

IN THE MATTER between **JT**, Applicant, and **JT and TM**, Respondents.

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:

JT

Applicant/Landlord

-and-

JT and TM

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	December 1, 2021
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	JT, Applicant MT, representing the Applicant
<u>Date of Decision:</u>	December 1, 2021

REASONS FOR DECISION

An application to a rental officer made by JT as the Applicant/Landlord against JT and TM as the Respondents/Tenants was filed by the Rental Office September 13, 2021. The application was made regarding a residential tenancy agreement for a rental premises located in Hay River, Northwest Territories. The filed application was personally served on the Respondents October 17, 2021.

The Applicant alleged the Respondents had repeatedly failed to pay the rent, had accumulated rental arrears, had failed to pay the security deposit in full, had permitted overcrowding at the rental premises, had permitted illegal activities at the rental premises, and had caused damages to the rental premises. An order was sought for termination of the tenancy and eviction.

A hearing scheduled for October 19, 2021, was cancelled because service of the documents on the Respondent had not yet been made in accordance with the *Residential Tenancies Act* (the Act). The hearing was re-scheduled and held December 1, 2021, by three-way teleconference. JT appeared as Applicant, with her daughter MT appearing on her behalf. JT and TM were sent notices of attendance for the re-scheduled hearing by registered mail which was deemed served November 10, 2021, pursuant to subsection 71(5) of the Act. The Respondents did not appear at the hearing, nor did anyone appear on the Respondents' behalf. The hearing proceeded in the Respondents' absence pursuant to subsection 80(2) of the Act.

Tenancy agreement

Evidence was presented establishing an oral tenancy agreement between the parties entered into July 13, 2021, for a month-to-month tenancy commencing July 1, 2021. I am satisfied a valid tenancy agreement is in place in accordance with the Act.

Security deposit

The security deposit was established to be \$1,300, the equivalent of one month's rent, and the Respondents paid \$700 towards the security deposit on July 13, 2021, with a promise to pay the remaining balance of \$600 the following week. The Applicant testified that Respondents have failed to pay the remaining balance of the security deposit to date.

I am satisfied the security deposit for this tenancy is \$1,300 and that the Respondents have paid \$700 towards the security deposit. Despite the commitment to pay the remaining balance by July 23, 2021, paragraph 14(2)(b) of the Act provides for the Tenant to pay the remaining balance within three months of the commencement of the tenancy. In this case, three months would be October 1, 2021.

I find the Respondents have failed to comply with their obligation to pay the security deposit in full as required and that they have a remaining balance owing of \$600. An order to pay the remaining balance of the security deposit will not be issued due to the termination and eviction orders which will be explained later in these reasons.

Rental arrears

Evidence was presented establishing the monthly rent at \$1,300 due the first of each month. The Applicant testified that the rent for July was paid July 13, 2021, and that there have been no further payments received to date. As a result, rental arrears have grown to \$6,500 including December's rent.

I am satisfied with the Applicant's testimony that the current status of the Respondent's rent account reflects a substantial accumulation of rental arrears. I find the Respondent has repeatedly failed to pay the rent and has accumulated rental arrears in the amount of \$6,500. That amount represents five months' rent.

Overcrowding

The Applicant alleged in their application that they suspected the Respondents of permitting overcrowding at the rental premises, but were unable to provide satisfactory evidence to support the claim.

Illegal activities

The Applicant alleged in their application that they suspected the Respondents of committing or permitting illegal activities to occur at the rental premises, but were unable to provide satisfactory evidence of what illegal activities occurred or when the illegal activities occurred.

Disturbances

The Applicant alleged at the hearing that the Respondents had been permitting numerous homeless people and other guests to come and go repeatedly and frequently from the rental premises. She testified that she has received several complaints from neighbours in the neighbourhood about disturbances caused by the Respondents and their guests, as well as the fear for the neighbours' safety created by their behaviours. None of the neighbours were willing to testify either in person or by written submission to the nature and extent of the alleged disturbances. RCMP were alleged to have responded to calls for service to the residence, but requests by the Applicant to the RCMP for incident reports to support her claim of disturbances were unsuccessful.

