

IN THE MATTER between **MB**, Applicant, and **TVH**, Respondent;

AND IN THE MATTER between **TVH**, Applicant, and **AJ**, 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:

MB

Applicant/Tenant

-and-

TVH

Respondent/Landlord

AND BETWEEN:

TVH

Applicant/Landlord

- and -

AJ

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing:

March 24, 2021

Place of the Hearing:

Yellowknife, Northwest Territories

Appearances at Hearing:

MB, Applicant/Tenant

DP, representing the Landlord

DH, representing the Landlord

DC, representing the Landlord

AJ, Respondent/Tenant

Date of Decision:

March 31, 2021

REASONS FOR DECISION

A written complaint was made by MB as the Tenant against TVH as the Landlord under subsection 44(2) of the *Residential Tenancies Act* (the Act). The written complaint was received in the Rental Office January 19, 2021. The written complaint included allegations that the Landlord had failed to adequately address complaints of disturbances being caused by the neighbouring Tenant, AJ, and that by failing to do so the Landlord effectively disturbed MB's enjoyment of the rental premises. The rental premises in question are located in Yellowknife, Northwest Territories.

After conducting preliminary inquiries, I formed the opinion that the dispute between MB and TVH could not be resolved without the involvement of AJ. I accepted MB's written complaint as an application to a rental officer made against TVH alleging a breach under subsection 34(1) of the Act, and assigned it Rental Office File #17175. I deemed that an application had been made by TVH against AJ with MB as a third party to that application pursuant to subsection 44(4) of the Act, and assigned it Rental Office File #17230.

A common hearing was held March 24, 2021, by three-way teleconference for both applications. MB appeared as the Applicant/Tenant. DP, DH, and DC appeared representing the Landlord. AJ appeared as the Respondent/Tenant.

Tenancy agreements

The parties agreed that the tenancy agreement between TVH and MB commenced September 16, 2013. The parties agreed that the tenancy agreement between TVH and AJ commenced in November 2014. I am satisfied both tenancy agreements are in place and in accordance with the Act.

Disturbances

Mr. B. testified and provided evidence in support of his claim that Mr. J. and persons that Mr. J. had permitted in the residential complex had been causing disturbances since at least November 2017. Text messages between Mr. B., Mr. B.'s wife SH, and Mr. P. were provided.

The text messages support that the Landlord was notified of disturbances once in November 2017, twice in January 2019, and 10 times between February 2020 and January 2021. References were made to additional disturbances occurring between the documented complaints, but those were not complained of at the time that they occurred.

The nature of the disturbances that the Landlord was notified of included high stereo volumes, fighting, arguing, cursing, stomping, and banging, usually occurring during late evening and early morning hours.

There is no evidence that the Landlord spoke with Mr. J. when he received the November 2017 complaint, but given no further complaints were received over the next 14 months the inference can be made that Mr. J. received the message and made reasonable efforts to avoid causing disturbances.

The Landlord confirmed that he notified Mr. J. of each of the January 2019 complaints, including issuing a final warning about the disturbances. This warning appears to have been taken to heart by Mr. J. given that no further complaints were received by the Landlord over the following 11 months.

With respect to the substantive issues occurring since February 2020, Mr. B. described the disturbances as including an escalation to what sounded like physical violence and abuse. Mr. B. did not report those incidents to the police out of an inexplicable fear of retaliation from Mr. J.. There is no evidence that Mr. B. attempted to approach Mr. J. at any time during their tenancies in an effort to resolve the issues, nor is there any evidence to suggest that Mr. J. has made any threatening actions towards any of his neighbouring tenants. Mr. B. acknowledged that he did not know what was actually happening in Mr. J.' apartment to cause the escalated disturbances, and that his description of them as physical violence and abuse is a characterization based only on what it sounded like and not from any personal observations. Mr. B. argued that it was not his responsibility to call the police or to attempt to directly resolve the disturbances, rather he suggested it was entirely in the Landlord's realm of responsibility, and that by choosing not to engage directly with Mr. J. he was protecting his and his family's personal safety.

While it is certainly the Landlord's responsibility to ensure the quiet enjoyment of the rental premises for all their tenants by responding to and inquiring after such complaints of disturbances, I disagree that the social responsibility for reporting significant disturbances involving violence and/or threats of harm to persons or property begins and ends with the Landlord. Certainly the Landlord must also be made aware of such incidents occurring in the residential complex, but in the interest of public safety it behooves the witness to those incidents to report them when they occur to the RCMP so that those qualified peace officers can make the necessary inquiries. The Landlord who is not present to witness the incidents would not have direct knowledge of the incident to report to the police.

