

IN THE MATTER between **DM**, Applicant, and **PG**, 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 **city of Yellowknife in the Northwest Territories**;

BETWEEN:

DM

Applicant/Landlord

-and-

PG

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	October 30, 2023
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	DM, the Applicant TJ, Witness for the Applicant RM, representing the Respondent
<u>Date of Decision:</u>	October 31, 2023

REASONS FOR DECISION

An application to a rental officer made by DM as the Applicant/Landlord against PG as the Respondent/Tenant was filed by the Rental Office October 19, 2023. 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 October 21, 2023.

The Applicant alleged the Respondent had repeatedly and unreasonably caused disturbances, had permitted an unauthorized occupant to reside with him, had permitted illegal activities to occur in the premises, had permitted a dog to remain in the premises, had failed to maintain the ordinary cleanliness of the rental premises, had repeatedly permitted smoking in the premises, and had repeatedly failed to pay rent on time. An order was sought for compensation for cleaning costs, compensation for costs of repairs, termination of the tenancy, and eviction.

An expedited hearing date was granted given the allegations of sexual harassment and repetitive unsanitary and unhealthy conditions in the rental premises and residential complex. A hearing was held October 30, 2023, by three-way teleconference. DM appeared as the Applicant with TJ appearing as a Witness for the Applicant. RM appeared on behalf of PG, although no written authorization was received from PG for RM to represent him at this hearing. PG was personally served notice of the hearing on October 21, 2023. It was reported at the hearing that the Respondent had subsequently left on a pre-scheduled and pre-paid vacation where he was apparently unable to dial into the hearing from, and that he would be returning this week. 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 DM and PG beginning February 1, 2022. I am satisfied a valid tenancy agreement is in place in accordance with the Act. I will note at this point that the Respondent's representative is also the Respondent's Roommate, but he is not a joint tenant to the tenancy agreement.

Late payment of rent

The written tenancy agreement specifies that the monthly rent is \$2,700 and is due on or before the 1st of each month. The Applicant indicated that the Respondent was late paying the rent every month of the tenancy, usually only by a day, but in several months this calendar year the rent was late by several days.

Explanations were offered suggesting that the Respondent's efforts to pay the rent by EMT were hindered by limits on how much could be transferred in one day. The Respondent had claimed previously to the Applicant, and the Respondent's representative alluded to the same, that the Respondent would pay what he could on the 1st and then send the rest on the 2nd of the month. This, however, does not explain the late payments of several days in several months.

The limitations on EMT payments are a known factor that the Tenant is obligated to account for when making his rent payments. The rent is due on or before the 1st of each month, so if the Tenant wants to pay the rent by EMT then he should be arranging to make those transfers two days before the rent is due in order to satisfy his obligation.

The Applicant confirmed that there currently are no rental arrears, but that the rents for February, April, September, and October were all paid several days past their due date.

I am satisfied the Respondent has repeatedly failed to pay the rent when due.

Damages

The Applicant claimed that in the course of having several parties during the tenancy damages had occurred to fence railings, doors, lawn furniture, and shelving. No photographs were provided of those damages, and no costs of repairs were provided, but the Applicant testified that he had repaired what he could himself and what couldn't be repaired was disposed of. At this point he is not in fact seeking compensation for costs, just acknowledgement of the Respondent's responsibility for the damages resulting from disturbances.

The Applicant further testified to and provided photographic evidence of damages to the tile grouting and wood trim in the bathroom and living room caused by the Respondent's dog being permitted to urinate and defecate in those rooms and then not adequately cleaning up after the dog. The Applicant related at least one incident when they entered the premises for an inspection after giving notice to observe that, despite the Respondent's effort to clean up the dog's leavings, the accumulated waste seeped up through the tile grouting and the urine-filled towel was left on the floor. The premises smelled strongly of the urine and faeces, and there was condensation of those waste products collecting on the windows. The premises as a result was so unsanitary that food could not be prepared there. A recent visit earlier this month reflected no substantive change to those conditions.

The Respondent's representative made no comments regarding the damages caused during the parties, other than to claim that the Applicant's Witness often participated in the parties.

