

IN THE MATTER between **HNWT**, Applicant, and **AB**, 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 **community of Ndilo in the city of Yellowknife in the
Northwest Territories;**

BETWEEN:

HNWT

Applicant/Landlord

-and-

AB

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	August 2, 2022
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	RB, representing the Applicant AB, the Respondent LB, in support of the Respondent LBa, in support of the Respondent
<u>Date of Decision:</u>	August 2, 2022

REASONS FOR DECISION

An application to a rental officer made by YDFNHD on behalf of HNWT as the Applicant/Landlord against AB as the Respondent/Tenant was filed by the Rental Office May 26, 2022. The application was made regarding a residential tenancy agreement for a rental premises located in the community of Ndilo in Yellowknife, Northwest Territories. The filed application was personally served on the Respondent June 2, 2022.

The Applicant alleged the Respondent had repeatedly permitted an unauthorized occupant to reside at the rental premises, had repeatedly and unreasonably caused disturbances, had caused extensive damages to the rental premises, and had failed to comply with their obligation to maintain the rental premises in an ordinary state of cleanliness. An order was sought for termination of the tenancy and eviction.

A hearing was held August 2, 2022, by three-way teleconference. RB appeared representing the Applicant. AB appeared as the Respondent, with his son LB appearing to assist the Respondent. LBa also appeared to assist the Respondent.

Tenancy agreement

Evidence was presented establishing a residential tenancy agreement between the parties for subsidized public housing in a seniors facility commencing February 1, 2012. I am satisfied a valid tenancy agreement is in place in accordance with the *Residential Tenancies Act* (the Act).

Unauthorized occupant

Section 5 of the written tenancy agreement prohibits the Tenant from permitting anyone to reside with him without the advance written consent of the Landlord. The Applicant testified that it has been repeatedly made clear to the Respondent since the tenancy began that he is not permitted to have anyone live with him, including and specifically his son DB.

The rental premises is a one-bedroom unit in a seniors facility. It is designed to accommodate a single adult or a maximum of two adults in a spousal relationship.

Schedule B to the written tenancy agreement would list any occupants in addition to the Tenant who are authorized to reside at the rental premises. There are no names included on the Schedule B attached to the Respondent's written tenancy agreement.

The Applicant testified, and provided notices substantiating, that the Respondent's son DB has been living with the Respondent despite repeated reminders that he is not allowed to. The Respondent admitted at the hearing that his son has been living with him for years because he doesn't have a place of his own. The Respondent's claim that he thought his son was included in the tenancy agreement is unbelievable given the evidence presented confirming otherwise.

I am satisfied the Respondent has been permitting his son DB to reside at the rental premises, and that he continues to do so. I find the Respondent has repeatedly failed to comply with his obligation not to permit unauthorized occupants to reside at the rental premises.

Damages and uncleanliness

An entry inspection report and photographs taken at the beginning of the tenancy were provided establishing the rental premises as being in good condition with no apparent damages and with a fresh coat of paint throughout.

The Applicant testified and provided photographs taken during a unit condition rating inspection on April 25, 2022. The unit condition rating report itself was not provided, but the photographs were. The photographs support the Applicant's claims that the rental premises had substantial damages to the walls, kitchen cupboards, stove, fridge, floors, exterior door, smoke detector, interior doors and door frames, and light fixtures. The photographs also support the Applicant's claims that there was a certain level of hoarding and a substantial level of uncleanliness inside the premises, and that the Respondent has been storing or permitting storage of large, unsightly items in the yard to the multi-unit seniors complex. Complaints have been received regarding the condition of the yard and the impact on neighbouring residences it has had, including allegations of contravention of the City of Yellowknife's Unsightly Land By-law.

It is noted that the Applicant is not making a claim in this application for compensation for costs of repairs and cleaning. Rather, at this time they are only seeking to identify the breaches in support of their request to terminate the tenancy. The Applicant confirmed that prior efforts to repair the flooring were unsuccessful due to the Respondent's refusal to cooperate with moving his property so the contractors could do the work. The Applicant also confirmed that they have not been able to schedule any of the necessary repairs in the current fiscal year, now anticipating the earliest any of the work can be completed would be next spring or summer. The Applicant suggested that they required vacant possession of the rental premises given the extensive amount of repairs that need to be done.

The Respondent conceded responsibility for the damages to the walls, which based on the evidence presented in the application package likely was primarily caused by his son DB. The Respondent ultimately accepted responsibility for most of the damages to the premises.

He disputed that he was responsible for the damages to the stove and the floor, claiming that the stove had blown up while cooking a roast in the oven and that the floor was so old it was just falling apart. I am still struggling to understand how an electric stove spontaneously “blows up”, but at this point the Applicant is not seeking compensation so the issue of establishing responsibility for the damages to the stove can be considered should the Applicant later choose to make an application for compensation.

As to the floor, the Applicant acknowledged that the flooring was old enough last year that they had intended to absorb the costs of replacing it, but reviewing the nature of the damages again this year they are uncertain that the extent of the damages could solely be attributed to age and normal wear and tear. Again, they are not at this time seeking compensation, but are rather suggesting that the extensive damages to the flooring are a further example of the Respondent’s negligence. At this stage, it seems more likely than not that the damages are the result of a combination of both. I suspect the floor tiles had started lifting and potentially breaking to some degree, at least in the higher traffic areas, but that the Respondent’s lack of cooperation to have the flooring replaced last summer aggravated the condition of the flooring. That being said, however, I do not benefit at this time from having the annual unit condition rating reports before me so I cannot be certain when or how the damages I’m seeing today occurred.

