

IN THE MATTER between **AY**, Applicant, and **AWHL**, 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:

AY

Applicant/Landlord

-and-

AWHL

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: August 12 and August 16, 2024

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: AY, representing the Applicant

SF, witness for the Applicant

EF, witness for the Applicant

AWHL, representing the Respondent

WL, representing the Respondent

Date of Decision: August 19, 2024

REASONS FOR DECISION

An application to a rental officer made by AY as the Applicant/Landlord against AWHL and WL as the Respondents/Tenants was filed by the Rental Office July 9, 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 Respondents on July 10, 2024.

The Applicant alleged the Respondents failed to vacate the rental premise after being give notice of termination multiple times over the past 5 years. The Applicant claimed due to tax and health conditions, it was recommended she dispose of the property. The Applicant also claimed the Respondents have caused disturbances, damages, and failed to maintain the ordinary cleanliness of the rental premises to an extent as to cause a health and safety hazard to themselves and other tenants within the rental complex. An order was sought for the Respondents to pay rental arrears, termination of the tenancy agreement, and eviction.

An expedited hearing dated was granted and scheduled for August 12, 2024, in Yellowknife, based on evidence provided in the application in regards to an immediate safety concern existing and risk of harm to the tenants and other tenants within the rental complex. An in-person hearing was carried out upon request of the Respondents who felt they could communicate better this way than on teleconference.

AY appeared representing the Applicant. SF and EF appeared as witnesses for the Applicant. AWHL and WL appeared representing the Respondents. Due to the severity of the claim, testimony and evidence provided by all parties, and under paragraph 74(1)(e) of the *Act*, whereas a rental officer may enter rental premises at any reasonable time after given reasonable notice for, for the purpose of discharging his or her duties under this Act or the regulations, the hearing was adjourned and rescheduled to continue at the rental premises at 3:00 p.m. August 16, 2024. All parties were notified of the continuation at the hearing on August 12, 2024 and the Applicant was also directed and provided written notice to the Respondents of the site visit. I reserved my decision after the hearing and after the visit to the rental premises to review the testimony and evidence provided.

Rental Complex

The rental complex consists of three rental units, one on the upper floor and two on the lower floor. The Respondents reside on the lower floor in a two-bedroom unit which has a shared bathroom and laundry with the second unit on the lower floor. The lower floor also a storage closet used by the Respondents and a furnace room.

Preliminary matter/tenancy agreement

The Applicant claimed the rental complex was managed by her deceased husband. The Applicant testified the Respondents pay rent separately and in different amounts as one Respondent has duties to reduce their rent charge such, as the ability to access the power for parking, and the second Respondent had accrued rental arrears. The Respondents testified they did not occupy the rental premises at the same time.

Based on evidence provided and testimony, I find the tenants have sole, not joint tenancies. However, the claim made by the Applicant indicates the Respondents have joint and separate claims within the application. In response to the application, the style of cause in this order will be amended from AY v. AIWHL and WL to **AY v. AWHL**. A second order will be issued in regards to AY v. WL.

Disturbances

Subsection 43(1) of the *Act* states *"A tenant shall not disturb the Landlord's or other tenants' possession or enjoyment of the rental premises or rental complex."*

Entered into evidence were statements from other residents of the rental complex (SF and EF). To support these statements, the two residents testified in the hearing. In both the statements and testimony, the residents stated the Respondents would cook at all hours of the evening and due to the uncleanliness of the stove, the rental complex would fill with smoke. S testified, at one point the whole complex was full of smoke and when investigated, found a pot on the stove had been left unattended and boiled over. S had called out, then A came from his room in an intoxicated state. S's statement and testimony noted the Respondents cooking would often cause smoke or odours in the rental complex and disturb her within her unit. E testified there are times he would come home and the complex would be filled with smoke and the odour was terrible.

During the hearing, the Applicant alleged the furnace was turned off more than once of by one of the two Respondents to which this application was made. The Applicant testified there are two furnaces in the rental premises, one for the upstairs apartment and second for the down stairs apartments. As a result, technicians were required to restart the furnaces. To support this claim, E provided testimony with regards to attempting to restart the furnaces and an invoice from a technician was also provided.

A testified he has not touched the furnace in over 10 years and once he became aware of the cooking disturbing other tenants, they changed their cooking methods to try and avoid causing further disturbances.

Ordinary cleanliness

Subsection 45(2) of the Act requires the Tenant to maintain the ordinary cleanliness of the rental premises.

