

IN THE MATTER between **RLDL**, Applicant, and **KM**, 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 **Jerry Vanhantsaeme**, Rental Officer, regarding a rental premises located within the **city of Yellowknife in the Northwest Territories**;

BETWEEN:

**RLDL**

Applicant/Landlord

-and-

**KM**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:** July 24, 2024

**Place of the Hearing:** Yellowknife, Northwest Territories

**Appearances at Hearing:** AR, representing the Applicant

LS, representing the Applicant

CB, Legal Counsel for the Applicant

KM, representing the Respondent

**Date of Decision:** August 7, 2024

### **REASONS FOR DECISION**

An application to a rental officer made by RLDL as the Applicant/Landlord against KM as the Respondent/Tenant was filed by the Rental Office on March 11, 2024. 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 on May 11, 2024.

The Applicant claimed the Respondent has failed to pay rent on time and in full resulting in the accumulation of rental arrears and caused disturbances and distressed other tenants residing in the rental complex. An order was sought for payment of the rental arrears, termination of the tenancy agreement, and eviction.

A hearing was scheduled for May 21, 2024, but was rescheduled for July 24, 2024, due to the Applicant failing to providing the proof of service to the rental office in time for the hearing. The hearing was rescheduled for July 24, 2024. All parties were provided notice of the scheduled hearing. The hearing proceeded on July 24, 2024, by three-way teleconference. AR and LS appeared representing the Applicant. CB appeared as Legal Counsel for the Applicant. KM appeared as the Respondent. Due to the severity of the claim, the hearing was adjourned *Sine Die* subject to the Applicant and Respondent providing supporting documentation to the claim.

From this point forward, the Applicant will be known as the Landlord and the Respondent will be known as the Tenant.

#### *Service of Documents*

In review of evidence provided in the application and during the hearing the Rental Officer questioned the service of documents:

- The Landlord entered into evidence that the Tenant was personally served with the application and notice of attendance for the May 21, 2024 scheduled hearing on May 11, 2024. The hearing was rescheduled as the Rental Office did not receive the proof of service to ensure service was done in accordance with the *Act*. On June 11, 2024, the Rental Office employed a process server to serve the Tenant with a "Notice of Attendance" for the July 24, 2024 hearing. The process server provided to the Rental Officer an "Affidavit of Service" confirming BU was served at the rental premises. The service done on BU was done in accordance with subsection 71(7) of the *Act*.

- On July 8, 2024, the Tenant contacted the rental office regarding a break in at her apartment and the Landlord not responding to her. The Rental Office informed the Tenant of the application by the Landlord with regards to their tenancy and provided all required documents within the timeline to proceed with the hearing. As noted above, the Tenant was in attendance at the hearing.
- The July 8, 2024 email from the Tenant claimed that they have been residing in Norman Wells. This prompted the Rental Officer to question service of the application and as to whether it was served in accordance with paragraph 71(1)(a) of the *Act*. The Rental Officer questioned the Landlord on who served the application. The Landlord's representative testified the documents were served by a peace officer. The Rental Officer questioned this further on the peace officer status, was it through the Sheriff's Office. The representative testified it was from the Yellowknife Office, but then could not confirm if it was either a peace officer or security guard. Service had been arranged through a colleague.
- The Rental Officer questioned the Tenant's relationship with BU. The Tenant claims they have no knowledge of BU and they are confused on why they were served. The Tenant is unsure on how they accessed the apartment, as it could have been through a window or that they got a hold of a key. Upon verification, an RCMP report file number X was provided.

The Rental Officer was concerned in regards to the testimony of both the Landlord and the Tenant in regards to the service of documents and the truthfulness of service. However, as the Tenant was served with the application package by the Rental Office within the appropriate timeline and with the attendance by all parties, the hearing was able to proceed.

#### *Tenancy Agreement*

Evidence was provided establishing a fixed term tenancy agreement commencing February 15, 2024. I am satisfied a valid tenancy agreement is in place in accordance with the *Act*.

In review of the tenancy agreement, the Rental Officer raised questions regarding context of three sections. Sections of concern were E1 - Vacancy and Premises, E2 - Re-entry, and E5 - Insolvency. The Rental Officer noted these sections are leading to a commercial tenancy agreement. Legal counsel responded that E1 and E2 were more to the extent of abandonment. And E5 - Insolvency, also is of concern. Legal Counsel stated the Landlord will be implementing house rules and the tenancy agreement will be reviewed.

### *Rental Arrears*

Entered into evidence was a May 9, 2024 customer aged detail of account for the Tenant's rent account. The aged account indicates the Tenant had failed to pay rent in the amount of \$6,150.00. During the hearing, Legal Counsel stated the Tenant has not paid rent and has accumulated rental arrears from February 14 to June 30, 2024 in the amount of \$10,250.00. Legal Counsel also advised the Landlord is not seeking payment after June 2024.

During the hearing, the Rental Officer questioned the Tenant as to why they were not paying rent. The Tenant responded they were not paying due to the cockroaches. The Tenant was advised they are not allowed to do a rent strike.

The Rental Officer requested, and was provided, a rent report to view the breakdown of rent. The rent report indicated rent was not paid from February 15 through June 30, 2024, resulting in the Tenant accumulating \$10,250.00 in rental arrears.

I am satisfied the rent report accurately reflects the Tenant's rent account.

### *Disturbances and Rental Premises*

Legal Counsel for the Landlord indicated there has been repeated and unreasonable disturbances cause by the Tenant or their guests, some of which were reported in CBC news. The Landlord entered into evidence, text messages dated February 26, 2024 and May 5, 2024, an email dated May 7, 2024, and a CBC news article. The Landlord also entered into evidence, photos of damages caused by the Tenant or their guests. Photo evidence included writing on walls, blood stains, and broken windows. The Landlord's representative also testified they had multiple complaints from other tenants regarding behaviour and homeless people entering the building causing issues.

