

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

LB

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: April 27, 2022

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: DD, representing the Applicant
LB, the Respondent

Date of Decision: May 5, 2022

REASONS FOR DECISION

An application to a rental officer made by the IHA on behalf of the NTHC as the Applicant/Landlord against LB as the Respondent/Tenant was filed by the Rental Office on March 16, 2022. 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 on April 19, 2022.

The Applicant alleged the Respondent/Tenant, LB, had rental arrears, repeatedly disturbed other tenants, and was responsible for damages. An order was sought for the Respondent to pay rental arrears, pay the expenses related to the repair of tenant damages, termination of the tenancy agreement, and eviction, as a result of the disturbances, as well as compensation for use and occupation of the rental premises after termination of the tenancy agreement.

A hearing was held on April 27, 2022 by three-way teleconference. Attending the hearing was DD representing the Applicant, and the Respondent, LB.

I reserved my decision at the hearing in order to receive further information from the Applicant relating to: charges for call-outs - time of day; charge for lock change at entry door - support for allegation that Respondent was responsible; and a complete lease balance statement- only pages 1 and 3 were provided.

Under section 82 of the *Residential Tenancies Act* (the Act) “, in making a decision, a rental officer may consider any relevant information obtained by the rental officer in addition to the evidence given at the hearing, provided that the rental officer first informs the parties of the additional information and gives them an opportunity to explain or refute it.”

The additional information was provided to the Rental Office and the Respondent by email on April 28, 2022. The Respondent sent their reply to this information by email to the Rental Office and the Applicant on April 29, 2022. All of this information was considered in making my decision.

Tenancy agreement

Evidence was provided establishing a tenancy agreement between the parties for subsidized public housing, commencing on October 13, 2020 and continuing month to month. I am satisfied a valid tenancy agreement is in place in accordance with the Act.

Rental Arrears

The updated lease balance statement provided to the Rental Office on April 28, 2022 represents the Landlord's accounting of the monthly rents and payments received against the Respondent's rent account. According to this statement, as of July 2021, the subsidized rent was assessed at \$160/per month. On November 8, 2021, the Respondent had a credit balance of \$99.02 on their rental account, rent charged after this date and up to April 20, 2022 (date on updated statement) was \$800, the Respondent paid rent totalling \$690, leaving \$10.98 owing for rent.

I am satisfied the updated lease balance statement accurately reflects the current status of the Respondent's rental account and I find they owed \$10.98 on April 20, 2022. As this amount is minor and considering the Respondent has regularly paid their rent, I deny the Applicant's request for an order to pay arrears.

Tenant Damages

The Applicant alleged the Respondent was responsible for outstanding charges for repair of tenant damages including:

- **\$735.00** - seven after office hour calls by the tenant to be let into their rental unit, also called "lock outs". Under the tenancy agreement, section "C", part 4 Lock-Outs, the Respondent had agreed to pay a charge of \$100 + \$5 GST for each after hour call. At the hearing, I asked the Applicant to provide further information on the time of the lock out to show that they were after hours. Copies of Invoices and Work Orders detailing the time and reason for the lock outs were provided:
 - ✓ April 15, 2022 at 11:05pm - Work Order TD328044 - lost keys;
 - ✓ December 23, 2021 at 4:30pm (office closed for Christmas) - Work Order TD 321574 - forgot key in unit;
 - ✓ November 30, 2021 at 6:00pm - Work Order TD321567 - tenant hadn't picked up new key;
 - ✓ November 28, 2021 at 12:15am - Work Order TD 321566 - needed new apartment keys;
 - ✓ November 20, 2021 (after hours, weekend) at 2:49pm - Work Order TD318523 - tenant asked to open door didn't have her key;
 - ✓ November 18, 2021 at 10:00pm (after hours) - Work Order TD 318522 - wanted to get clothes, keys are in fathers truck and he is out at camp; and
 - ✓ November 18, 2021 at 5:25pm (after hours) - Work Order TD 318520 - left her keys in dad's truck and he already left on the highway.

- **\$1,295.44** - to change the entry lock for the building. At the hearing, the Applicant testified they held the Respondent responsible for this charge, as they had given their keys to one of their guests. This guest used them to enter the building and disturb other tenants on two occasions. In order to prevent further entry, the Applicant had to change the lock and provide new keys to all of the tenants. I requested further information to support this claim and why the tenant was held responsible.

The Applicant provided further information including Work Order TD 318940, a copy of a notice to the Respondent dated November 22, 2021, and the Caretaker's Call Reports relating to disturbances November 20, 2021 and November 24, 2021.