The Respondent's representative disputed that there were any extensive damages to the premises caused by the dog, who he claimed only occasionally urinated inside the premises. He claimed that the dog was taken out of the house on occasion, was well cared for, and that there was no damage that could be proven.

There being no evidence or testimony to the contrary with respect to the damages resulting during the claimed parties, I am satisfied the Respondent is responsible for causing those damages and that the Respondent did not repair those damages as required under subsection 42(1) of the Act.

With respect to the claimed damages to the flooring resulting from the dog's behaviour, the Applicant did provide photographs taken October 19th which show dirty blankets, pet hair, what appears to be staining on the wood trim, and condensation on the windows. The Applicant's testimony on this matter is more credible than the Respondent's representative's testimony.

I am satisfied on a balance of probabilities that the Respondent permitted the dog to repeatedly urinate and defecate in the bathroom and part of the living room, that the Respondent failed to adequately clean up after the dog, and that the resulting damages extended not only to affecting the flooring and wood trim, but also to the unsanitary condition of the premises. I am also satisfied that this behaviour is ongoing.

Uncleanliness

Subsection 45(2) of the Act requires the Tenant to maintain the ordinary cleanliness of the rental premises. The Applicant provided evidence, as previously mentioned, of the damages caused to the premises by permitting the dog to urinate and defecate inside the premises, but the resulting unsanitary conditions and failure to adequately clean up after the dog also constitute a failure to maintain the ordinary cleanliness of the premises.

Additionally, the Applicant provided evidence of the Respondent repeatedly failing to properly dispose of household garbage in the bins provided by the City of Yellowknife. Those bags of garbage have been left to accumulate on the porch, not only creating an unclean area but also interfering with the neighbouring tenant's possession and enjoyment of the residential complex.

The Respondent's representative acknowledged that the garbage would accumulate, but claimed that was only because the garbage bins provided for the property were not large enough to accommodate the amount of garbage created by both tenants in the premises. He claims that they asked the Landlord to request an additional bin for the property from the City, but that never came. He also claimed that they would routinely make arrangements for their garbage to be picked up and dropped off at the dump.

To clarify, the residential complex is a house comprised of two rental units. The Respondent resides in the main floor unit and another tenant resides in the lower floor unit. Both tenants access their respective units through the same front entrance area.

The Applicant testified that he and his Witness resided in the Respondent's unit for 10 years before renting it out and they never had a problem with the size of the garbage bin. The issues with garbage accumulation occurred throughout the tenancy except through the brief period that the Respondent's representative moved out of the premises this summer. The issue began again immediately before the wildfire evacuation and continued after everyone returned from the evacuation.

I am satisfied, both with respect to the uncleanliness resulting from the dog and with respect to the improper disposal of the garbage, that the Respondent has repeatedly failed to comply with their obligation to maintain the ordinary cleanliness of the rental premises.

Smoking

The Applicant alleged that the Respondent and his Roommate and guests were smoking in the premises to such an extent that the odour was embedded in the property and was transferring into the front porch and the neighbouring tenant's rental premises. The Applicant claimed that smoking was prohibited in the premises and that the Respondent and his Roommate were aware of that and been repeatedly asked not to smoke in the premises.

The Respondent's representative did not dispute that they had been smoking in the premises, and he recalled being told not to smoke in the premises, but indicated that the tenancy agreement does not specifically prohibit smoking.

In that regard the Respondent's representative is correct: the written tenancy agreement does not specifically prohibit smoking in the premises. However, the breach in question is perhaps less about smoking in a non-smoking premises and more about smoking to the extent of causing damage and disturbances. It is in that regard that I am satisfied the Respondent has been permitting such extensive smoking at the rental premises that it has caused disturbances. The Applicant has provided evidence establishing that repeated efforts were made to resolve the smoking issue with the Respondent, without success.

Disturbances

The Applicant testified that during the tenancy there have been repeated parties at the rental premises which have gone all night and disturbed not only the neighbouring tenant but other residents in the neighbourhood. The partying included incidents of physical altercations and

property damage, as previously mentioned. There have been no issues since returning from the evacuation in September, but the parties were a consistent problem throughout the summer, occurring upwards of three times per week.

The Respondent's representative had received no instructions from the Respondent on how to respond to this claim.

