

IN THE MATTER between **Hay River Housing Authority**, Applicant, and **Mary Jane Martin**, Respondent;

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act") and amendments thereto;

AND IN THE MATTER of a Hearing before, **Adelle Guigon**, Deputy Rental Officer, regarding a rental premises within **the Town of Hay River in the Northwest Territories**.

BETWEEN:

HAY RIVER HOUSING AUTHORITY

Applicant/Landlord

- and -

MARY JANE MARTIN

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 46(2)(c) and 83(2) of the *Residential Tenancies Act*, the tenancy agreement between the parties regarding the rental premises known as 10 Elm Crescent in Hay River, Northwest Territories, is terminated effective January 15, 2014, and the respondent must vacate the rental premises on or before that date, if the respondent has not provided a medical prescription for marihuana that was valid on June 25, 2013, to the applicant by January 15, 2014.

2. Pursuant to section 46(2)(b) of the *Residential Tenancies Act*, the respondent must not breach their obligation to keep from committing an illegal act on the rental premises again.

DATED at the City of Yellowknife in the Northwest Territories this 10th day of December 2013.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Hay River Housing Authority**, Applicant, and **Mary Jane Martin**, 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 **Adelle Guigon**, Deputy Rental Officer.

BETWEEN:

HAY RIVER HOUSING AUTHORITY

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MARY JANE MARTIN

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REASONS FOR DECISION

Date of the Hearing: November 13, 2013

Place of the Hearing: Hay River, Northwest Territories, via Teleconference

Appearances at Hearing: Adam Swanson, representing the Applicant
Mary Jane Martin, representing herself
Arlene Hache, supporting the Respondent

Date of Decision: December 9, 2013

REASONS FOR DECISION

An application to a rental officer made by Hay River Housing Authority as the landlord against Mary Jane Martin as the tenant was received and filed by the Rental Office on July 10, 2013. The application is regarding a subsidized public housing unit at 10 Elm Crescent in Hay River, Northwest Territories. The applicant served a copy of the filed application on the respondent by personal service on July 22, 2013.

The applicant alleges the respondent committed an illegal act in the rental premises contrary to sections 46 of the *Residential Tenancies Act* (the Act) and 20 of the residential tenancy agreement between the parties. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for November 13, 2013. Mr. Adam Swanson appeared representing the applicant, Ms. Mary Jane Martin appeared representing herself as the respondent, and Ms. Arlene Hache appeared in support of Ms. Martin.

At hearing, Mr. Swanson submitted evidence that Ms. Martin had been convicted in Territorial Court of simple possession of marihuana. A search warrant had been executed at the rental premises – 10 Elm Crescent in Hay River – resulting in the seizure of 180 grams of marihuana on June 25, 2013. Ms. Martin entered a guilty plea to the charge and in an agreed statement of facts read into the record at the Territorial Court hearing – from which Mr. Swanson provided a copy of the transcript – Ms. Martin admitted to having the marihuana, including “a container that had buds of marijuana in it”, in her home. She was convicted and sentenced to 50 days in jail with time served and a \$100 victims of crime surcharge.

Mr. Swanson also referred in the Territorial Court transcript to a previous conviction Ms. Martin carries on her criminal record from March 23, 2004, for “production of a Schedule II substance” for which she received a suspended sentence with a year of probation.

Mr. Swanson argued for termination of the tenancy pursuant to section 46 of the Act, which states:

46. (1) A tenant shall not commit an illegal act or carry on an illegal trade, business or occupation, or permit another person to do so, in the rental premises or in the residential complex.
- (2) Where, on the application of a landlord, a rental officer determines that a tenant has breached the obligation imposed by subsection (1), the rental officer may make an order
- ...
- (c) terminating the tenancy on the date specified in the order and ordering the tenant to vacate the rental premises on that date.

He further referenced section 20 of the residential tenancy agreement made between the parties, which states:

20. Additional Obligations – Illegal/Criminal Activities

In addition to the prohibition against criminal activities in s. 46 of the *Residential Tenancies Act*:

- a. No Tenant or occupant will commit, attempt or conspire to commit, or aid, abet or counsel another person to commit, an illegal activity in the Premises or in the residential complex; and
- b. If a Tenant or occupant commits, attempts or conspires to commit, or aids, abets or counsels another person to commit, in the Premises or in the residential complex an illegal activity of a serious and detrimental nature, such as, but not limited to, bootlegging or trafficking in an illicit substance, then this will be cause for terminating the tenancy agreement.

