

IN THE MATTER between **HNT**, Applicant, and **JC**, 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 **Janice Laycock**, Rental Officer, regarding a
rental premises located within the **city of Yellowknife in the Northwest Territories**;

BETWEEN:

HNT

Applicant/Landlord

-and-

JC

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	January 15, 2025
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	PS, representing the Applicant JC, Respondent MF, witness for the Respondent
<u>Date of Decision:</u>	January 17, 2025

REASONS FOR DECISION

An application to a rental officer made by YHA on behalf of HNT as the Applicant/Landlord against JC as the Respondent/Tenant was filed by the Rental Office October 9, 2024. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was deemed served on the Respondent by email on November 1, 2024.

The Applicant claimed the Respondent had not paid their rent when due, and was responsible for damages, their dog had disturbed other tenants and the Respondent had breached their obligations under the tenancy agreement by having a dog without approval, not maintaining the premises in a state of cleanliness, and not maintaining the utilities account. An order was sought for the Respondent to pay rent owing, pay rent on time in the future, conditional termination of the tenancy agreement, and eviction.

A hearing was held on November 13, 2024, by three-way teleconference. PS appeared representing the Applicant. The Respondent, JC, also appeared. This hearing was adjourned to allow the Applicant time to provide further evidence to support their claim for costs to clean the carpet in the hall and costs incurred as a result of the fire alarm being pulled, and to allow the Respondent time to provide documentation on their disability and need for a service animal, as well as a photo of their dog.

A hearing to resume consideration of the application was scheduled for January 8, 2025, but was rescheduled at the request of the Rental Office. The hearing to resume consideration of the application was held on January 15, 2025, by three-way teleconference. PS appeared representing the Applicant. The Respondent, JC, also appeared along with their supporting witness, MF.

Preliminary matter

During the hearing on January 15, 2025, the Applicant raised issues relating to service of evidence by the Respondent. They stated that the Respondent had not met the time lines set by the Rental Officer when the hearing was adjourned, to provide additional information by November 30, 2024, and had provided some information less than 24 hours before the hearing. They thought this wasn't fair and shouldn't be accepted.

At the hearing, I explained that it was my decision to accept the information after the date that had been agreed to at the hearing in November 2024. The Respondent did provide a picture of the dog and information from their health professional in support of a service animal on December 9, 2024, well in advance of the resumption of the hearing.

I noted that the Respondent had sent some of the information by email to the Applicant's office, but not directly to the representative for the Applicant attending the hearings. I agreed that receiving evidence the day of the hearing was not acceptable.

Under subsection 76(1) of the Act, a landlord or tenant making an application to a rental officer under this Act shall

- (a) file the application with the rental officer; and
- (b) serve a copy of the filed application on the other party
 - (i) at least five business days before the day set for any hearing, or within a different period specified by the rental officer, or
 - (ii) if no day is set for a hearing, within a period specified by the rental officer.

When information requested at a hearing is substantive, the Rental Office requires that it is provided at least 5 business days before the hearing. However, if the information is a minor update, such as an updated lease balance statement, the Rental Office has a policy allowing for that information to be received at least 24 hours before the hearing.

In this case, the information provided by the Respondent on the day of the hearing was not in accordance with our policy and was not relied upon for my decisions. I relied on the testimony of the parties, the evidence provided in December 2024, after the hearing, as well as evidence provided with the application.

Previous orders

Previous Rental Officer Order file #16732, between NTHC and JC, was issued on August 10, 2020, and required the Respondent to pay their rent on time in the future.

Tenancy agreement

The Applicant provided, as evidence, the written tenancy agreement between the parties for subsidized public housing commencing on May 13, 2015, and continuing month to month. The subsidized rent based on household income is currently \$160 per month.

I am satisfied there is a valid tenancy agreement between the parties in accordance with the *Residential Tenancies Act* (the Act).

Rental arrears

The lease balance statement provided, as evidence, represents the Landlord's accounting of monthly rents and payments received against the Respondent's rent account. According to the statement provided with the application dated October 8, 2024, the Respondent had outstanding rental arrears totalling \$547.