The previously referenced accumulation of garbage in the front porch also constitutes a disturbance given it interfered with the neighbouring tenant's possession and enjoyment of the residential complex.

And the previously referenced excessive smoking in the premises constitutes a disturbance given it transferred into the neighbouring tenant's rental premises, interfering with her enjoyment of the rental premises.

I am satisfied there have been repeated and unreasonable disturbances caused for which the Respondent is responsible.

Illegal activities

Drug-related activity

The Applicant provided evidence alleging that throughout the tenancy the Respondent's representative had been engaging in drug-related activity from the rental premises. Efforts to resolve the issue through the Respondent were not successful. The issue subsequently arose again when the Respondent and his Roommate reported a theft of money from their premises to the Landlord on May 8th. It was not explicitly stated that the stolen items included drugs, but the Applicant and his Witness interpreted the implication to mean it was. The neighbouring tenant also told the Applicant and his Witness that the Respondent's Roommate had interrogated her about the theft and her impression was that it was about drugs as well. The Applicant spoke with the Respondent about the matter, and despite promising that the activity would end immediately it did not. The Applicant testified that when he spoke directly with the Respondent, the Respondent admitted the drug-related activity.

The Respondent's representative denied that the theft had anything to do with drugs, and that it was only about money that had gone missing from the premises. They spoke to the Landlord about the issue, asked for the door code to be changed as a precaution, and told the neighbouring tenant about it, asking her to keep an eye out for the missing money. The Respondent's representative denied that he interrogated the neighbouring tenant.

While there does appear to be suspicious activity occurring, I cannot be satisfied that the suspected drug-related activity is necessarily illegal given it has not been made clear whether the drugs in question were illegal or whether there was any direct observation of illegal sale or distribution.

Harassment and unlawful entry

The Applicant provided evidence from the neighbouring tenant alleging that the Respondent's Roommate had been sexually harassing her and unlawfully entering her premises. The behaviour had been occurring over a series of months, starting with unwanted advances and then culminating with the Respondent's Roommate waiting for the neighbouring tenant in her own bed. These invasions appear to have occurred between the end of March and the end of June.

The neighbouring tenant acknowledged having initially asked the Respondent's Roommate to water her plants when she was at the mine site, but she did not invite or consent to the Respondent invading her privacy. The Respondent's Roommate's behaviour has made the neighbouring tenant feel unsafe in her own home and anxious for what he may do next. There was a relaxing of these feelings for a brief time at the end of June when the Respondent's Roommate was asked to move out, but then he continued attending the Respondent's premises and ultimately moved back in.

Initially the neighbouring tenant wasn't going to say anything to the Landlord about the matter as she was hopeful it would just go away and stop, but when the Respondent returned from evacuation with the Roommate the neighbouring tenant's anxieties returned and she continued to be concerned for her safety. In response to these concerns, not only did she report them to the Landlord but she also began asking for overtime at the mine site in an effort to stay away from her home and avoid potential contact with the Respondent's Roommate. When the Applicant became aware of the issue he immediately made this application to a rental officer and promised the Respondent he would provide a safe place for her until the matter was resolved.

The Respondent's Roommate denied the allegations that he was sexually harassing the neighbouring tenant. He claimed that they were good friends, that she had asked him to take care of her place while she was at the mine site, and that she gave him permission to sleep in her bed while she was away when he needed some alone time away from the Respondent. He denied having made any sexual advances to her, that he believed she was just a good friend. He claimed he didn't know what her schedule was, and confirmed that they had stopped talking for a while, but he didn't know why. He claimed he hasn't talked to her since mid-July, and hasn't even seen her in passing at the premises since returning from the evacuation.

The Respondent's Roommate provided a screenshot of a text message chat between himself and the neighbouring tenant as evidence of the alleged arrangement between them. That text message exchange occurred on March 18th and referred to the Respondent's Roommate asking the neighbouring tenant if he could stay on her couch that night while the Respondent had a birthday party. The neighbouring tenant said he could, asked him not to bring anyone down, and gave him permission to sleep in her bed. The Respondent's Roommate agreed to take care of her place and would never let anyone in there.

