Applicant alleged the Respondent had repeatedly failed to pay rent in full when due, had accumulated rental arrears, had caused damages to the rental premises, and had disturbed the quiet enjoyment of other tenants. An order was sought for payment of the rental arrears, payment of costs for repairs, termination of the tenancy agreement, and eviction.

A hearing was held November 18, 2020, and both parties were provided notice of the hearing. PS and KW appeared representing the Applicant. No one appeared for the Respondent. The hearing proceeded in the Respondent's absence under subsection 80(2) of the *Residential Tenancies Act* (the Act).

The hearing was adjourned to December 9, 2020, and the Applicant was asked to provide further information to support their claim, including:

- an updated statement showing rental arrears up to and including December 2020;
- copy of the most recent last chance agreement;
- further evidence to support the claims for repairs of damages;
- updates on any further disturbances caused by the Tenant or those they allow into the rental premises; and
- confirmation that the Tenant has also received the referenced information.

This information was received at the Rental Office on December 1, 2020. A copy of the information was also provided by email to the Respondent.

At the request of the Respondent, this hearing was re-scheduled to December 16, 2020. At that hearing PS appeared representing the Applicant. The Respondent DC appeared, as did his witness CC. Later in the hearing, KW joined the call as an additional representative for the Applicant.

On the day of the hearing the Rental Office also received updated information on the Respondent's rental account. The Respondent was provided a copy of this information as well. This information was reviewed at the hearing with the agreement of the Respondent.

Tenancy agreement

Evidence was presented establishing a residential tenancy agreement between the parties for subsidized public housing commencing on July 28, 2017, and continuing month to month. I am satisfied that a valid tenancy agreement is in place in accordance with the Act.

Rental arrears

The statements entered into evidence represent the Landlord's accounting of the monthly subsidized rents and the payments received against the Respondent's rent account. According to this information the monthly subsidized rent was initially \$80 per month, was re-assessed at \$365 per month in July 2019, and then re-assessed at \$610 per month starting in July 2020.

According to the statements the Respondent had a \$0 balance in October 2019, but after failing to pay rent in November and December 2019, and January, March, September, October, November, and December 2020, and only partial rent for July and August 2020, the Respondent had accrued rental arrears totalling \$4,025.

The Respondent did not dispute the rental arrears but explained that they lost their job in December 2019 and thought that their rent in 2020 should be reassessed to reflect this. The Applicant testified that they talked to the Respondent this fall about reassessing their rent and asked them to come into the office. The Respondent did not follow up with the Applicant.

Just prior to the hearing on December 16th, the Rental Office received an updated statement from the Applicant showing further payments on the rental account made November 18, 2020, – one payment of \$365 and four payments of \$245 each, totalling \$1,345. These payments reduced the rent currently owing to \$2,680. This statement was also provided to the Respondent.

The revised statement was discussed at the hearing with the agreement of the Respondent. I reserved my decision at the hearing so that I could have time to review the statement and confirm the current balance owing. I am satisfied that the updated statement provided as evidence accurately reflects the current status of the Respondent's rental account. I find the Respondent currently has rental arrears in the amount of \$2,680.

Damages

The Applicant provided invoices and work orders relating to their claim for the following damages:

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| 1. March 19, 2020 – lock change as a result of tenant damage to the door | \$69.30 |
| 2. August 18, 2020 – interior doors replaced | \$801.35 |
| 3. October 2, 2020 – lock change for mailbox | \$101.54 |

- | | |
|--|----------|
| 4. October 16, 2020 – garbage left in public area - removed to dump | \$83.16 |
| 5. November 23, 2020 – remove and dispose of couch left in entry | \$126.05 |
| 6. November 25, 2020 – assisting RCMP with video of domestic assault | \$69.30 |

At the hearing I denied the claim for costs related to assisting the RCMP. In my opinion this is not related to tenant damages but is part of the Landlord's responsibility.

On the other claims, the Respondent admitted they were responsible for the cost of the two lock changes (door and mailbox) and removing the garbage and the couch, but disputed the charges for the replacement of the interior doors. They testified that the interior doors had not been installed. They also raised questions about the charge for the entry door.

The Applicant's representative testified that the interior doors had been ordered, painted, and the hardware installed, but they had not been installed in the unit yet. The work order provided as evidence also includes a charge for an entry door and references a total amount of \$1,094.67, not \$801.35 as claimed. Neither of the representatives for the Applicant were able to explain the discrepancy between the amount claimed and the work order, nor were they able to clearly explain all of the damages being claimed, including if they do or do not include damages and replacement of the entry door.

At the hearing I pointed out that this was the second hearing to discuss the claimed damages and I was still not clear what was being asked for relating to the doors. As a result, I denied their claim for expenses related to the doors and suggested that the Applicant complete the work, clarify the damages being claimed and the costs for repairing those damages, and return at a later date with a new application.

Based on the evidence and testimony of the parties, I am satisfied that the Respondent is in breach of subsection 42(1) of the Act, which states that "a tenant shall repair damage to the rental premises and the residential complex caused by the wilful or negligent conduct of the tenant or persons who are permitted on the premises by the tenant." I find that the Respondent is liable for the costs associated with replacing the locks on the door and the mailbox, and for removing garbage and the couch. I find that the Respondent owes a total of \$380.05 for costs of repairs and cleaning.

