

IN THE MATTER between **507145NL**, Applicant, and **KA**, 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:

**507145NL**

Applicant/Landlord

-and-

**KA**

Respondent/Tenant

**REASONS FOR DECISION**

<b><u>Date of the Hearing:</u></b>	<b>September 28, 2021</b>
<b><u>Place of the Hearing:</u></b>	<b>Yellowknife, Northwest Territories</b>
<b><u>Appearances at Hearing:</u></b>	<b>AM, representing the Applicant KA, Respondent</b>
<b><u>Date of Decision:</u></b>	<b>October 21, 2021</b>

### **REASONS FOR DECISION**

An application to a rental officer made by 507145NL as the Applicant/Landlord against KA as the Respondent/Tenant was filed by the Rental Office August 23, 2021. The application was made regarding a residential tenancy agreement for a rental premises located in Inuvik, Northwest Territories. The filed application was personally served on the Respondent August 30, 2021.

The Applicant alleged the Respondent had repeatedly failed to pay rent, had accumulated rental arrears, and had repeatedly and unreasonably caused disturbances. An order was sought for payment of the rental arrears, termination of the tenancy, and eviction.

A hearing was held September 28, 2021, by three-way teleconference. AM appeared representing the Applicant. KA appeared as Respondent. Submissions were made at the hearing and the decision was reserved pending receipt of supplementary information from both parties. The supplementary information was provided and both parties were given an opportunity to submit written replies prior to a decision being made. The Respondent made no further written submissions after providing his supplementary information and being served with the Applicant's supplementary information.

#### *Tenancy agreement*

Evidence was provided establishing a residential tenancy agreement between the parties commencing January 1, 2020. I am satisfied a valid tenancy agreement is in place in accordance with the *Residential Tenancies Act* (the Act).

#### *Rental arrears*

The statements of account provided by the Applicant reflect rent charged and payments received between September 1, 2020, and July 26, 2021. Rent was established at \$1,200 per month. The Applicant requested that the rents for August and September be added to the balance owing, and he testified that no additional payments had been received. The statement of account balance was adjusted accordingly. No payments were recorded as received in 10 of the last 12 months of the tenancy.

The Respondent did not dispute that he had failed to pay the rent for a substantial period of time and had accumulated rental arrears. He claimed that he had lost employment in November 2020 due to the COVID-19 pandemic and was unable to pay the rent, and that he had informed the Landlord of this in April 2021. The Applicant acknowledged that the Respondent had told him he lost his job, but denied that the Respondent said it had anything to do with the pandemic. The Applicant further pointed out that, regardless of whether the Respondent mentioned the pandemic as the cause of his unemployment, the Applicant was generous in granting the Respondent time to resolve the issue and did not pursue this application to a rental officer for an additional four months after being told the Respondent was unemployed.

The Respondent further claimed that he had made a rent payment of \$1,200 in July 2021 that did not appear to be accounted for in the statements of account. The Respondent could not recall what day he made the payment, but claimed that he paid in cash and did not receive a receipt from the Applicant. The Applicant denied receiving any payments from the Respondent in July and confirmed that he always issues receipts for all payments he receives from his tenants. The Respondent subsequently provided copies of his bank statement reflecting transactions between July 14<sup>th</sup> and July 28<sup>th</sup>. That statement show cash withdrawals on July 15<sup>th</sup> of \$100, July 23<sup>rd</sup> of \$200, and July 26<sup>th</sup> of \$400, \$400, \$200, and \$100. The Applicant subsequently provided copies of 13 receipts that were issued to the Respondent dated between February 8, 2020, and June 28, 2021.

The Respondent's bank statement confirms the Respondent had withdrawn sufficient cash in the month of July to cover the rent, but it does not confirm that the Applicant was actually paid. The Applicant's receipts are consistent with the payments reflected in the statement of account and establish that the Landlord consistently issues receipts when payments are received. Based on this evidence, it is unlikely that the Landlord did not issue receipts for payments received in July and it is more likely that the Tenant did not make any payments in July to the Landlord.

The Respondent testified that he finally started working again in April 2021 – hence the payments made in May and June – and he committed to paying \$1,200 every two weeks on his paydays. The Respondent also testified that he is expecting a large residential school settlement payout, but is uncertain when he will receive it. He is hopeful he will get the cheque by Christmas and committed to paying any remaining balance of arrears then.

Subsequent inquiries confirmed that the Respondent has not made any payments since the hearing date, and that the rent for October had become due. The Applicant acknowledged that the Respondent had offered to pay the rent for October in cash, but the Applicant declined that method of payment and requested the payment be made either by E-transfer or by cheque. The Respondent did not take advantage of either of these methods of payment. I have adjusted the statement of account balance to include the rent for October.

I am satisfied the adjusted statement of account accurately reflects the current status of the Respondent's rent account. I find the Respondent has repeatedly failed to pay the rent when due and has accumulated rental arrears in the amount of \$12,400. That amount represents approximately 11 months' rent.