The Rental Officer scrutinized the text messages and emails presented as they were undated and could not confirm direct relationship to this tenancy. The Rental Officer also scrutinized the CBC article presented as evidence. The Rental Officer questioned if any notices of disturbances were provided to the Tenant. Legal Counsel for the Landlord informed the Rental Officer via email no notices of disturbances had been issued.

The Rental Officer requested dates of the text messages and email to confirm correspondence took place within the tenancy and the relationship of the tenancy with the CBC article. In review of the items presented into evidence:

- February 5, 2024, text message complained of cigarette smoke smell coming from the Tenant's unit into the hallway and the Tenant bringing people in and out of the rental complex;

- May 5, 2024, text message was complaining about the occupants in unit 13 (Tenant's unit) and to the fact they had almost gotten stabbed by the next door neighbour. The text message also complained about the conditions of the property itself in regard to other disturbances, cleanliness, insect infestations, and condition of the complainant's unit. The text message also claimed drug dealing from the rental unit; and
- May 7, 2024, complaints of people smashing their unit door, demanding the door be opened, and that they do not feel safe within their rental unit. The email also stated the writer had contacted the Landlord's office about security and the Landlord is not doing anything. The email also stated they had contact the police multiple times.
- CBC Article dated February 27, 2024, of two people being arrested in the rental complex and charged with assault. The Landlord could not provide evidence of relationship with the Tenant's unit.

During the hearing, the Tenant testified over the years there has been numerous incidents of homeless people in and out of the rental complex before they had moved there. The Tenant testified her mother resided there previously and there were already issues with broken windows, graffiti; to the point to which her mother did not feel safe residing in the rental complex. The Tenant also felt the accusation of disturbance caused by her friends should be disregarded.

The Tenant testified they moved to Norman Wells for employment and vacated the unit on April 15, 2024. Proof of Tenant's travel to Norman Wells and offer of employment was provided and showed the Tenant left Yellowknife on April 14, 2024 to start work on April 22, 2024.

When questioned about being in Norman Wells since April 14, 2024, the Tenant testified the unit was locked when she left, they had also been in treatment from June 4 to July 9, 2024, someone had broken in and started to reside in the unit. The Rental Officer questioned the reporting of someone in the rental premises. As noted earlier, the Tenant had reported to the RCMP. In verification of the testimony, the RCMP were contacted and informed the Rental Officer a report had been made on July 6, 2024 and they also advised that between February 15, 2024 and July 6, 2024, there has been 16 calls to the rental premises for various reasons.

During the hearing, the Tenant also testified the window to the rental premises was broken and the Landlord was to repair the window. The Tenant believes people entered the rental premises by entering through the window or by using a key to which they were not provided. They are unsure if the unauthorized people may have gotten possession of their keys. The Tenant provided a police file number which referred to an incident occurring on July 6, 2024, in which the RCMP entered the rental premises and took an injured unknown person under the influence to medical attention. In response to the Tenant's claim, the Landlord's representative testified they entered the unit to secure it and removed two people. The Landlord's representative also testified the people that were removed claimed to be related to the Tenant and the unauthorized occupants were in possession of keys to the unit and building. In response, the Tenant advised they did not give any authorization for someone to reside in the rental premises when they were not there.

The Landlord's representative also testified they are replacing doors and a non-duplication key.

#### *Abandonment of Rental Premises*

Legal Counsel for the Landlord indicated it is the Landlord's understanding the Tenant had abandoned the rental premises and the tenancy has ended in accordance with the *Act*. As the Tenant testified during the hearing, they were trying to address the unauthorized use of the rental premises by requesting RCMP assistance and reaching out to the Landlord to secure the unit, I find the Tenant did not abandon the unit.

#### *Tenant Concerns*

During the hearing, the Tenant testified prior to her moving into the rental premises, there was an infestation of cockroaches with a nest under the sink. The Tenant testified the Landlord was going to help them, they were in a desperate situation when moving to Yellowknife and needed a place to live. As indicated earlier, the Tenant stopped paying rent as the Landlord had not addressed the infestation.

The Tenant also challenged the Landlord's claim regarding rent and that one month of payment should have been made and the Tenant was waiting for a new refrigerator and the addressing of the cockroaches.

#### *Termination of tenancy and eviction*

Based on the evidence and testimony at the hearing, I am satisfied that the Tenant has repeatedly breached their obligation under subsection 41(1) of the *Act* to pay their rent when due. On that basis alone, termination of the tenancy agreement and eviction would be justified.

During the hearing, the Tenant had requested the claim for disturbances be withdrawn. In review of the testimony, evidence provided, and the provision of information from the RCMP to the fact of 16 calls being made to the rental premises since the tenancy started, the request to strike from the record is **denied**.

The Tenant maintained possession of the rental premises, thus remains ultimately responsible for activities that occur in the unit whether they were there or not.

Additionally, although there are complaints about disturbances by occupants of the rental premises, even though the Tenant claimed not to be residing in, they remained in possession and therefore ultimately responsible for occurrences taking place there.

*Orders*

- requiring the Tenant to pay rental arrears in the amount of \$10,250 (p.41(4)(a));
- terminating the tenancy effective August 21, 2024 (p. 41(4)(c), p. 43(3)(d)); and
- evicting the Tenant on August 22, 2024 (ss. 63(4)(a)).

*Note*

Should the Tenant not vacate the property on or prior to the termination date and remove their belongings, the Landlord must ensure they follow section 64 and 65 of the *Act* with respect to handling of those belongings.

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Jerry Vanhantsaeme  
Rental Officer