The Applicant further testified that she does not feel it is safe for her to attend the rental premises due to the behaviours of the Respondents, despite not having witnessed those behaviours herself. The Applicant's interactions directly with the Respondents are limited to those which occurred in July 2021. Since the oral tenancy agreement was entered into on July 13, 2021, the Applicant attempted to attend the premises to communicate with the Respondents and otherwise conduct necessary repairs on four occasions: August 6th, August 9th, August 16th, and September 1st. Each time, despite the exterior lights suggesting the Respondents were home, the Respondents did not answer the door. No attempts were made to communicate with the Respondents by registered mail due to the assumption by the Landlord that the Respondents would not pick up their mail.

Claims of disturbances were not included in the application, so it would be unfair of me to consider issuing an order regarding disturbances without ensuring the Respondents had fair opportunity to defend themselves against the allegations. Despite this, I am prepared to concede that it is more likely than not that disturbances have occurred for which the Respondents are responsible, but I cannot establish with certainty the extent or specific nature of the disturbances other than that associated with many people coming and going from the rental premises. I also cannot with certainty make any determinations of whether the disturbances constitute a breach of section 43 of the Act given the disturbances have not directly been experienced by the Landlord or other tenants of the landlord.

The Applicant further testified that the Respondents changed the locks to the rental premises without her permission and have not shared a copy of the new keys with her, thereby interfering with her ability to access the rental premises as necessary. On this I can make a finding that the Respondents have breached their obligation under subsection 25(1) of the Act, which states that neither the Landlord nor the Tenant shall change the locks to the rental premises except by mutual consent. In doing this, the Respondents have also interfered with the Landlord's possession or enjoyment of the rental premises which constitutes a breach of section 43 of the Act as a disturbance.

Those limited findings being made, no order will issue regarding either the disturbances or the lock change due to neither of those issues being part of the application and due to the termination and eviction orders which will be explained later in these reasons.

Utilities

At the hearing, the Applicant testified that the oral agreement was for rent plus utilities and that not only have the Respondents failed to pay the rent but they have also failed to pay the utilities bills. Although I can be satisfied that the Respondents are liable for the utilities, the application did not include a claim for utilities and no evidence was provided to support that claim. I declined to consider the claim for utilities under this application, but clarified that if the Applicant wished to pursue a claim for utilities she could include it in a new application to a rental officer.

Damages

In the application, the Applicant claimed the Respondents had caused damages to the rental premises, but no details of the alleged damages and no evidence of the costs of repairs were provided. The Applicant clarified that the last time she attended the premises she could see through the windows that there appeared to be extensive damages to the premises and she suspects there is likely to be more damages since then.

Given the lack of evidence at this stage the claims of damages were not considered, particularly in light of the forthcoming termination of the tenancy. The Applicant was reminded that they would be required to conduct an exit inspection when the Respondents vacate or are evicted from the rental premises at which time she would get a better idea of the full extent of the damages and can then prepare an accounting of the costs of repairs. The Applicant can then make a new application to a rental officer to claim the actual costs of repairs.

Termination of the tenancy and eviction

In light of the Respondents' 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. Given the likely delay in the Sheriff's availability to execute the eviction due to the mandatory holiday closure, an order for compensation for overholding rent will also be issued.

Orders

An order will issue:

- requiring the Respondents to pay rental arrears in the amount of \$6,500 (p. 41(4)(a));
- terminating the tenancy December 31, 2021 (p. 41(4)(c));
- evicting the Respondents from the rental premises January 1, 2022 (p. 63(4)(a)); and
- requiring the Respondents to pay compensation for use and occupation of the rental premises at a rate of \$42.74 for each day they remain in the rental premises after December 31, 2021, to a maximum of \$1,300 per month (p. 63(4)(b)).

Adelle Guigon
Rental Officer