

IN THE MATTER between **GBHHL**, Applicant, and **MR**, 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, regarding a
rental premises located within the **town of Inuvik in the Northwest Territories**;

BETWEEN:

GBHHL

Applicant/Landlord

-and-

MR

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: June 8, 2022

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: GM, representing the Applicant
MR, the Respondent

Date of Decision: June 8, 2022

REASONS FOR DECISION

An application to a rental officer made by GBHHL as the Applicant/Landlord against MR as the Respondent/Tenant was filed by the Rental Office May 11, 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 May 24, 2022.

The Applicant alleged the Respondent had failed to comply with a conditional termination order by causing more than three substantial disturbances since that order was issued. An eviction order was being sought by the Applicant.

A hearing was held June 8, 2022, by three-way teleconference. GM appeared representing the Applicant. MR appeared as the Respondent.

Tenancy agreement

Evidence was presented establishing a residential tenancy agreement between the parties commencing November 1, 2020. The parties acknowledged at the hearing that the Respondent had given notice to terminate the tenancy effective June 30, 2022. The Respondent confirmed at the hearing that she was actively in the process of moving out of the premises, with the expectation that the boxes and furniture would be moved to her new place the weekend of June 11th and cleaning would be completed at the current premises the following week. I am satisfied a valid tenancy agreement is in place and that it has been terminated by the Tenant effective June 30, 2022, in accordance with the *Residential Tenancies Act* (the Act).

Despite the agreed termination of the tenancy and the Respondent's clear actions in that regard, the Applicant wished to proceed with the hearing in an effort to secure an eviction order.

Previous order

Rental Officer Order #17483 issued March 23, 2022, ordered the Respondent to comply with her obligation not to cause disturbances and not to breach that obligation again. It was also ordered that the tenancy agreement would be conditionally terminated June 30, 2022, unless no more than three substantial disturbances were verified as being caused by the Respondent or persons permitted on the premises by the Respondent. In other words, the ordered termination of the tenancy would only take effect on June 30, 2022, if more than three substantial disturbances occurred before that date.

Disturbances

April 23, 2022

The Applicant testified to receiving a complaint from the Respondent's downstairs neighbour at 2:10 a.m. on April 23, 2022, regarding loud talking and walking coming from the Respondent's premises, waking the neighbouring tenant from their sleep and interrupting the enjoyment of their premises. The Applicant's representative did not appreciate being woken up at that hour of the morning to respond to this complaint, but did get up and serve the Respondent with a warning notice.

The Respondent admitted that she and a friend were up playing a game of Monopoly. However, she denied that they were being noisy about it. She refused to take responsibility for either the lack of soundproofing between apartments in the residential complex or the sensitivities of the downstairs neighbour.

I am satisfied the Respondent's actions on April 23, 2022, caused a substantial disturbance to the downstairs neighbour, given the time of morning that it occurred. The Respondent is fully aware that sounds travel quite clearly throughout the residential complex, yet she does not quite grasp the increased level of responsibility that puts on her and all the other Tenants in the building to make more of an effort to keep the noise down, especially during the quiet hours between 11:00 p.m. and 8:00 a.m.

May 1, 2022

The Applicant testified to an incident on May 1, 2022, in which he was woken at 7:00 a.m. by a concerned neighbouring Tenant who noticed the Respondent's apartment door was open. The Applicant again did not appreciate being woken up at that hour of the morning, but he did get up to check on the Respondent. He confirmed that the apartment door was open and tried knocking on the door and calling out for the Respondent, but received no response. The parties already have a contentious relationship and have been avoiding interacting with each other unless they have to, so the Applicant did not enter the apartment but did call the RCMP to conduct a welfare check out of concern not only for the Respondent but also for the Respondent's daughter.

The Respondent testified that she and her daughter had been suffering through a stomach flu for most of the week and were sleeping together in the bedroom when the RCMP entered the apartment to conduct the welfare check. The RCMP confirmed that other than being ill the Respondent and her daughter were fine. The Respondent does not know why her door was open that morning, but has since installed a chain lock on the inside to avoid another such incident.

