

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

VL

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: June 9, 2021

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: PS, representing the Applicant

Date of Decision: June 11, 2021

REASONS FOR DECISION

An application to a rental officer made by the YHA on behalf of the NTHC as the Applicant/Landlord against VL as the Respondent/Tenant was filed by the Rental Office April 30, 2021. 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 May 17, 2021.

The Applicant claimed that the Respondent had repeatedly failed to paid their rent, had accumulated rental arrears, was responsible for causing damages, was responsible for disturbing other tenants, and had breached their obligation to pay utilities. An order was sought for payment of the rental arrears, for payment of rent on time in the future, for payment of the costs of repairs, to comply with the obligation to pay utilities, for termination of the tenancy agreement, and for eviction.

A hearing was held on June 9, 2021, by three-way teleconference. PS attended the hearing representing the Applicant. No one appeared for the Respondent. As the Respondent failed to appear after receiving sufficient notice, the hearing proceeded in their absence under section 80(2) of the *Residential Tenancies Act* (the Act).

At the hearing I reserved my decision pending receipt of the updated lease balance statement and in order to further consider the issues raised by the Applicant in their testimony.

Tenancy agreement

Evidence was provided establishing a tenancy agreement between the parties for subsidized public housing commencing on April 19, 2018, 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 as evidence represents the Applicant's accounting of monthly rents and payments received against the Respondent's rent account. All rents are subsidized and assessed at \$80 per month.

According to the testimony of the Applicant at the hearing and the updated lease balance statement provided to the Rental Office on June 9, 2021, the Respondent had not paid any rent for the eight months from November 2020 to June 2021 resulting in rental arrears totalling \$640.60.

I am satisfied the lease balance statement accurately reflects the current status of the Respondent's rent account and I find the Respondent currently has rental arrears totalling \$640.60.

Damages

The Applicant claimed \$363.83 for the costs to repair the following damages:

\$69.30	May 28, 2019: lock change - the Applicant testified the Respondent asked for the lock to be changed.
\$155.93	July 28, 2019: call out to open door - the Applicant provided work order #222208 as evidence and testified that when the Respondent called to get the door opened after work hours they were informed that a lock smith had been called and they would need to pay lock smith directly. The Respondent did not do so. The Applicant paid the lock smith and is charging this cost back to the Respondent.
\$69.30	December 4, 2020: lock change - the Applicant testified the Tenant asked for the lock to be changed. Work order #279515 was provided as evidence.
<u>\$69.30</u>	January 15, 2021: remove garbage left by the Tenant - the Applicant reported that they had reviewed security camera footage and identified the Respondent as the person that left the garbage in a public area of the building. Work order #282267 was provided as evidence.
<u>\$363.83</u>	TOTAL

According to the lease balance statement the Respondent paid \$80 towards the charges for damages in March 2020. Despite notices reminding the Respondent of the outstanding charges, they still currently owe \$283.83.

I am satisfied based on the evidence and testimony that the charges claimed are justified and reasonable, and I find the Respondent responsible for expenses associated with the repair or action totalling \$283.83.

Disturbances

The Applicant claimed the Respondent had repeatedly disturbed the quiet enjoyment of other tenants and requested termination of the tenancy as a consequence. The Applicant provided as evidence a copy of their notice to the Respondent dated February 26, 2021, reporting they had received recurring complaints against the Respondent and the Respondent's visitors, including "yelling, shouting, very high traffic to the unit". Another tenant complained the Respondent was bothering them for money, cigarettes, and using the phone, and was intimidating them. At the hearing the Applicant was not able to provide me with any further details about the complaints, such as the date, time of day, or specific nature of the disturbances.

The Applicant also provided correspondence with the Respondent from July 2018 relating to complaints about noise and disruptive behaviour, and a notice to the Respondent dated February 12, 2019, that an application would be made to the Rental Office for (amongst other things) disturbing the quiet enjoyment of other tenants and the Landlord, although no specific details were provided.

On review of the evidence and testimony I am convinced the Respondent has disturbed other tenants' enjoyment of the rental premises or residential complex in breach of subsection 43(1) of the Act. However, the Applicant did not provide sufficient evidence to persuade me that the disturbances reported in 2021 were repeated or that they justified termination of the tenancy.

