

IN THE MATTER between **NPRLP**, Applicant, and **PAK**, 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:

NPRLP

Applicant/Landlord

-and-

PAK

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	May 11, 2021
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	RP, representing the Applicant PAK, Respondent KB, Integrated Case Management
<u>Date of Decision:</u>	June 3, 2021

REASONS FOR DECISION

An application to a rental officer made by NPRLP as the Applicant/Landlord against PAK as the Respondent/Tenant was filed by the Rental Office March 30, 2021. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was served on the Respondent by registered mail signed for April 15, 2021.

The Applicant alleged the Respondent had repeatedly and unreasonably caused disturbances at the rental premises and residential complex. An order was sought for termination of the tenancy agreement.

A hearing was held May 11, 2021, by three-way teleconference. RP appeared representing the Applicant. PAK appeared as Respondent, with KB appearing from Integrated Case Management. The decision was received pending receipt of additional evidence, including audio recordings. The Respondent was granted an opportunity to review the additional evidence and submit written replies to them. The Respondent did not submit any replies.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them commencing May 1, 2019. I am satisfied a valid tenancy agreement is in place in accordance with the *Residential Tenancies Act* (the Act).

Disturbances

The Applicant provided four warning notices, one security incident report, one letter from the City of Yellowknife addressed to the Applicant, and several complaints from one neighbouring tenant regarding the following disturbances.

The Applicant testified that he had received multiple complaints from multiple persons, but could not provide more detailed information as to whether the “multiple persons” were neighbouring tenants, when the multiple complaints were received, and what the nature of the complaints were. He indicated that the complaints were regarding disturbances occurring in

the evenings, after hours, and in the early mornings. The Applicant did confirm at hearing that there have been no further reports of disturbances against the Respondent in the last couple of months. An emailed complaint dated April 13, 2021, was provided regarding a knife fight in the parking lot, but it was from a different tenant than the one the below referenced emails were from and it references a premises that is not the Respondent's.

February 21, 2020

A warning notice dated February 21, 2020, was issued to the Respondent alleging garbage had been thrown out of the Respondent's third-floor window, and that bags and empty boxes had been left in the common areas.

The Respondent testified that she did not receive the referenced warning notice. She acknowledged that she and her sons often use cardboard boxes when getting groceries, but denied throwing garbage out the window or leaving it in the common areas.

The Applicant was unable to provide any evidence to support the claim that whatever garbage may have been outside the residential complex or left in the common areas had come from the Respondent's rental premises. I cannot be satisfied that the Respondent is responsible for causing a disturbance by improperly disposing of garbage.

June 17, 2020

A security incident report dated June 17, 2020, reported an incident that occurred at approximately 9:00 p.m. the evening of June 16, 2020. The security officer reported that the fire pull station located across the hallway from the Respondent's apartment door had been pulled and a fire extinguisher had been deployed in the hallway by the Tenant's guest. RCMP attended to arrest the guest. The security officer cleaned up the fire extinguisher powder and returned the exhausted fire extinguisher to the fire department. The City of Yellowknife subsequently invoiced the Applicant for the false alarm.

The Respondent disputed that either she or her sons were responsible for this incident. She testified that she had left the premises at approximately 6:00 p.m. and her sons had left shortly thereafter. The Respondent returned to the premises at approximately 9:00 p.m. and noticed the powder in the hallway, although she did not know at the time that it was fire extinguisher powder. Her sons returned later that evening, after she had gone to bed.

The Applicant confirmed that there was no video surveillance in this building, and that the only rationale used to assign responsibility for this incident was that it occurred in the hallway outside the Respondent's premises. An assumption was made that the person who was arrested had been let into the residential complex by the Respondent or her sons. The Respondent further argued that while the main doors to the building were currently secured by key access, it does not take much for someone to follow another Tenant into the building or otherwise to yank hard enough on the door to pop it open. The Applicant acknowledged this could happen, although it is not as easy as it sounds.