The Work Order details costs, including labour of 2 hours and materials to replace the lock and to replace the keys for all of the tenants + GST totalling \$1,295.44.

The Caretaker's Call Reports relating to disturbances November 20, 2021 and November 24, 2021, by the guest using the Respondent's key to gain entry, confirms the Applicant's testimony. According to this information, the guest told the Caretaker the tenant had given them the keys.

At the hearing, the Respondent testified they had lost their keys. However, whether they lost the keys, or the keys were given to the guest, as the guest told the Caretaker, the Respondent is still responsible for looking after their keys and charges to replace the lock and to prevent further disturbances and maintain the security of the building.

- **\$90.26** - Lock change to door to Respondent's unit - Work Order TD 319063 - tenant lost key to their rental unit. Materials \$60, labour \$23.46 + GST.
- **\$130.98** - April 11, 2022 at 1:50pm - Work Order TD328041 - fire damage repairs/Call out.

TOTAL \$2,251.68

Based on the evidence and testimony of the Applicant, I am satisfied the charges are reasonable and find the Respondent is responsible for expenses related to repair of damages totalling \$2,251.68. According to the updated lease balance statement, the Respondent has paid \$200 on these tenant damages leaving a total of \$2,051.68 owing.

Disturbances - termination of tenancy agreement and eviction

Under subsection 43(1) of the Act "A tenant shall not disturb the landlord's or other tenant's possession or enjoyment of the rental premises or residential complex", and under subsection 43(2) "A disturbance caused by a person, permitted by a tenant to enter the residential complex or the rental premises of the tenant is deemed to be a disturbance caused by the tenant."

The Applicant provided evidence and testified to repeated disturbances caused by the Respondent in breach of section 43, including two incidents where the Respondent had left food cooking on the stove unattended and the fire department had to come.

Following a cooking fire in May 2021, the Applicant reported sixteen separate incidents between November 20, 2021 and April 11, 2022 involving disturbances by the Respondent or their guests. Many of these incidents involved the Respondent's guests who were in the building knocking on doors, yelling, harassing other tenants, and generally causing a disturbance. There are also reports about loud parties, yelling, banging, and fighting in the Respondent's rental premises. In some situations, the RCMP were called to remove people from the building. The most recent incident on April 11, 2022 involved a second cooking fire.

Notices were sent to the Respondent after each disturbance and were provided as evidence:

- May 21, 2021 - letter sent about incident on May 12, 2021 - 12:20pm fire alarm going off in unit and building as a result of cooking fire. In notice to Respondent, it is reported the landlord's maintenance person and the fire department attended and the Respondent admitted to falling asleep while cooking.
- November 22, 2021 - first warning notice sent about incident November 20, 2021 - 2:05am guest walking the halls of the building and knocking on other tenant's doors, RCMP had to be called to remove them. According to the Caretaker's report, they also had the keys to the Respondent's apartment and the building and said the Respondent gave them to them.
- January 10, 2022 - final warning notice about incident November 24, 2021 - 5:22pm a guest left unit and began knocking on other tenant's doors. According to Caretaker's report, this was the same individual who had been removed by the RCMP on November 20, 2021.
- January 10, 2022 - notice of termination for noise and disturbances, check out on March 1, 2022, right to appeal in 20 days. Further incidents reported on November 24, 2021, including at 4:38pm Caretaker had to remove a intoxicated guest from the unit. As they were being removed from the building, they damaged the glass in the front entrance. At 10:00pm another guest had to be removed from the building.

- January 11, 2022 - notices after termination about incidents reported:
 - ✓ December 3, 2021 at 2:00am loud disturbances from Respondent's rental unit and Respondent knocking on other tenant doors. Caretaker had to ask tenant to keep it down.
 - ✓ December 4, 2021 at 2:48pm guests causing disturbance and yelling in hallway of the building.
 - ✓ December 12, 2021 at 6:40pm Respondent harassing a tenant in the hallway and RCMP were called.
 - ✓ December 13, 2021 at 7:21pm a guest of the Respondent had the key to the unit and was threatening another tenant.
 - ✓ December 19, 2021 at 12:53am Respondent in apartment yelling and causing a disturbance.
- January 25, 2022 - notice after termination, relating to an incident on January 22, 2022 at 11:09pm, loud yelling and banging from Respondent's unit, the Caretaker attended and asked guest to leave, RCMP had to be called. RCMP attended and removed guests.
- February 21, 2022 - notice after termination relating to incidents:
 - February 12, 2022, Respondent's guests wandering the halls of the building, knocking on other tenant's doors, Caretaker had to ask them to leave the building.
 - February 17, 2022, loud disturbance in Respondents rental unit, loud music, loud banging noises, Caretaker attending and reported that there was a big party in the unit.
 - February 18, 2022 at 9:00pm a guest of the Respondent was wandering the hallway of the building, trying to get back into Respondent's unit.