Mr. Swanson's position that termination is justified in this instance relies on the seriousness of the offence, the strict interpretation that an illegal activity occurred or was permitted to occur in the rental premises, and the consequences specified in section 20 of the tenancy agreement.

Ms. Martin advised she entered a guilty plea at the Territorial Court hearing for which she was convicted of simple possession simply to get the process over with and that she did, in fact, have a prescription for medical marihuana. She maintains she has had the prescription for her entire adult life and that it did not specify either a dosage or an expiry date. The marihuana that was in

her home was obtained through her ex-common-law husband to satisfy the prescription, although the means of his obtaining the substance are not known. She stated she was told she was unable to obtain medical marihuana legally in the Northwest Territories and that she would have to travel to Alberta or British Columbia to get it, which is why she got it from her ex-common-law husband. She further advised me that she has ripped up her prescription and has not had any marihuana since June as she is fed up with dealing with the social and criminal repercussions. She now treats the symptoms of her medical condition with a multitude of prescribed pills, including Tylenol 3. She advised she sees a doctor monthly.

Ms. Martin argued against terminating her tenancy, believing she was being singled out due to her Aboriginal ancestry when there are multiple other housing units whose tenants are committing more serious offences such as bootlegging and trafficking, and they appear to be getting away with it.

Ms. Hache pointed out that this conviction for simple possession is a first offence under this tenancy agreement and requested consideration of an alternative order other than termination of the tenancy agreement. She offered assistance to Ms. Martin to research legal means of obtaining medical marihuana if Ms. Martin gets another prescription so that she does not put herself in a similar position again. Ms. Hache further pointed out that Ms. Martin's possession of marihuana was of a nature that was not detrimental to anyone else and that trafficking is not a factor in her situation.

Mr. Swanson conceded if Ms. Martin did have a medical marihuana prescription and could offer assurance of using legal methods to obtain medical marihuana in the future the landlord would not be opposed to the continuation of the tenancy. He indicated they were looking at legalities and compliance with the law; Mr. Swanson agreed with Ms. Hache's suggestion that if Ms. Martin could prove she had a legal prescription for medical marihuana, in spite of the conviction confirming an illegal act occurred in the rental premises, an order other than termination of the tenancy would not be opposed.

Mr. Swanson responded to Ms. Martin's accusation that illegal activities occurring in other rental premises were going unpunished by pointing out landlords could not apply for termination of tenancies as a consequence of illegal activities without a conviction for those illegal activities; the illegal activities must be proven.

The hearing was adjourned *sine die* pending receipt of confirmation of Ms. Martin's prescription for medical marihuana. A letter dated November 18, 2013, from Dr. Richard Cunningham of the Hay River Health and Social Services Authority was received confirming Ms. Martin was prescribed medical marihuana in the past. A request of Ms. Martin for a more detailed prescription history was unanswered as of the writing of this decision.

The residential tenancy agreement submitted by the applicant is for subsidized public housing in the rental premises known as 10 Elm Crescent in Hay River, Northwest Territories. It began April 1, 2009, on a month-to-month basis. I am satisfied a valid tenancy agreement exists between the parties.

The CBC News article posted February 27, 2012, references the arrest of Ms. Martin and Mr. Laviolette for possession for the purpose of trafficking, which Ms. Martin spoke of in her testimony. Ms. Martin indicated she was found not guilty of this charge in July 2013. A letter from Ms. Martin's counsel, Kaysi Fagan of Evans Fagan McKay, dated August 19, 2013, clarified the charges had been stayed.

The transcript of the sentencing hearing regarding court file number T2CR2013000463 between Her Majesty the Queen v. Thomas Laviolette and Mary Jane Martin is a verbatim document of the hearing held October 3, 2013. Mr. Laviolette is the co-accused and Ms. Martin's ex-common-law husband. I am satisfied the transcript accurately reflects what was said at the hearing.

The transcript references Ms. Martin's criminal record as consisting of two offences: a theft of \$200 in 1983 and production of a Schedule II substance in 2004. The transcript further confirms the withdrawal of the charge of possession for the purpose of trafficking from June 2013 and the conviction of simple possession of less than 30 grams of marihuana from June 2013. The admitted facts of the simple possession charge indicate the marihuana was found at 10 Elm Crescent in Hay River. I am satisfied an illegal activity for which the respondent was convicted occurred in the rental premises during the term of the current tenancy agreement.