At the hearing, the Applicant testified that since the application was filed there had been additional charges of rent for November and December 2024, and January 2025, totalling \$480, and during this period the Respondents had made payments totalling \$480, and the balance owing remains at \$547.

The Respondent claimed their rent is paid regularly and questioned these arrears. I reviewed the lease balance statement with the Respondent, pointed out instances where no rent had been paid resulting in rental arrears accruing. These arrears accrued mainly in 2022 and 2023, but have not been paid off and remain due.

I am satisfied the lease balance statement accurately reflects the status of the Respondent's rent account and along with the Applicant's testimony, I find the Respondent currently has rental arrears owing totalling \$547, and an order will issue for payment of these arrears.

Tenant damages - cleaning

The Applicant alleged the Respondent's dog had defecated in the public hallway of the residential complex and claimed costs to clean the carpet totalling \$667.01. They provided a copy of the invoice from Carl's Carpet Cleaning Ltd. and from the property owner to clean the carpet totalling \$577.50, as well as their invoice #131704A dated June 13, 2023, to the Respondent to recover these costs plus administration fee of \$57.75 and GST of \$31.76, bringing the total to \$667.01. At the hearing, it was pointed out that GST was charged on the initial invoice, and should be deducted from the claim, bringing the revised total to \$635.25.

At the hearing in November 2024, I asked why an application had not been made sooner, the Applicant reported that they had been seeking payment but were not successful and had to seek payment through the Rental Office.

The Respondent denied that it was their dog that was responsible for the damages. The Applicant agreed to provide further evidence in support of their claim, and I adjourned the hearing to allow them to do that. When the hearing resumed, the Applicant reported that due to the date of the incident, they were unable to secure video evidence, but provided a copy of the report from the property owner about the incident. According to the report, their security camera showed a loose dog belonging to the Respondent defecating in the hallway. The property owner reported they returned the dog to the apartment and waited for the Respondent to return, the Respondent later returned and were advised about the incident and they would need to clean up after their dog, and the Respondent agreed to do so.

The Respondent again denied that it was their dog that was responsible for defecating in the hallway, they said they were home that day and their dog was not loose, and remembered the security person coming to the unit and telling them they had to clean up, which they did because they didn't want the mess in the hall, not because they were responsible.

At the hearing, I reserved my decision on the claim for these costs to consider the evidence and testimony. After further consideration, I deny the claim for costs. The Respondent has testified that their dog was not loose and was not responsible for the damages. The Applicant does not have direct knowledge of the event and is relying on a second party report from the property owner. When I weigh the evidence and testimony, I am not satisfied that the Respondent's dog was responsible for the damages.

Tenant damages - false fire alarm pulled

The Applicant claimed the Respondent's guest had pulled the fire alarm, resulting in a charge of \$2,500 from the City of Yellowknife for the fourth false alarm at the residential complex. The Applicant provided, as evidence, a copy of the invoice from the City of Yellowknife, photos from the security camera showing an individual in the hallway, pulling the alarm and then exiting the building, as well as report from the property owner indicating the guest had come from the Respondent's unit, along with the invoice to the Respondent dated June 12, 2023, #131705A.

The Respondent denied that the person who pulled the fire alarm was their guest. They did not let the person into the building, and when they showed up at the Respondent's door and wanted to come in the Respondent refused them entry. They understood that when this person left they pulled the alarm on their way out.

The Applicant committed to provide further video evidence to support their claim and the hearing was adjourned to allow them time to do that. The Applicant was unable to secure further evidence as the security camera footage is not kept past a certain date.

I denied the claim for costs relating to the false alarm. The Respondent has testified that the person who pulled the alarm was not their guest, and the Applicant has not provided evidence to dispute this testimony.

Breach of obligations - utilities

Under part 8 of the tenancy agreement, the Respondent is responsible for all utilities provided to the rental premises. The Applicant has claimed the Respondent had not maintained the utilities account. A copy of an email dated September 11, 2024, from Northland Utilities is provided as evidence. According to the email, the power was being shut off on September 11, 2024. The Applicant testified that it was shut off because the Respondent did not pay their power, as required under the tenancy agreement.