Prior to the hearing, the Applicant also provided to the Rental Office and Respondent evidence of further disturbances:

- March 14, 2022 letters to Respondent about incidents:
 - ✓ March 13-14, 2022, party in Respondent's unit, a lot of people, fights, and loud banging noises. Guest at front entrance yelling at a tenant. Guests have keys and is letting in other people to the building.
 - ✓ March 14, 2022, party in unit, Caretaker attending and asked Respondent to keep it down and guests to leave.
- April 20, 2022 - letter to Respondent about cooking fire incident on April 11, 2022 at 1:44pm, smoke alarm went off in the unit and the building. Fire Department attending and found no one in the unit, and a cooking pot and ladle left on the stove, with the burner still on. The unit was full of smoke.

There are also allegations about unauthorized people living in the unit, smoking, and guests using the laundry. In my opinion, although these are possible breaches of the Act, it is not clear to me that these resulted in disturbances caused by the Respondent, and I did not include them in this list of documents.

At the hearing, the Applicant testified the Caretaker, who lives in the building, responds to complaints about disturbances and writes a report of their call-outs. These reports are used as the basis for notices sent to the tenant. The Respondent received a termination notice on January 10, 2022. The Respondent appealed the termination to the Landlord and was denied.

At the hearing, the Respondent testified that they live right beside the doorway where people are knocking and banging outside and their neighbour is also bothering people. They stated they are trying to work on these issues and asked for another chance.

In their letter provided to the Rental Office and Applicant on April 29, 2022, the Respondent accepted responsibility and apologized for everything, but asked for another chance to be a good tenant. They provided some information on their background, including that they had previously been homeless for 14 years, had worked hard to get this rental unit and pay their rent, and were trying to address their alcohol addiction with the help of local counsellors.

Based on the evidence and testimony of both the Applicant and the Respondent, I stated at the hearing that I felt that termination and eviction were justified but would reserve my decision. I asked the Applicant if they would consider giving the Respondent another chance. They said they would not be willing to do that because of the risk caused by the cooking fires.

After reviewing the evidence provided, prior to and after the hearing, and considering the testimony of the Applicant and Respondent, it is my opinion that the Respondent has repeatedly breached their obligation under section 43 of the Act by disturbing other tenants in their residential complex and termination of the tenancy agreement and eviction are justified.

I appreciate the Respondent's situation and applaud their desire to be a better tenant, but not only have they or their guests repeatedly disturbed other tenants, they have also put the entire residential complex at risk. On two occasions, the fire department attended their rental premises to deal with food left unattended and burning on the stove. I am not sure, despite the best intentions of the Respondent, there wouldn't be another incident that could result in injury or death as well as loss of property. Because of this risk, I feel I have no choice but to order termination of the tenancy agreement on May 31, 2022 and eviction to follow on June 15, 2022.

Compensation for use and occupation

In their application, the Applicant had requested compensation for the use and occupation of the rental premises, at the rate of \$52.41 per day, if the Respondent remains in the rental premises after the tenancy is terminated. Under paragraph 63(4)(b) of the Act, a rental officer who terminates a tenancy may make an order requiring the tenant to compensate the landlord for the use and occupation of the rental premises, calculated for each day the tenant remains in occupation following the termination of the tenancy.

If the Respondent remains in the rental premises after the termination of the tenancy agreement on May 31, 2021, the Respondent will no longer be eligible for subsidized rent, the full market rent for this unit is \$1,625. The Respondent will be responsible to compensate the Applicant at a rate of \$52.41 for each day they remain in the rental premises after the tenancy is terminated to a maximum of \$1,625 per month.

Orders

An order will issue:

- requiring the Respondent to pay expenses for repair of damages totalling \$2,051.68 (p.42(3)(e));
- terminating the tenancy agreement on May 31, 2022 and the Respondent must vacate the rental premises on that date (p.43(3)(d);
- evicting the Respondent from the rental premises on or after June 15, 2022 (p.63(4)(a);
- requiring the Respondent to compensate the Applicant for use and occupation of the rental premises at a rate of \$52.41 for each day they remain in the rental premises after May 31, 2022, to a maximum of \$1,625 per month (p.63(4)(b).

Janice Laycock
Rental Officer