As noted in the disturbances portion of the reasons, the statements from SF and EF included claims the tenant kept the residence in an unclean condition. In S's statement, she had to constantly remind the tenants to clean and dispose of their garbage within the common areas. S also testified it is not nice coming home to the smell of the rental complex. E's statement noted the tenants are hoarders, they leave leftovers everywhere, food is scattered, rotten and not cleaned up, and recycling left everywhere. E's statement also pointed to the condition of the rental premises attracting pests to the rental complex and they have caused a fire hazard by their cooking process. E testified the shared bathroom was not kept clean. The Respondents would wear outside footwear in the bathroom, the rental premises would be filled with smoke when he gets home.

Entered into evidence was a letter from a contractor regarding the condition of the Respondent's rental premises. The letter stated they were in shock of the state it was in and the smell, to the point they would be sick. The unit was filthy and full of garbage. The contractor also advised the rental premises would need to be gutted from floor to ceiling.

Photos entered into evidence overwhelmingly supports the Applicant's claim of the unsanitary condition of the rental premises. Photo evidence depicts debris, food boxes, and garbage cluttered throughout the rental premises. Upon being served with the application to the rental officer, A did take steps to clean and there is a noted difference in the condition. Upon the site visit, it was noted there was a marked improvement in the organization of the unit, however, it remains in an untidy condition. It was also noted, the Applicant has been willing to assist the Respondents by providing the garage for storage and disposal.

Building security

The Applicant claimed the Respondents left the rental complex unlocked resulting in an attempted break and enter to another unit within the complex. The attempted robbery did not occur, as it was discovered by W while in process. During the hearing, W testified some times he leaves the door open due to heat or while cooking.

During the hearing, it was also noted other residents in the rental complex do open the door due to heat but are also on that side of the building and remain aware.

As the building is left unsecured by multiple residents, it is difficult to pinpoint who the actual and continued cause of the security issue is and therefore disregarded the issue of building security in the application.

Termination of the tenancy agreement and eviction

As part of the application, the Applicant claims they were advised to dispose of the rental complex for health and tax reasons. The Applicant claims they have advised the Respondents they are looking to renovate the rental premises in preparation for sale. The Applicant testified they had given an eviction notice to the Respondents.

58. (1) A landlord may apply to a rental officer to terminate a tenancy if the landlord

(a) requires possession of the rental premises for use as a residence by

- (i) the landlord,
- (ii) the spouse, child or parent of the landlord, or
- (iii) a child or parent of the spouse of the landlord.

(b) has entered into an agreement of sale of a rental premises, and

- (i) is required by the agreement of sale to deliver vacant possession of the rental premises to the purchaser, and
- (ii) the purchaser requires possession of the rental premise for use by
 - (A) the purchaser,
 - (B) the spouse, child or parent of the purchaser, or
 - (C) a child or parent of the spouse of the purchaser.

An order for termination is not approved on the basis of renovations for the sale of the property. However, in review of the evidence, testimony, and site visit, I find the Applicant's claim for disturbances and uncleanliness of the rental premises to be valid. While there has been some improvement in the cleanliness, the rental premises is cluttered and creates a significant safety hazard to the Respondents, other tenants, and the rental complex itself. A conditional order for termination and eviction will be issued based on cleanliness and disturbances.

Orders

An order will be issued:

- requiring the Respondent to comply with their obligation not to disturb the possession and quiet enjoyment of the rental premises or complex and not breach that obligation again (p. 43(3)(a) 43(3)(b));
- requiring the Respondent to comply with their obligation to maintain the ordinary cleanliness of the rental premises and not breach that obligation again (p. 45(4)(a), p. 45(4)(b));
- authorizing the Applicant to enter the rental complex after September 15, 2024, to effect the necessary cleaning and require the Respondent to pay the Applicant the reasonable costs associated with the cleaning, should the rental premises not be returned to a satisfactory level of cleanliness (p. 45(4)(d), ss(83(2)));
- terminating the tenancy agreement on October 31, 2024, unless there are no further disturbances caused by the Respondent or their guests or failed to maintain the rental premises in an ordinary state of cleanliness (p. 43(3)(d), p. 45(4)(e), ss. 83(2)); and
- evicting the Respondent from the rental premises, November 1, 2024, should the tenancy be terminated (ss. 63(4)(a)).

Jerry Vanhantsaeme
Rental Officer