In this case, Mr. J. does not dispute that he has caused or permitted guests to cause repeated incidents of disturbances, many of them loud and involving arguments, but he does dispute that any significant incidents of violence causing harm have occurred. Mr. P. confirmed that while he or his staff have always responded to Mr. B.'s complaints, including verifying a couple of them with neighbouring tenants who did not otherwise complain, the disturbances had all stopped by the time Mr. P. or his staff arrived at the building. Therefore they have no direct knowledge of the claimed disturbances.

It is also of note that it appears that almost all of the disturbances were reported by text message rather than by calling the Landlord's on-call line, and some of the disturbances were not reported until the next day, well after they ended. The Landlord repeatedly told Mr. B. that text messages are not forwarded to the on-call staff when the phone number is forwarded to them, and therefore text messages are often missed until the next business day. Mr. B. was encouraged to actually call the on-call phone number when an issue arose to ensure that it could be responded to as soon as reasonably possible. He was also encouraged to call the RCMP as well as the Landlord for any incidents he hears which could raise concerns for a persons' safety.

I am satisfied that Mr. J. and his guests have repeatedly and unreasonably caused disturbances from within his rental premises at least since February 2020. I find Mr. J. has failed to comply with his obligation not to cause disturbances under section 43 of the Act.

Although I am satisfied the Landlord did respond and inquire after receiving the complaints of disturbances made against Mr. J., I am also satisfied that by not pursuing a resolution to the disturbances through the making of an application to a rental officer against Mr. J. that the Landlord effectively permitted the disturbances to continue. Consequently, I find the Landlord has failed to comply with their obligation to Mr. B. not to disturb their tenants' enjoyment of the rental premises under section 34 of the Act.

Remedies

Mr. B. sought remedies from the Landlord for their failure to provide quiet enjoyment of the premises in the form of an abatement of rent and compensation for the effects of the disturbances on the well-being of Mr. B. and his family.

I am in agreement that the nature and repeated pattern of disturbances interfered with Mr. B.'s enjoyment of the premises, which the tenant is entitled to as part of the agreement and comprises a representative portion of the rent he is paying. It is an accepted principle that if a tenant is paying 100 percent of the rent then they should be getting 100 percent of what they are paying for. Any reduction in what is being paid for should consequently result in an abatement of rent equal to the difference in value.

Mr. B. offered a calculation of an abatement of rent based on 35 reported incidents affecting 70 days of interrupted enjoyment multiplied by a per diem rate of \$55.85 resulting in an amount of \$3,912.33. I am not satisfied this is a fair assessment because none of the reported incidents occurred over a two-day period and the majority of them occurred over the 12-month period between February 2020 and January 2021. As such, I am prepared to grant Mr. B. an abatement of rent at 5 percent per month for 12 months, calculated as follows:

Monthly rent =	\$1,700.00
5% of monthly rent =	\$85.00
5% abatement x 12 months =	\$1,020.00

With respect to Mr. B.'s claim for compensation for the effects of the disturbances on his family's well-being, the Act does not provide remedies for pain and suffering. As such, this part of Mr. B.'s claim is denied.

Termination of the tenancy agreement and eviction

At the hearing, Mr. J. indicated an intention to give notice to terminate his tenancy effective April 30, 2021, despite not having secured alternate accommodations.

In light of the established repeated pattern of causing disturbances over a lengthy period of time, I am satisfied that termination of the tenancy agreement and eviction are justified. However, I am of the opinion that such orders should be conditional on no further disturbances being caused by Mr. J. or his guests. If Mr. J. chooses to stay at the rental premises he must comply with his obligation not to cause disturbances.

Orders

An order will issue:

- requiring TVH to compensate MB for disturbances in the amount of \$1,020 (p. 34(2)(c));
- requiring AJ to comply with his obligation not to disturb the landlord's or other tenants' enjoyment or possession of the rental premises or residential complex, and not to breach that obligation again (p. 43(3)(a), p. 43(3)(b));
- terminating the tenancy agreement between TVH and AJ June 30, 2021, unless no further disturbances verified as being caused by AJ or persons permitted on the premises by AJ are reported to the Landlord (p. 43(3)(d), ss. 83(2)); and
- evicting AJ from the rental premises July 1, 2021, if the termination of the tenancy agreement becomes effective (p. 63(4)(a), ss. 83(2)).

Adelle Guigon
Rental Officer