

IN THE MATTER between **G.B.H. HOLDINGS LTD.**, Applicant, and **MARIA GREENLAND AND DANIEL ELANIK**, Respondents;

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, **HAL LOGSDON**, Rental Officer, regarding the rental premises at **INUVIK, NT**.

BETWEEN:

G.B.H. HOLDINGS LTD.

Applicant/Landlord

- and -

MARIA GREENLAND AND DANIEL ELANIK

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondents shall pay the applicant rent arrears in the amount of one thousand four hundred dollars (\$1400.00).
2. Pursuant to sections 43(3)(a) and 43(3)(b) of the *Residential Tenancies Act*, the respondents shall comply with their obligation to not disturb other tenants and shall not create any disturbances in the future.
3. Pursuant to sections 41(4)(c) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the premises known as Apartment 8, 40 Tununuk Place, Inuvik, NT shall be terminated on March 17, 2010 and the respondents shall vacate

the premises on that date, unless the rent arrears and the balance of the required security deposit in the total amount of two thousand seven hundred seven dollars and sixty five cents (\$2707.65) are paid in full.

4. Pursuant to section 41(4)(b) of the *Residential Tenancies Act*, the respondents shall pay future rent on time.

DATED at the City of Yellowknife, in the Northwest Territories this 2nd day of March, 2010.

Hal Logsdon
Rental Officer

IN THE MATTER between **G.B.H. HOLDINGS LTD.**, Applicant, and **MARIA GREENLAND AND DANIEL ELANIK**, Respondents.

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 **Hal Logsdon**, Rental Officer.

BETWEEN:

G.B.H. HOLDINGS LTD.

Applicant/Landlord

-and-

MARIA GREENLAND AND DANIEL ELANIK

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: February 24, 2010

Place of the Hearing: Inuvik, NT via teleconference

Appearances at Hearing: Lois Kathrens, representing the applicant
Maria Greenland, respondent
Lillian Greenland, witness for the respondents

Date of Decision: March 1, 2010

REASONS FOR DECISION

Maria Greenland's first name is incorrectly spelled on the application. The style of cause of the order shall be amended to reflect the correct spelling of her name.

The applicant alleged that the respondents had breached the tenancy agreement by failing to pay rent and by disturbing the landlord and other tenants in the residential complex. The applicant sought an order requiring the respondents to pay the alleged rent arrears and terminating the tenancy agreement between the parties.

The applicant stated that she was not sure how much rent was presently owing but the balance owing on January 24, 2010 was \$5815.36. The respondent disputed the amount owing, stating that she owed only the February, 2010 rent of \$1400.

The respondents took possession of Apartment 41 on June 1, 2009. The monthly rent for those premises was \$1250. On August 1, 2009, the respondents moved to Apartment 8 in the same residential complex and the parties entered into a new written tenancy agreement for those premises. The monthly rent for Apartment 8 is \$1400/month, however it was reduced to \$1300 only for the month of January, 2010 to compensate the tenants for some problems with the hot water system.

The applicant provided a statement of the payments made by the respondents which included payments made for both tenancy agreements. The statement indicated that a security deposit of

\$1250 for Apartment 41 was paid by the respondents on June 30, 2009. The statement indicated that payments totalling \$1340 had been made by the respondents for Apartment 41 rent and payments totalling \$6970 had been made for Apartment 8 rent. The applicant stated that since the statement was produced one additional payment of \$1330 had been received. The respondent acknowledged that, except for the missing payment of \$1330, the statement included all payments that had been made.

The tenancy agreement for Apartment 8 requires a security deposit of \$1400. There is no evidence that this has been paid or that the \$1250 provided to the applicant for the Apartment 41 security deposit has been returned to the respondents. No statement of the \$1250 security deposit appears to have been completed so I assume the landlord continues to hold the deposit and has not used it to satisfy any arrears of rent or repair costs associated with Apartment 41.

Section 18 requires a landlord to either return the security deposit to the tenant or provide an itemized statement of the deductions.

- 18.(1) Subject to this section, where a landlord holds a security deposit the landlord shall, within 10 days after the tenant vacates or abandons the rental premises,**
 - (a) return the security deposit to the tenant with interest; and**
 - (b) give the tenant an itemized statement of account for the security deposit.**
- (2) A landlord may, in accordance with this section, retain all or part of the security deposit for repairs of damage caused by a tenant to the rental premises and for any arrears of the rent.**
- (3) Where a landlord objects to returning all or a part of the security deposit on the grounds that a tenant has caused damage to the rental premises and repairs to the rental premises are necessary or the tenant is in arrears of the rent, the landlord shall, within 10 days after the tenant vacates or abandons the rental premises,**

