

IN THE MATTER between **NTHC**, Applicant, and **GT**, 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:

NTHC

Applicant/Landlord

-and-

GT

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: May 10, 2022

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: PS, representing the Applicant

Date of Decision: May 10, 2022

REASONS FOR DECISION

An application to a rental officer made by YHA on behalf of the NTHC as the Applicant/Landlord against GT as the Respondent/Tenant was filed by the Rental Office April 7, 2022. 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 April 13, 2022.

The Applicant alleged the Respondent had failed to pay the security deposit in full and on time, had repeatedly failed to rent, had accumulated rental arrears, and had caused disturbances. An order was sought for payment of the security deposit arrears, payment of rental arrears, payment of future rent on time, compliance with the obligation not to cause disturbances, conditional termination of the tenancy, and eviction. Due to additional and continued issues arising since the application to a rental officer was made, the Applicant's representative withdrew the requests for payment of future rent on time and conditional termination of the tenancy, requesting unconditional termination of the tenancy in their place.

A hearing was held May 10, 2022, by three-way teleconference. PS appeared representing the Applicant. GT was personally served notice of the hearing April 13, 2022. The Respondent did not appear at the hearing, nor did anyone appear on the Respondent's behalf. The hearing proceeded in the Respondent's absence pursuant to subsection 80(2) of the *Residential Tenancies Act* (the Act).

Tenancy agreement

Evidence was presented establishing a residential tenancy agreement between the parties for subsidized public housing commencing September 1, 2021. I am satisfied a valid tenancy agreement is in place in accordance with the Act.

Security deposit

Paragraph 9 of the written tenancy agreement specified the security deposit of \$1,451. This paragraph further set out that 50 percent of the security deposit was to be paid at the commencement of the tenancy and the remaining 50 percent was to be paid within three months of the commencement of the tenancy.

Evidence was provided establishing that as of October 18, 2021, the Respondent had failed to make any payments towards the security deposit. A notice was issued to the Respondent on that date extending the due date for the first 50 percent to October 27th. A lease balance statement was provided representing the Landlord's accounting of the security deposit charge and payments received against the security deposit. The Respondent paid \$530 on October 27th and \$200 on November 2nd, leaving a security balance owing of \$721.

The second 50 percent of the security deposit was due by December 1st. A notice was issued to the Respondent on December 14th reminding him of the outstanding security deposit balance and extending the due date to December 29, 2021. No payments were received. A second notice was issued to the Respondent January 21, 2022, extending the due date to January 31st. No further payments have been received against the security deposit as of the hearing date.

I am satisfied the lease balance statement accurately reflects the current status of the Respondent's security deposit account. I find the Respondent has failed to comply with their obligation to pay the security deposit in full within three months of the commencement of the tenancy. I find the Respondent has accumulated security deposit arrears in the amount of \$721. However, given the following findings, an order for payment of the security deposit arrears will not be issued.

Rental arrears

The lease balance statement entered into evidence also represents the Landlord's accounting of monthly subsidized rents and payments received against the Respondent's rent account. The Applicant testified that since filing the application the rents for April and May had become due, and no payments had been received. The lease balance statement was adjusted to include the rents for April and May.

All rents have been subsidized and are currently assessed at \$80 per month. There have been no payments made for rent in 6 of the last 9 months, with the last payment having been recorded September 29, 2021, in the amount of \$80.

I am satisfied the adjusted lease balance statement accurately reflects the current status of the Respondent's rent account. I find the Respondent has repeatedly failed to pay the rent and has accumulated rental arrears in the amount of \$520. That amount represents approximately 6.5 months' subsidized rental arrears.

Disturbances

On February 15, 2022, the Applicant received a complaint from a neighbouring tenant of excessively loud music being played at the Respondent's rental premises from 5:00 a.m. onwards, to the extent of causing the neighbour's room to shake and furniture to vibrate. The neighbouring tenant also complained of smoke entering her premises through the vents from the Respondent's premises.

On February 21st the Applicant's representative spoke with the Respondent by phone regarding the complaint. The Respondent told the Applicant that he had a friend staying at the premises while he was away, and that it was the friend who caused the disturbances.

On May 2nd the Applicant received another complaint of disturbances and attended the premises to investigate. Upon their arrival they found the same friend residing at the rental premises. The friend told the Applicant the Respondent was away, but agreed to pass a message on to the Respondent to call the Applicant. The Applicant told the friend that because she was not an authorized occupant she would have to leave the premises.

More complaints of disturbances were received and the Respondent had not called the Applicant by May 5th, so the Applicant again attended the premises. The friend was still there, so they asked her to leave and then changed the locks to secure the premises against unauthorized entry. The Respondent contacted the Applicant by phone on May 6th from the North Slave Correctional Centre (NSCC), admitting that he was in custody but expected to be released the following Tuesday (the day of this hearing). The Applicant told the Respondent that the premises had been secured and that if the Respondent is released from custody he could come to the office to get the new keys. The Respondent also told the Applicant that he intended to move out by the end of the month.

Section 43 of the Act and subparagraph 12(c) of the written tenancy agreement set out the Tenant's obligation not to cause disturbances and not to permit their invited guests to cause disturbances. By permitting his friend to stay at the rental premises in his absence the Tenant accepted responsibility for the friend's behaviour.

Subsection 45(1) of the Act provides for additional obligations to be included in the written tenancy agreement. Paragraph 5 of the written tenancy agreement clearly states that additional occupants other than the Tenant must be authorized by the Landlord to reside at the premises, and the authorized occupants must be listed in Schedule B to the written

tenancy agreement. Schedule B to the Respondent's tenancy agreement does not list any additional occupants. The Applicant's representative acknowledged that the Respondent had previously requested permission for his friend to reside with him, but the Applicant denied the request.

I cannot be certain that the friend was not initially housesitting for a short period of time in February while the Respondent was away, which is not unreasonable and would actually be required to satisfy the Respondent's obligation under paragraph 18 of the written tenancy agreement which requires the Tenant not to leave the premises unoccupied for longer than 24 hours between October 1st and April 30th. However, I can be satisfied on a balance of probabilities that the friend had been residing with the Respondent since then given the Respondent's subsequently denied request to permit that friend to reside with him and the discovery that the friend was occupying the premises in May.

At any rate, regardless of whether the friend was an authorized occupant, the friend was permitted to be at the premises by the Respondent and as such the Respondent is responsible for the friend's behaviour at the premises and in the residential complex, even if the Respondent was not there himself. I am satisfied the reported disturbances occurred and originated from the Respondent's rental premises and as such I find the Respondent has failed to comply with the obligation not to cause disturbances or allow disturbances to be caused by persons they permit in the premises.

Termination of the tenancy and eviction

I am not satisfied the number of disturbances constitute a repeated pattern of behaviour to justify termination of the tenancy. However, in light of the Respondent's repeated failure to pay the rent and the substantial amount of subsidized rental arrears that have accumulated, I am satisfied termination of the tenancy and eviction are justified on those grounds.

Orders

An order will issue:

- requiring the Respondent to pay rental arrears in the amount of \$520 (p. 41(4)(a));
- terminating the tenancy May 31, 2022 (p. 41(4)(c)); and
- evicting the Respondent from the rental premises June 1, 2022 (p. 63(4)(a)).