I am not satisfied that there is any evidence to support the assumption that the person who pulled the fire alarm and used the fire extinguisher were let into the building by the Respondent or her sons, particularly given the Respondent's testimony that no one was home during the period that the incident occurred. It is entirely plausible that someone else in the building let the person in, that the person followed someone in, or that the person managed to force the door open. As such, I cannot be satisfied that the Respondent is responsible for either the resulting disturbance or the cleaning damages.

The Respondent testified that she had been forwarded the City of Yellowknife invoice with an eviction notice. Feeling under threat of and to avoid eviction, the Respondent paid the invoice but did so not because she was admitting guilt to the offence but because she was put under duress. The Applicant acknowledged that the Respondent had paid the City of Yellowknife for the invoice and the Landlord had recognized that payment as an admission of responsibility for the disturbance. The Respondent asked about getting those monies back, but I declined to consider that request in the context of this application. Rather, I encouraged the Applicant and Respondent to consider my decision and attempt to negotiate a settlement regarding the invoiced costs for the false alarm. Should the parties be unable to negotiate a settlement in this regard, the Respondent has leave without prejudice to make her own application for the recovery of those costs from the Applicant.

December 12, 2020

A warning notice dated December 12, 2020, references receipt of "complaints of noise coming from" the Respondent's premises. No further detail was provided of the extent or nature of the disturbances, nor exactly when or how frequently the "noises" have occurred.

The list of emailed complaints from one neighbouring tenant on the same floor references four separate incidents associated with the Respondent's premises. Three of those complaints are not dated and therefore cannot be directly correlated with either this or the following complaints. For all I can tell from these writings the complaints could be referencing the incidents for which the warning notices were given or they could be referencing completely different incidents not otherwise referenced in the application. The Applicant confirmed that this complaining tenant has only been in the residence for about six months, so a relationship could be made to the warning notices given since December 2020. However, even if I were to accept that these three complaints were the ones that generated those warning notices I cannot be certain which complaint goes with which warning because I cannot assume that the list is chronological. One of the complaints, while not dated as to when it was submitted, does make reference to February 12th and will be discussed later in these reasons.

The Respondent testified with respect to the December 12th date that there was an evening when she had upwards of eight people at the premises celebrating her granddaughter's birthday. She claims they were doing nothing more than sitting around remembering her granddaughter, as she had passed away in June 2020, and listening to music or watching TV. The evening did not go late at night, and the Respondent did not believe they were making excessive noise. This is another case in which the Respondent denies having received the warning notice that was entered into evidence.

The Applicant's representative testified that he had received videos from the neighbouring tenant which appeared to support the claim of disturbances. He was granted leave to submit the videos after the hearing, and the Respondent was provided with time to review the videos and make any written submissions about them if she wished. The Respondent did not provide any written replies to the videos.

The five videos were alleged to have been taken in sequence by the neighbouring tenant resident on the same floor as the Respondent on December 12 or 13, 2020. The videos were taken from within the neighbouring tenant's residence and have no value as videos, but the audio captures a loud, aggressive, rather ugly argument between a male and a female. It sounds like the argument is taking place in the hallway. Having heard the Respondent's voice during the hearing, it does sound like the Respondent is the female in the recording. Given the

context of the argument, which can be clearly understood, it appears the male is one of the Respondent's sons. I am satisfied on a balance of probabilities that the parties involved in this argument are the Respondent and her son. I am also satisfied that this argument was of sufficient extent and concern so as to cause a disturbance for the neighbouring tenant. These videos directly contradict the Respondent's testimony about whether any disturbing activity occurred on December 12, 2020.

I am satisfied that a disturbance did occur on or about December 12, 2020, for which the Respondent is responsible. I find the Respondent failed to comply with her obligation not to cause disturbances in this instance.

January 15, 2021

A warning notice dated January 15, 2021, references receipt of "complaints of noise coming from" the Respondent's rental premises. Again, no further detail was provided of the extent or nature of the disturbances, nor exactly when or how frequently the "noises" have occurred.

Also again, the listed emailed complaints are not helpful as they cannot be correlated with any specific incident given they are not dated.

The Respondent testified that she again did not receive the warning notice that was provided into evidence, nor does she recall any particular incidents or gatherings occurring in January 2021. The Respondent did acknowledge that her son tends to speak loudly, and that sometimes they have trouble with her son's girlfriend who is prone to causing a ruckus. But otherwise, the Respondent did not recall any particular incidents.