As to the uncleanliness, the Respondent claimed that his place is not always as dirty as it appears in the photos that were taken April 25th, and that it has since been cleaned up. The Applicant has not attended the premises to confirm the Respondent’s claim, but nor are they in a position to refute it.

As to the items and debris left in the yard, the Respondent did not dispute that he has left his chattels from a prior property he resided at in the yard. He argued that the Applicant was a party to him being removed from that prior property and that he had nowhere else to put his chattels, although he conceded that he may be able to move the chattels back to the property despite being unable to reside on that property due to health and safety concerns there. The Respondent appeared loath to remove his chattels, but acknowledged the necessity to do so and agreed to find a way to have it done. LB also reminded his father that much of the chattels in the yard in fact belonged to some of his siblings and that there was no reason they couldn’t remove their own property.

I am satisfied the majority of the damages and all of the uncleanliness both inside and out were caused by the Respondent or his son DB. I find the Respondent, as the sole Tenant, is responsible for causing damages to the rental premises and has breached his obligation to maintain the ordinary cleanliness of the rental premises.

Disturbances

Limited evidence was provided in support of the Applicant's claims that the Respondent and his son DB had repeatedly and unreasonably caused disturbances. Clearly issues occurred in 2015 with respect to complaints of partying, and then again in July 2020 with respect to arguments and fighting raising concerns for the Respondent's safety, but the Applicant conceded that there have been no complaints of disturbances received since July 2020.

While I can be satisfied that there had been disturbances occurring in the past, I am not satisfied that there is either a current or a repeated and unreasonable pattern of disturbances.

Termination of the tenancy and eviction

On May 3, 2022, the Landlord issued a notice to the Tenant terminating the tenancy effective June 2, 2022, due to damages and uncleanliness.

Subsection 51(5) of the Act provides for subsidized public housing landlords to terminate a tenancy for the last day of a period (month) of the tenancy by giving the tenant at least 30 days' advance written notice. Subsection 55(3) of the Act requires the landlord giving notice to terminate to specify the reasons for terminating the tenancy. While the Applicant's termination notice in this case did include the reasons for terminating the tenancy, and it gives at least 30 days' advance written notice, it did not terminate the tenancy for the last day of a month and is therefore an invalid notice.

Paragraph 54(1)(b) of the Act provides for a landlord to terminate a tenancy with at least 10 days' advance written notice where the tenant or person permitted on the premises by the tenant has caused damage to the rental premises and the tenant has failed to comply with a rental officer order to comply with the obligation to repair damages, not cause further damages, compensate the landlord for losses suffered as a direct result of the damages, authorizing the landlord to effect repairs, and/or requiring the tenant to pay reasonable expenses directly associated with the repairs. While the Applicant's termination notice in this case did give more than 10 days advance written notice, a rental officer order regarding damages had not previously been issued for the Respondent to have breached and, therefore, the termination notice is not valid under section 54.

The Applicant rationalized their request for unconditional termination of the tenancy as being due to the extent of renovations and repairs required to return the premises to a habitable condition. While I certainly appreciate that there are extensive repairs required, none of the damages appear to affect any of the vital services to the premises and do not seem to render the premises uninhabitable. The repairs do need to be completed, but the Respondent has been living with the damages for some time and has indicated he is prepared to continue living with them. The Respondent has also offered to arrange for the repairs to the walls himself by his own people. The repairs as a whole would likely be effected more smoothly and quickly if the contractors had unlimited access to a vacant property, but they are also repairs that can be completed while the premises is occupied with the correct coordination and the direct cooperation of the Respondent. As previously mentioned, the Applicant has acknowledged that at this point the repairs would not be completed at the earliest until the next fiscal year.

The Respondent's cooperation and compliance with his obligations is the key to the success of this tenancy going forward. Had the Respondent complied with his obligation not to permit DB to live with him it is likely the majority of the damages would not have occurred. Had the Respondent cooperated with the Applicant to move his property when requested then the flooring would already be replaced. Had the Respondent arranged to remove the chattels stored in the yard years ago when he promised to this situation would not be aggravated by that ongoing breach.

Being cognizant of the Respondent's status as an Elder balanced against the repeated and extensive damages, uncleanliness, and non-compliance with the obligation not to permit unauthorized occupants to reside in the premises, I am satisfied termination of the tenancy agreement and eviction are justified but on a conditional basis. If the Respondent wants his tenancy to continue he must ensure DB vacates the premises, he must ensure the premises is returned to an ordinary state of cleanliness, he must ensure the property stored in the yard is removed, and he must not cause or permit to be caused any further damages to the rental premises.

Orders

An order will issue:

- prohibiting the Respondent from causing or permitting further damages to be caused to the rental premises (p. 42(3)(b));
- requiring the Respondent to comply with his obligation to maintain the ordinary cleanliness of the rental premises (p. 42(3)(b));
- requiring the Respondent to comply with his obligation to not permit unauthorized occupants to reside at the rental premises (p. 45(4)(a));

- terminating the tenancy agreement November 30, 2022, unless:
 - a) any and all unauthorized occupants have vacated the rental premises;
 - b) the rental premises has been returned to an ordinary state of cleanliness;
 - c) the Respondent's property has been removed from the residential complex yard; and
 - d) no further damages to the rental premises or residential complex have been caused by the wilful or negligent conduct of the Tenant or persons permitted on the premises by the Tenant (p. 42(3)(f), p. 45(4)(e), ss. 83(2)); and
- evicting the Respondent from the rental premises December 1, 2022, if the termination of the tenancy becomes effective (p. 63(4)(a), ss. 83(2)).

Adelle Guigon
Rental Officer