### *Disturbances*

The Applicant testified to having received multiple complaints from neighbouring tenants regarding disturbances attributable to the Respondent and persons the Respondent permitted in the premises throughout the tenancy but more so since early July 2021. The nature of the disturbances included partying, yelling, fighting, smoking, drinking in the common areas, and incidents requiring RCMP attendance to resolve, as well as disturbances from a dog barking. The disturbances were reported to have occurred primarily during the late evenings, often overnight, and nearly every weekend and occasionally during the weekdays.

The Applicant testified at the hearing that he had personally responded to and verified the reported disturbances, witnessing much of the disturbing behaviour and being subject to abusive language from both the Respondent and his guests. The Applicant also testified that the RCMP were called on at least three or four occasions this summer to speak to the Respondent regarding the disturbances.

The Applicant testified that the complaints he received were often received by phone and occasionally by text message. He subsequently provided copies of the text messages received from four different neighbouring tenants complaining about the disturbances. The text messages reference issues arising twice in April 2020, twice in July 2021, and once in September 2021. The Applicant also provided video recordings taken by one of the neighbouring tenants which confirm disruptive noises coming from the Respondent's premises and the presence of a dog in the hallway barking incessantly at the Respondent's premises.

The Respondent did not deny having friends over and having some gatherings, but claimed that he did not believe they were making enough noise to justify calling them disturbances. He described the gatherings as talking, laughing, and joking with friends, and further claimed that the gatherings were usually shut down by 10:00 p.m. with only two or three gatherings extending after midnight. The Respondent then contradicted himself by acknowledging having parties every two weeks, and he admitted to drinking a lot due to stress.

The Respondent denied smoking in the premises, claiming that he only smokes outside. He disputes that the smoke in the building is coming from him. The Respondent also denied knowing anything about the incident involving the dog barking in the hallway, but the Applicant testified that he actually spoke to the Respondent about the dog and the Respondent at the time agreed to keep the dog quiet.

Based on the evidence and testimony presented, I am satisfied the Respondent is responsible for the described disturbances, excepting the allegation of smoking in the premises. There is insufficient evidence to directly correlate the smoking which clearly occurred in the building to the Respondent. That is not to say the Respondent was definitely not smoking in his unit, just that the smoke in the building could have come from any one or more of the other units given there is no direct observation of the Respondent's smoking habits.

With respect to the remaining disturbances, the complaints received correlate with the Applicant's own observations, and the Respondent's admissions further substantiate the claims. I am satisfied that it is more likely than not that the Respondent's gatherings were loud and disruptive, particularly given the 'thin walls' referenced by the Respondent. The Respondent knew the walls were 'thin' and still permitted parties and gatherings which inherently tend to be loud. The incidents including yelling and fighting further aggravated matters. While tenants are entitled to live their lives in a normal fashion, respect must be shown to neighbours in multi-unit complexes where noise levels become disruptive. I would also remind the Respondent that he is responsible for the actions of all persons (and pets) that he permits on the property and in his premises. In this case, I do find the Respondent has failed to comply with his obligation not to cause, or permit to be caused, disturbances affecting the landlord's or other tenants' possession or enjoyment of the rental premises or residential complex.

### *Termination of the tenancy and eviction*

In light of the Respondent's repeated failure to pay the rent and the substantial amount of rental arrears that have accumulated, I am satisfied termination of the tenancy and eviction are justified. That justification is further aggravated by the Respondent repeatedly and unreasonably causing disturbances.

At the hearing, the Applicant acknowledged the Respondent's commitments to make bi-weekly payments towards the rent account and to pay off the balance when he receives his residential school settlement. The Applicant also acknowledged the Respondent's commitment to address the disturbances issues. Despite having little faith that the Respondent will follow through, the Applicant indicated that if the Respondent paid his rent and arrears, and was respectful to his neighbours, he would be agreeable to a limited conditional termination order. Given the lack of payments between the hearing date and the writing of this order, I have my doubts about the Respondent's ability to follow through on his rent payment commitments, but I am prepared to issue tiered conditional termination and eviction orders dependent on the receipt of payments towards the rent account and no further disturbances being caused.

### *Orders*

An order will issue:

- requiring the Respondent to pay rental arrears in the amount of \$12,400 (p. 41(4)(a));
- requiring the Respondent to pay his rent on time in the future (p. 41(4)(b));
- requiring the Respondent to comply with his obligation not to cause disturbances and not to breach that obligation again (p. 43(3)(a), p. 43(3)(b));
- terminating the tenancy:
  - (a) November 15, 2021, unless at least \$2,400 is paid towards the rent account and no further disturbances are caused by the Respondent or his guests;
  - (b) November 30, 2021, unless another \$2,400 is paid towards the rent account and no further disturbances are caused by the Respondent or his guests; and
  - (c) December 31, 2021, unless another \$2,400 is paid towards the rent account and no further disturbances are caused by the Respondent or his guests (p. 41(4)(c), p. 43(3)(d), ss. 83(2)); and

- evicting the Respondent from the rental premises:
  - (a) November 16, 2021, if the termination of the tenancy becomes effective November 15, 2021;
  - (b) December 1, 2021, if the termination of the tenancy becomes effective November 30, 2021; and
  - (c) January 1, 2022, if the termination of the tenancy becomes effective December 31, 2021 (p. 63(4)(a), ss. 83(2)).

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Adelle Guigon  
Rental Officer