- (a) send a notice to the tenant and a rental officer of the intention of the landlord to withhold all or part of the security deposit;
 - (b) give the tenant an itemized statement of account for the security deposit;
 - ©) give the tenant an itemized statement of account for the repairs or arrears of the rent; and
 - (d) return the balance of the security deposit with interest to the tenant.
- (4) Where the landlord objects to returning all or part of the security deposit, but is unable to determine the correct amount of the repairs within 10 days after the tenant vacates or abandons the rental premises, the landlord shall
- (a) deliver to the tenant, within 10 days after the tenant vacates or abandons the rental premises,
 - (I) an estimated itemized statement of account for the repairs, and
 - (ii) the estimated balance of the deposit; and
 - (b) within 30 days after the tenant vacates or abandons the rental premises
 - (I) deliver a final itemized statement of account for the repairs, and
 - (ii) return the final balance to the tenant.
- (5) Where a landlord fails to return all or part of the security deposit with interest, a landlord or a tenant shall refer the matter to a rental officer who shall inquire into the matter and render a decision on the matter.

I find rent arrears for Apartment 41 of \$1160, calculated as follows:

June rent	\$1250
July rent	1250
Pmt June 30/09	(625)
Pmt July 11/10	(160)
Pmt July 20/10	(160)
Pmt July 15/09	<u>(395)</u>
Balance	\$1160

Applying the security deposit and accrued interest against the rent arrears I find a balance owing the respondents of \$92.35, calculated as follows:

Security deposit	\$1250.00
Interest	2.35
Less rent arrears	<u>(1160.00)</u>
Amount owing respondents	\$92.35

I shall assume that the respondents wish to have the \$92.35 applied to the payment of the required security deposit for Apartment 8, leaving an amount due of \$1307.65. As more than three months have past since the commencement of the tenancy agreement, the full amount is overdue.

I find rent arrears for the current tenancy agreement for Apartment 8 to be \$1400 calculated as follows:

Rent - Aug/09 - Feb/10	
(7 months @ \$1400/month)	\$9800
Reduction for January/10	(100)
Total payments Aug/09 - Dec/09	
(as per landlord's statement)	(6970)
Pmt - January 24/10	<u>(1330)</u>
Rent arrears	\$1400

I note that throughout the tenancy, the applicant has provided numerous notices regarding outstanding rent which state the amount of rent owing on that date. If the landlord's statement of payments made is accurate, the notices are not. For example, a notice dated December 15/09 states the rent owing as \$1630. Another notice dated December 20/09 states the rent owing is \$930. The landlord's statement of payments indicates that one payment of \$1000 was made between these dates.

The applicant provided several notices of early termination and notes to file outlining alleged incidents of disturbance. The earliest of these, dated August 3, 2009 alleges that the respondents' children jump about in the apartment causing a lot of noise. The respondent stated that she had never had any of the neighbours complain about any noise caused by her children although the applicant stated she had received complaints. The applicant stated that the move from Apartment 41 to Apartment 8 was intended to reduce the noise for tenants living below the respondents. I assume that the move at least mitigated the problem as there was no application filed or further notice issued regarding this source of noise.

On October 23, 2009 the applicant issued another notice of early termination alleging that the respondent had provided keys to the building to someone who was not a tenant. The applicant stated that only persons who were listed on the written tenancy agreement as tenants were permitted to have keys. The applicant stated that if a tenant wished to provide keys to someone, they had to add them to the tenancy agreement as a tenant. The respondent stated that she had given a key to her babysitter. This rule is patently unreasonable and certainly does not constitute disturbance.

On January 1, 2010 the applicant issued another notice of early termination alleging that there was loud music and noise at 4:30 AM. The respondent stated that in her opinion, the complaint was exaggerated, describing the incident as just "sitting around having a few drinks". The applicant also stated that she had earlier seen the landlord patrolling the hall listening at doors.

The applicant stated that the RCMP had attended the premises on February 12, 2010 and removed a person who was “hiding” in the apartment. The respondent stated that she had been staying with her mother and on attending the apartment that morning asked the person to leave. She called the RCMP and asked for their assistance in removing the unwanted person. The respondent’s mother testified that the respondent had called the police for assistance in the matter. The extent and nature of any disturbance is unclear from the evidence.

In my opinion, there has been some disturbance, notably the noise created in the very early morning of January 1, 2010. At that hour of the day, what seemed like a sociable evening to the respondents may have seemed otherwise to other residents. In my opinion, however, the incidents set out by the applicant do not warrant termination of the tenancy agreement.

I find the respondents in breach of their obligation to not disturb other tenants in the residential complex, their obligation to pay rent and their obligation to pay the required security deposit. I find the rent arrears to be \$1400 and the balance of the security deposit owing to be \$1307.65. In my opinion, there are sufficient grounds to terminate the tenancy agreement on March 17, 2010 unless these amounts are paid in full. Should the tenancy agreement continue, the respondents are also ordered to pay future rent on time.

Hal Logsdon
Rental Officer