Breach of obligation - utilities

The Applicant claimed the Respondent had breached section 8 of the written tenancy agreement, which says "The Tenant shall pay for all utilities to the rental premises", and subsection 45(1) of the Act by repeatedly failing to pay their electricity account with Northland Utilities.

The Applicant testified and provided as evidence disconnect notices from Northland Utilities for October 26, 2020, and again February 9, 2021. They also provided notices to the Respondent to terminate their tenancy related to this issue from October 2020 and February 2021, as well as a previous notice dated July 30, 2018, to terminate the lease because of power disconnection. In the notice they told the Respondent that not only was this a breach of their tenancy agreement it could pose a risk to the unit if alternate heat/cooking/light sources were used.

Based on the testimony and evidence I am satisfied that the Respondent has repeatedly breached their obligation to pay their utilities resulting in disconnection of their power.

Illegal activities

In addition to breaching their obligation to pay all utilities, the Applicant also claimed the Respondent was “stealing power” by running an extension cord from their unit to the lobby. The Applicant testified and provided evidence that their staff had witnessed the Respondent doing this.

At the hearing, although they testified that the Respondent currently had their power reconnected, the Applicant asked for an order prohibiting the Respondent from “stealing power” again. Under section 46 of the Act “a tenant shall not commit an illegal act”, and under subsection 46(2) on application by a landlord a Rental Officer may make an order

- (a) requiring the tenant to comply with the tenant’s obligation;
- (b) requiring the tenant to not breach the tenant’s obligation again; or
- (c) terminating the tenancy.

Under paragraph 326(1)(a) of the *Criminal Code of Canada*, “Everyone commits theft who fraudulently, maliciously, or without colour of right, abstracts, consumes or uses electricity or gas or causes it to be wasted or diverted”. I believe that this section includes the theft of electricity described in this case and therefore the Respondent has committed an illegal act.

Based on the evidence and testimony of the Applicant I am satisfied the Respondent has in the past breached section 46 of the Act by committing an illegal act in the rental premises or residential complex and I will order them to comply with their obligation to not commit an illegal act.

Termination of the tenancy and eviction

Based on the testimony and evidence it is clear that the Respondent has repeatedly breached the Act and their tenancy agreement by:

- failing to pay their rent when due (ss. 41(1));
- failing to repair damages caused by the Tenant (ss. 42(1)); and
- failing to comply with their obligation to pay their utilities (ss. 45(1)).

In light of these repeated breaches I am satisfied termination of the tenancy agreement and eviction are justified. However, by agreement with the Applicant's representative, the termination and eviction orders will be conditional on the Respondent paying the rental arrears in full, paying the rents for July and August when due, paying the costs of repairs, and complying with their obligation to pay all utilities. Although the Respondent also breached their obligation to not commit an illegal act under section 46 of the Act, the Applicant did not request termination on that section and I do not feel it is justified in this situation.

Orders

An order will be issued:

- requiring the Respondent to pay rental arrears totalling \$640.60 and to pay their rent on time in the future (p. 41(4)(a), p. 41(4)(b));
- requiring the Respondent to comply with their obligation not to cause disturbances and not breach that obligation again (p. 43(3)(a), p. 43(3)(b));
- requiring the Respondent to pay the costs of repairs totalling \$283.83 (p. 42(3)(e));
- requiring the Respondent to comply with their obligation to pay for the utilities and not breach that obligation again (p. 45(4)(a), p. 45(4)(b));
- requiring the Respondent to comply with their obligation to not commit an illegal act and not to breach that obligation again (p. 46(2)(a), p. 46(2)(b));
- terminating the tenancy agreement August 31, 2021, unless the rent arrears are paid in full, the rents for July and August are paid on time, the costs of repairs are paid in full, and the Respondent complies with their obligation to pay their utilities (p. 41(4)(c), p. 42(3)(f), p. 45(4)(e), ss. 83(2)); and
- evicting the Respondent from the rental premises September 1, 2021, if the termination of the tenancy agreement becomes effective (p. 63(4)(a), ss. 83(2)).

Janice Laycock
Rental Officer