

IN THE MATTER between **GREENWAY REALTY LTD.**, Applicant, and **NATHAN DOW**, 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, **HAL LOGSDON**, Rental Officer, regarding the rental premises at **HAY RIVER, NT**.

BETWEEN:

GREENWAY REALTY LTD.

Applicant/Landlord

- and -

NATHAN DOW

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant rent arrears in the amount of one thousand six hundred dollars (\$1600.00).
2. Pursuant to sections 43(3)(a) and 43(3)(b) of the *Residential Tenancies Act*, the respondent shall comply with his obligation to not disturb other tenants in the residential complex and shall not create any disturbance 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 306, 3 Neville Place, Hay River, NT shall be terminated on May 12, 2010 and the respondent shall vacate the

premises on that date, unless the rent arrears and the rent for May, 2010 in the total amount of two thousand four hundred dollars (\$2400.00) are paid in full.

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

DATED at the City of Yellowknife, in the Northwest Territories this 28th day of April, 2010.

Hal Logsdon
Rental Officer

IN THE MATTER between **GREENWAY REALTY LTD.**, Applicant, and **NATHAN DOW**, 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 **Hal Logsdon**, Rental Officer.

BETWEEN:

GREENWAY REALTY LTD.

Applicant/Landlord

-and-

NATHAN DOW

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: April 20, 2010

Place of the Hearing: Hay River, NT via teleconference

Appearances at Hearing: Patricia Kay, representing the applicant
Nathan Dow, respondent

Date of Decision: April 28, 2010

REASONS FOR DECISION

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

The applicant testified that the monthly rent for the premises was \$800. Although no written tenancy agreement was produced in evidence, the applicant testified that a written tenancy agreement had been executed by the parties which obligated the tenant to pay the monthly rent in advance on the first day of every month. The applicant testified that no rent had been paid for March and April, 2010 resulting in rent arrears of \$1600. The applicant testified that no rent payments had been received since February 26, 2010.

The residential complex is an apartment building with 17 units. The applicant provided two unsworn, unsigned letters of complaint and testified that they were written by two tenants living in the residential complex. The first letter, dated February 10, 2010 complained about loud music and the smell of drugs at all hours of the night. No specific dates were outlined. The second letter, dated March 26, 2010 complained about marijuana use and loud music. Specifically, the writer noted that on February 21, 2010 he determined that a smell of marijuana originated from the respondent's apartment after leaving apartment 304. There was no date mentioned regarding the alleged loud music.

The applicant's representative testified that she had been in the building on March 16, 2010 about 10 PM and heard screaming and yelling from the respondent's apartment. She also testified that she had called the police on two occasions after receiving complaints regarding alleged noise and marijuana use. There was no indication as to what action, if any, was taken by the police.

The respondent did not dispute the allegations pertaining to rent. The respondent denied creating any disturbance, stating that he did not play music during the "quiet hours" of 11 PM to 7 AM. He also stated that he usually used headphones when he played music. The respondent stated that the smell of marijuana in the building could have come from any apartment in the building.

Section 46 of the *Residential Tenancies Act*, prohibits the carrying on of any criminal act in the rental premises.

46.(1) A tenant shall not carry on or permit to be carried on any criminal act or do or permit the doing of any criminal act in the rental premises or in the residential complex.

I assume that had the police had reasonable grounds to suspect that a criminal act was being committed, they would have taken some action. There is no evidence of any action taken by the police. The odour of a suspected drug, emanating from a suspected location is not, in my opinion, sufficient to determine that a breach of section 46 has occurred.

Section 43 of the *Residential Tenancies Act* prohibits a tenant from disturbing the landlord or other tenants in the residential complex.

43.(1) A tenant shall not disturb the landlord's or other tenants' possession or enjoyment of the rental premises or residential complex.

I question how disturbing the scent of marijuana can be. Living in an apartment building, one is subjected to a variety of odours which are not of your own making. It is part of apartment living. One may object to the smell of curry but the preparation of aromatic food in an apartment suite should not be considered disturbance. Similarly, unless smoking is specifically prohibited by the tenancy agreement, enjoying a cigar in the privacy of your apartment should not constitute a breach of section 43. Simply because the possession of marijuana is illegal does not make the scent of it objectionable to the point of disturbance.

While I can not find the respondent in breach of section 43 due to the alleged marijuana use, I do find him in breach of that section due to the loud music. Just because music is played before 11 PM does not make it undisturbing. The landlord's representative testified that she had experienced disturbing noise and, although unsworn, the tenants' letters add further credibility to her testimony. I am satisfied, on the balance of probabilities, that some disturbance has occurred but in my opinion it does not, in itself, warrant the termination of the tenancy agreement.

The failure to pay any rent for two months is a different matter. I find the respondent in breach of his obligation to pay rent and find the rent arrears to be \$1600. In my opinion, there are sufficient grounds to terminate the tenancy agreement unless the rent arrears are promptly paid.

The respondent noted that the landlord's notice of early termination, dated March 10, 2010,

sought vacant possession on March 17, seven days later. Section 54 of the *Residential Tenancies Act* sets out a minimum of 10 days notice between the service of the notice and the date of possession. Taking that into consideration, I believe it is reasonable to terminate this tenancy agreement on May 12, 2010 unless the rent arrears and the rent for May, 2010 are paid in full. I calculate that amount to be \$2400 as follows:

Rent arrears (March and April, 2010)	\$1600
May, 2010 rent	<u>800</u>
Total	\$2400

An order shall issue requiring the respondent to pay the applicant rent arrears in the amount of \$1600 and terminating the tenancy agreement on May 12, 2010 unless those arrears and the May, 2010 rent in the total amount of \$2400 are paid in full. The respondent is also ordered to comply with his obligation to not disturb other tenants and to not create any disturbance in the future. Should the tenancy agreement continue, the respondent is also ordered to pay future rent on time.

Hal Logsdon
Rental Officer