While I appreciate that being woken early in the morning by his tenants to respond to calls for service or complaints is annoying and frustrating, it is a part of the job of managing a residential complex, particularly as an on-site manager. The calls and complaints themselves do not necessarily constitute a disturbance, but a repeated requirement to respond to complaints of disturbances could be considered disturbing to the Landlord. In this particular case, there was no actual disturbance that triggered the complaint. The call for service itself was not in fact a complaint, but was rather an expression of concern for the safety of the Respondent and her child given their apartment door had been left open.

I am not satisfied this incident resulting in a welfare check constitutes a disturbance, let alone a substantial disturbance.

May 8, 2022

The Applicant provided evidence regarding an after-hours call-out to let the Respondent and her guest back into the building at 4:10 a.m. on May 8, 2022. The Respondent appeared to be intoxicated and had stepped outside the building for smoke break, forgetting her keys in the apartment. She buzzed the on-site manager's apartment for assistance and the manager-in-training responded, letting them into the building. The call-out woke both the Applicant's representative and the manager-in-training, which again the Applicant's representative did not appreciate.

The Respondent had not previously met the manager-in-training and briefly tried to converse with him and set the foundation for good future communication before her guest drew her away back to her apartment. The manager-in-training appears to have misunderstood the Respondent's friendly approach as an inappropriate advance, which he found disturbing.

Again, it is the on-site manager's job to respond to calls for service or to respond to complaints, regardless of the time of day. Is being woken in the middle of the night to let the Tenant back into the building disturbing to the on-site manager? Yes; the Tenant is issued keys to access the premises and is responsible for making sure they remember the keys in order to avoid disturbing the Landlord or other tenants during quiet hours. Is the after-hours call-out to be let back into the building a substantial disturbance? No, not unless it is a repeated or cumulative occurrence. In this case the after-hours call-out was a one-time occurrence.

While I can be satisfied that a minor disturbance occurred for which the Respondent is responsible, I am not satisfied that this incident was a substantial disturbance.

May 27, 2022

The Applicant testified that he received a complaint at 3:38 a.m. on May 27, 2022, that the Respondent was tromping around in the middle of the night and disturbing the neighbouring tenants. The Applicant prepared another warning notice and let it in the Respondent's door. The Respondent immediately found the notice and swore at the Applicant as he was walking away.

The Respondent admitted to causing this disturbance. She explained that she had just learned her partner had been cheating on her throughout their relationship, so she was extremely upset and emotional. She had returned to the apartment in this state and proceeded to kick her partner out. Her partner did leave without further incident after the Applicant served the warning notice. The Respondent acknowledged her inappropriate attitude towards the Applicant given the legitimate disturbance and apologized to the Applicant for her behaviour towards him.

I am satisfied this incident constitutes a substantial disturbance.

Termination of the tenancy and eviction

Although I have made findings that the Respondent has failed to comply with her obligation not to cause disturbances and as a result has failed to comply with a Rental Officer order to comply with that obligation and not breach it again, I am not satisfied that the referenced incidents occurring since the last Rental Officer order was issued justify termination of the tenancy.

Of the four referenced incidents I have found that two of them would constitute a substantial disturbance. The conditional termination order issued under File #17483 required more than three substantial disturbances to make the June 30th termination date effective. That threshold had not been met as of the hearing date and therefore the Rental Officer Order to terminate the tenancy June 30th is not effective and an eviction order is not justified.

The Respondent is actively moving out of the rental premises and I have no reason to believe that she will not be fully vacated by or before June 30th. Therefore, an eviction order is also not necessary to enforce the Respondent's notice to voluntarily terminate the tenancy.

Given my findings that an eviction order is not justified, the Landlord's application for an eviction order is denied.

Dated at the city of Yellowknife in the Northwest Territories this 14th day of June 2022.

Adelle Guigon
Rental Officer