At the hearing in November, the Respondent reported that although they had an outstanding charge with the power company, they were addressing this and their power had not been shut off, nor were they on a limiter.

When the hearing resumed in January 2025, I asked what the status was of the power account. The Respondent reported that the utilities were up to date, and the Applicant did not dispute this.

Breach of obligations - pets

Under the written tenancy agreement signed by the parties, no pets are allowed in the rental units or on the grounds of the building. This is set out in both the tenancy agreement and the addendum to the agreement.

The Applicant alleges that the Respondent had two large dogs in their rental unit in violation of the tenancy agreement, and provided copies of the complaints that they received from a tenant in March 2024, about the Respondent having dogs in breach of the no pets policy and the mess they were leaving outside the building, as well as another complaint in September 2024, that the Respondent had two dogs in their rental unit that bark loudly when people walk along the hallway.

On September 23, 2024, a letter was sent to the Respondent informing them that complaints had been received, that pets were not allowed, and they needed to remove the animals before 5:00pm on Wednesday October 2, 2024 and also come into the office to sign an affidavit affirming the animal was removed, and that staff would be inspecting the unit to ensure compliance.

On October 4, 2024, a further letter was provided to the Respondent from the Applicant, regarding the Respondent's request to approve support animals in the rental unit. The Applicant denied the Respondent's request for a support animal, stating that their policy permits only one support animal per tenant, weighing 30 pounds or less.

A copy of the Applicant's policy, entitled "Pets and Special Care Animal Policy", was provided as evidence. According to this policy, although they prohibit all pets, they do allow special care animals where they are required to accommodate the needs of tenants with disabilities. Also, under this policy they recognize service animals and emotional support animals, and require a letter from the appropriate health or mental health professional attesting to the need for an animal. The "Sample Approval Letter" provided with the policy sets out the conditions that apply if the conditional approval is given for a special care animal:

1. **"Animal Requirements:** The animal must be a small dog or cat weighing less than 30 pounds.
2. **Breed Requirements:** We do not permit Pit Bulls, Dobermans, German Shepherds, Rottweilers, and other large dog breeds.
3. **Other Animals:** No animals are allowed in the unit or the yard.
4. **Responsibility for Damages:** You will take full responsibility for any damages to the unit resulting from the animal.
5. **Animal Identification:** You must provide the YHA with a clear photograph of the animal within 30 days approval of this letter.
6. **Number of Animals:** This approval applies to one support animal only. This accommodation will not extend to any replacement animals.
7. **Complaints:** You must ensure that the animal does not cause issues such as failing to pick up after the animal, aggressive behaviour, or excessive noise that may lead to complaints from neighbours."

The Applicant has claimed the Respondent is in breach of their obligation by having two dogs in their rental unit in violation of the no pets policy, and not removing the dogs after they were directed to do so when their request for a support animal was turned down due to the size and number of animals.

At the hearing in November 2024, the Respondent stated that they had cleaned up dog faeces outside the residential complex from both their dog and other dogs, and their son was moving out of the rental unit with their dog (a support animal), which would leave one animal in the rental premises. They testified that they needed their dog, Layla, to assist them with their disability.

I asked the Respondent to provide a copy of the documents provided to the Landlord documenting their need for a service animal, allowing them to redact any personal health information they did not wish to share, and to provide a photograph of the dog, so I could recognize it in any video provided by the Applicant.

Prior to adjourning the hearing in November 2024, I stated that it was my opinion that it was not reasonable for the Applicant to restrict the size of a service animal, giving the example of guide dogs for the blind which are typically larger breed dogs like labs, and well over thirty pounds. I suggested the Applicant review my Reasons for Decision on the issue of service animals, contained in Rental Officer file #17054, MPM v HO, issued on November 26, 2020, and consider amendments to their policies.