Disturbances

The Applicant provided as evidence their record of complaints that had been made by other tenants about disturbances caused by the Respondent, as well as actions that had been taken by the Applicant to address the disturbances with the Respondent:

1. November 20, 2020 - Applicant testified that the security video shows a disturbance involving the Respondent and persons in his unit. The disturbance started in the unit but carried on out into the public area where the camera is located. The video footage shows the Respondent assaulting a woman and dragging her across the hall. The RCMP were called to the unit and arrested the Respondent.
2. November 10, 2020 - complaint from another tenant about disturbances relating to pounding and dragging heavy objects on the floor. Noises kept tenants awake and continued into the morning hours. Applicant followed up with an email to the Tenant referencing numerous complaints over the last month.
3. November 2, 2020 - met with Respondent and talked about disturbances. Last Chance Agreement for arrears and disturbances signed by Respondent.
4. October 26, 2020 - complaint from another tenant about pounding and dragging heavy objects. Affected sleep of other tenant and disturbances continued even after midnight. Also mentioned that similar incident occurred previous weekend.
5. October 13, 2020 - complaint from another tenant about noise from 404, sounded like furniture moving, went on until midnight, happened last couple of days as well.
6. October 1, 2020 - Last Chance Agreement signed by Respondent for arrears and noise disturbances.
7. September 28, 2020 - email to Respondent about complaints/incidents on September 26, 2020, and July 2, 2020. Also sent a Last Chance Agreement.
8. September 26, 2020 - Applicant provided copy of security video as evidence, shows Respondent repeatedly kicking door to his unit, walls near unit, and elevator door. Respondent also kept knocking on door of 405. This went on for a few hours during the evening of September 26, 2020.
9. July 2, 2020 - received information that Respondent's guest smoked in hallway and set off the fire alarm. Applicant sent email to Respondent about this event.
10. April 21, 2020 - other tenant complained about things being repeatedly dropped, this went on for 5 hours over the weekend and was happening again.
11. March 13, 2020 - complaint about fighting, noise from people coming and going, and disturbing other tenants.
12. March 11, 2020 - complaint about noise from people coming and going from apartment.
13. February 26, 2020 - Last Chance Agreement emailed, and noted in email about complaints from tenants relating to people coming and going.
14. February 20, 2020 - complaint from other tenant about things being moved around at night, music playing loud, RCMP called. Applicant did a home visit and the tenant denied complaints and said RCMP woke him up.
15. June 7, 2019 - letter to Respondent from Applicant regarding noise, throwing rocks at window of another unit to get in.

At the hearing on November 18, 2020, the Applicant testified that they installed the security cameras in July 2020, and the unit below the Respondent's apartment was empty from May to August. The complaints began again when a new tenant moved into the apartment below the Respondent.

At the resumption of the hearing on December 16, 2020, the Respondent questioned who was making the complaints because the tenant next door does not like him. The Applicant testified that the complaints are numerous and documented on two occasions by the security camera.

I am satisfied based on the evidence provided that the Respondent has repeatedly breached their obligation under Section 43 of the Act to "not disturb the landlord's or other tenants' possession or enjoyment of the rental premises or residential complex."

Termination of the tenancy agreement and eviction

The Respondent testified that this last year has been a hard year for him as a result of his addictions. He said that he was trying to turn his life around and get sober. He and his witness testified to the steps that he has taken to get assistance, including accessing help with addictions and domestic violence, securing a social worker, applying for assistance to pay off his arrears, getting on the waitlist for the Government of the Northwest Territories' Integrated Case Management Program, etcetera. His witness argued that public housing is a social program and the Applicant has a responsibility beyond that of a landlord to provide assistance to their tenants.

The Applicant argued that the disturbances have been going on for the last year and that the Respondent had been provided many opportunities to change their behaviour. The Applicant said that he has a responsibility to other tenants who are repeatedly being disturbed and, as a result of the violent behaviour of the Respondent, are now feeling unsafe.

Based on the evidence and testimony, I find that the Respondent has repeatedly breached his obligations under Subsection 41(1) of the Act to "pay to the landlord the rent lawfully required by the tenancy agreement on the dates specified in the tenancy agreement", and has repeatedly and unreasonably breached his obligations under Subsection 43(1) of the Act to "not disturb the landlords' or other tenants possession or enjoyment of the rental premises or residential complex". I am satisfied termination of the tenancy agreement and eviction are justified.

I appreciate that the Respondent is taking steps to be sober and address their issues, however, they have made numerous promises in the past to address the issues raised by the Applicant and did not do so. In recognition of the positive steps that the Respondent is now taking I will order the termination of the tenancy agreement for the end of January 2021 to give them some time to sort out alternative housing arrangements.

Order

An order will be issued:

- requiring the Respondent to pay rental arrears in the amount of \$2,680 (p. 41(4)(a));
- requiring the Respondent to pay expenses related to tenant damages in the amount of \$380.05 (p. 42(3)(c));
- terminating the tenancy agreement on January 31, 2021, 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 on or after February 1, 2021 (p. 63(4)(a)).

Janice Laycock
Rental Officer