To my mind that single text message from March 18th does not constitute or represent ongoing permission to sleep at the neighbouring tenant's premises. Any subsequent agreement to water the plants while she was at work would seem particularly specific to entering the premises for that function only. In reviewing the material and considering the testimonies, it seems likely to me that the Respondent's Roommate's behaviour towards the neighbouring tenant was manipulative and understandably made the neighbouring tenant uncomfortable and uneasy. He appears he was taking advantage of a single act of kindness and subsequent permission to enter for a specific purpose to exploit an opportunity. The neighbouring tenant's reactions and response are reasonable in the circumstances of the Respondent's Roommate's return to residing at the Respondent's premises.

I feel it prudent to further explore the Respondent's Roommate's residency at this juncture. The written tenancy agreement does not prohibit having a Roommate, and does provide for a maximum of two occupants at the rental premises. It is evident that the Roommate has been residing with the Respondent since the beginning of the tenancy. The dog is owned by the Roommate and has been kept at the premises since the beginning of the tenancy as well. By and large, all of the issues so far discussed have directly involved the Roommate.

Evidence was presented establishing that in June 2023 the Roommate threatened the Respondent and scared him to the degree that he nervously took action, with the support of other friends, to ask the Roommate to move out. The Landlord was kept apprised of this situation as it unfolded, and offered support if necessary to facilitate that discussion between the Respondent and the Roommate. The Roommate moved out at the end of June, and was expected to return only for the dog and his belongings. Arrangements were made for someone to be home to supervise the Roommate's visits. The Respondent remained engaged with the Landlord and continued assuring the Landlord that the dog would not remain and that the Roommate would not return. It appears that commitment only lasted about two weeks before the Roommate moved back in with the Respondent, but the Respondent actively avoided informing the Landlord of the Roommate's return.

Video surveillance on the front door of the complex, activated at the request of and by agreement with both the Respondent and the neighbouring tenant in early July due to evidence that the Roommate had been entering both the rental premises without authorization, confirmed that it appeared the Roommate had moved back in with the Respondent by the end of July. It appears the Roommate had never fully moved his belongings out. Text messages from the Respondent well into August continued to express the lie that the Roommate had not moved back in and that the dog would be given away to the SPCA if necessary.

The Respondent's evasions regarding the Roommate's continued presence at the rental premises aggravate the situation. By permitting the Roommate to return after repeatedly promising that he wouldn't, the Respondent has accepted responsibility for the Roommate's actions as well as his own, and the consequences thereof. With the understanding that the Roommate would no longer be resident in the residential complex, the neighbouring tenant expected to have some relief to her concerns. Although there is no evidence to suggest that upon his return the Roommate continued entering the neighbouring tenant's premises, his mere presence in the building understandably is cause for concern in the circumstances.

I am satisfied on a balance of probabilities that the illegal acts of unlawfully entering the neighbouring tenant's premises and of harassing the neighbouring tenant were committed by the Respondent's Roommate during the tenancy.

Termination of the tenancy and eviction

I am satisfied given the repeated pattern of failing to pay the rent on time, the repeated and unreasonable disturbances, the repeated failure to maintain the ordinary cleanliness of the rental premises, and the illegal acts justify termination of the tenancy agreement.

The Respondent's representative acknowledged at the hearing that he and the Respondent had already been speaking about this issue and agreed that they would not dispute the termination of the tenancy. They have taken steps to locate alternate accommodations, but have so far been unsuccessful. He suggested that they just needed "the standard 90 days" to vacate. I do not know where he got the impression that there is a "standard 90 days" for terminating a tenancy under the circumstances raised in this application.

While I appreciate that the Respondent and his Roommate have already started taking steps to find alternate accommodations, given the circumstances that I have heard I am not prepared to permit their tenancy to continue. The direct impact on the neighbouring tenant is too great, as is the risk of further damages to the premises.

Order

An order will issue:

- terminating the tenancy November 3, 2023 (p. 41(4)(c), p. 43(3)(d), p. 45(4)(e), p. 46(2)(c));
- evicting the Respondent and his Roommate November 6, 2023 (p. 63(4)(a); and
- requiring the Respondent to pay compensation for use and occupation of the rental premises (overholding rent) at the rate of \$88.77 for each day they remain in the rental premises after November 3, 2023, to a maximum of \$2,700 per month.

Adelle Guigon
Rental Officer