Prior to the hearing resuming in January, a picture of the dog and a copy of the letter from the health professional confirming the disability and the need for a service animal was provided. When the hearing resumed in January 2025, the Respondent reported that their son had obtained housing and was moving out with their dog. Due to their disability, it was taking some time for them to complete the move but they expected to be finished by the upcoming weekend.

The Applicant expressed concern the dog would not be removed and wanted assurances that this would happen in a timely manner and the son's dog would not return to Respondent's rental premises. I agreed to order the Respondent to complete the move by January 24th, and the Respondent agreed to do so. I also cautioned the Applicant that if, as the Respondent has indicated, their son's dog is also a service animal, and appropriate documentation is provided to the Applicant relating to this, they may need to allow the son to visit with their service animal.

I also asked the Applicant if there had been any further complaints from other tenants about disturbances relating to the dogs barking. They reported that no further complaints had been received.

Termination of the tenancy agreement and eviction

In their application, the Applicant sought conditional termination of the Respondent's tenancy agreement due to rental arrears under paragraph 41(4)(c) of the Act, disturbances under paragraph 43(3)(d) of the Act, and considering the Respondent's repeated breaches of their obligations under the tenancy agreement, they had kept dogs in the rental premises without approval, hadn't removed them after being directed to do so, had not maintained ordinary cleanliness, and had not maintained their utilities account.

At the resumption of the hearing in January 2025, I asked the Applicant, if considering the status of issues raised in the application, they would be withdrawing their request for termination of the tenancy agreement and eviction. The Applicant said that despite indications that I would be denying their claims, they wished to proceed with the request for termination of the tenancy agreement and eviction, but did not explain why.

Rental arrears - I have established that the rental arrears are historical, total \$547, and the rent is currently being paid when due. I will order the Respondent to pay these arrears, but I do not think that termination of the tenancy agreement is justified under paragraph 41(4)(c) of the Act.

Disturbances - Aside from the complaint in September 2024, no further evidence has been provided that the Respondent is responsible for disturbances. I find that termination of the tenancy agreement is not justified under paragraph 43(3)(d) of the Act.

Breach of obligation utilities - Based on the evidence, I believe the Respondent's power account was previously in arrears and they were in breach of their obligation, however, as the account is currently in good standing, I find that termination of the tenancy agreement for this breach of this obligation is not justified.

Breach of obligations cleaning - I have denied the Applicant's claim for costs to clean the carpet after a dog defecated in the hallway. The Applicant did not satisfy me that the Respondent was responsible for this, nor have they provided any other evidence that the Respondent has not maintained ordinary cleanliness. I find that termination of the tenancy agreement for breach of this obligation is not justified.

Breach of obligation pets - It has been established that the Respondent's son is moving out with their dog. As I previously stated, it is my opinion that their refusal of the Respondent's service animal due to size is not reasonable, and their policy is not consistent with the direction provided in my previous decision - specifically those sections of their policy setting out the size and breed of dogs. For those reasons, I do not think that termination of the tenancy agreement

is justified for this reason.

.../10

In my decision, I found, based on documentation from health professionals and testimony from the Tenant, the Tenant was a person with a disability, who required a service animal, in this case a Great Dane, to assist them with their disability. I noted that the Tenant is responsible for their service animal's behaviour and is not exempt from other obligations under the Act. However, I pointed out that under subsection 12(1) of the NWT *Human Rights Act* the Landlord has a duty to accommodate the Tenant with the disability, unless, under subsection 12(2) they can establish that to do so would impose undue hardship. Further, I would caution the Applicant that any concerns about the service animal should not be used to justify discriminatory practice.

At the hearing, the Applicant argued that allowing the Respondent's dog in the rental unit was being met with complaints from other tenants about fairness - "why was the Respondent allowed to have a pet but they aren't". I recommended that the Applicant provide information on service animals to their tenants as a way of curtailing these kinds of complaints. It may also be helpful to identify Layla as a service animal.

Orders

An order will issue:

- requiring the Respondent to pay rental arrears owing totalling \$547 (p. 41(4)(a)); and
- requiring the Respondent to remove their son's dog from the rental premises by January 24, 2025 (p. 45(4)(a)).

Janice Laycock
Rental Officer