Given the Respondent did not recall any particular disturbances in December 2020 either, and yet concedes that her son tends to be loud and her son's girlfriend tends to cause problems, I believe it is more likely than not that some type of disturbance was caused to generate the complaint to the Landlord. That being said, while I am satisfied that the Respondent is responsible for causing a disturbance in January 2021, without more substantive evidence as to the extend, nature, and repetitiveness of that disturbance I cannot be satisfied that the disturbance was of such a degree as to be considered excessive or otherwise occurring during the City's proscribed quiet hours.

I am satisfied on a balance of probabilities that a disturbance occurred which the Respondent would be responsible for, but I cannot be satisfied that it was of an extensive or serious degree. Despite the presumed minor nature of the disturbance, I do find the Respondent has failed to comply with their obligation not to cause disturbances.

February 19, 2021

A warning notice dated February 19, 2021, references receipt of “complaints of noise coming from” the Respondent’s rental premises. Again, no further detail was provided of the extent or nature of the disturbances, nor exactly when or how frequently the “noises” have occurred.

There is one emailed complaint in the provided list that does reference February 12th, but that is in the context of smelling marijuana smoke coming from the Respondent’s premises. In this complaint, the complainant further references that “sometimes they have party’s that last for several days, they are loud - people yelling in the hall is a common thing. They are constantly calling the police on each other within that apartment”. Given this complaint is from the neighbouring tenant on the same floor who moved in approximately October or November 2020, it seems more likely than not that it is this complaint that generated the February 19th warning notice.

The Respondent again testified that she didn’t know anything about a disturbance in February 2021 and didn’t think there had been one, but she was hesitant in this statement. She commented that she believed her neighbour “had it in for her.”

While I am prepared to accept the one email referencing the February 12th date as correlating with the warning notice issued on February 19th, I am mindful that it is again vague in it’s reference to the specific incident that prompted the neighbouring tenant to file the complaint. If it was the allegations of smoking in the rental premises, this application does not reference smoking as a reason for making it, nor has evidence been provided that smoking in the rental premises is a breach of the tenancy agreement. The incidents of disturbances that are alleged in the neighbour’s complain are general disturbances apparently over a period of time, but that period of time, frequency, or even specific dates or incidents are not clearly defined from which the Respondent could reasonably be expected to defend herself.

Again, given my earlier finding that because the Respondent's testimony regarding the December incident was soundly contradicted with reliable evidence and that consequently the Respondent's claims of not recalling disturbing incidents does not seem credible, I believe it is more likely than not that some form of disturbance was caused by the Respondent, her sons, or their guests. However, with the evidence at hand I cannot be satisfied as to the extent, frequency, or nature of that disturbance, and I cannot reasonably assume that more than one disturbance occurred.

Again, I am satisfied on a balance of probabilities that a disturbance occurred which the Respondent would be responsible for, but I cannot be satisfied that it was of an extensive or serious degree. Despite the presumed minor nature of the disturbance, I do find the Respondent has failed to comply with their obligation not to cause disturbances.

Termination of the tenancy agreement and eviction

Having found that three incidents of disturbances were caused between December 2020 and February 2021 by the Respondent or her sons or their guests a repeated pattern of behaviour is established, if just barely. However, I am not satisfied based on the evidence provided that the disturbances have been significantly unreasonable. Given the repeated pattern of behaviour I am satisfied a lengthy conditional termination order dependent on no further disturbances being caused is justified, but the requested eviction order is not and therefore is denied.

Order

An order will issue:

- requiring the Respondent to comply with her obligation not to cause disturbances and not to permit disturbances to be caused, and not to breach that obligation again (p. 43(3)(a), p. 43(3)(b)); and
- terminating the tenancy agreement will terminate November 30, 2021, unless no further disturbances verified as being caused by the Respondent or persons permitted in the rental premises or residential complex by the Respondent are reported to the Landlord (p. 43(3)(d), ss. 83(2)).

Adelle Guigon
Rental Officer