In the transcript of the October 3, 2013, proceedings, Ms. Martin told the court through her counsel that she "consumed marijuana for medical reasons." No arguments were put forth regarding the legality of her possession of marihuana and she did enter a guilty plea to simple possession. Ms. Martin alleges in her testimony at the rental hearing that she did in fact have a

prescription for medical marihuana. In support of this assertion she obtained a letter from the doctor in Hay River dated November 18, 2013, which confirms she “was advised that she could use inhalaed [sic] THC for her medical problems in the past”. The letter does name two prescribing physicians but does not elaborate on further details, such as: how long Ms. Martin has had the prescription for; whether or not the prescription expires and, if so, when; and what dosage was prescribed, if any. It was requested of Ms. Martin to provide an official prescription history from the medical facility she obtained the prescription from which shows the dates and dosages prescribed. She did not seem motivated to invest the effort to obtain this document, but agreed to. As of the writing of this order the prescription history had not been received. I am not satisfied the respondent had or has a legal medical prescription for medical marihuana.

Section 20 of the tenancy agreement is specific in identifying illegal activities which warrant termination of the tenancy as those “of a serious and detrimental nature”, and gives examples. While I would agree that drug-related offences in general are considered serious offences under the law, there is a spectrum of seriousness to consider in certain cases. In this case, the simple possession of the marihuana was not detrimental to anyone else.

While this offence is the first conviction for Ms. Martin in this tenancy, it is her second conviction for drug-related offences – in 2004 she was convicted for production of a schedule II substance. Further, while Ms. Martin advised the court in October she used the marihuana for medical purposes, she pled guilty and was convicted of simple possession. No mention appears to have been made prior to this rental hearing of holding a prescription for medical marihuana. Ms. Martin’s credibility is questionable at this point.

Having read the *Marihuana for Medical Purposes Regulations* and the *Marihuana Medical Access Regulations*, I note the legal requirements for the medical use of marihuana are specific and require, first, that an authorized medical practitioner prescribe the product, and second, that a patient (client) register with a licenced marihuana producer to receive the product. The regulations are strict and specifically identify how a client goes about getting the product they’ve been prescribed. Ms. Martin appears to be ignorant of this procedure, which begs the question of the validity of the prescription Ms. Martin claims to have.

The *Residential Tenancies Act* (the Act) allows for three possible remedies where it is proven illegal activities have taken place in a rental premises: an order requiring the tenant to comply with their obligation; an order requiring the tenant not to breach their obligation again; or an order terminating the tenancy agreement. The residential tenancy agreement between the parties specifically identifies at section 20 that the only consequence the housing authority will pursue for illegal activities within the rental premises is termination of the tenancy. By signing the residential tenancy agreement Ms. Martin indicated she was aware of this condition and understood it. Having proven that Ms. Martin was convicted for conducting an illegal activity within the rental premises, the applicant's argument for termination of the tenancy is made. However, even Mr. Swanson agrees that, in spite of the conviction, if Ms. Martin is able to prove she had a legal medical prescription for marihuana he would not be opposed to continuing the tenancy as long as she maintains the legal prescription and obtains medical marihuana legally or does not have marihuana in the rental premises without those legal requirements.

In making my decision I have considered the evidence and testimony presented, including the question of Ms. Martin's credibility against her assurances that she is no longer using marihuana and that she is now aware she cannot have it in her home without a legal prescription. I also take into consideration that she is a single parent with full custody of her children, that she is otherwise eligible for subsidized public housing, and that there are no other allegations of breaches of the tenancy agreement. I also acknowledge that Ms. Martin has Ms. Hache's support to seek legal means of satisfying any prescription for medical marihuana she may obtain in the future.

I understand the applicant's desire to enforce the legal requirements of the tenancy agreement. I recognize the difficulty with pursuing such action under section 46 of the Act. Mr. Swanson has proven that Ms. Martin committed an illegal act in the rental premises contrary to section 46(1) of the Act. Each case must be determined on its merits and the remedies justified. In this case I find that termination of the tenancy agreement is justified unless Ms. Martin can prove she held a legal prescription for medical marihuana as of June 25, 2013.

An order will issue terminating the tenancy agreement effective January 15, 2014, if the respondent does not produce a medical prescription for marihuana which was valid June 25, 2013. A further order will issue requiring the tenant to not breach their obligation to keep from committing an illegal act in the rental premises again.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Applicant's statement of facts
- Exhibit 2: Residential tenancy agreement dated April 1, 2009
- Exhibit 3: hqyellowknife.com June 27, 2013 on-line news report
- Exhibit 4: Hay River Hub news brief
- Exhibit 5: CBC News article posted February 27, 2012
- Exhibit 6: Northern News Services on-line article dated March 29, 2004
- Exhibit 7: Applicant's notice to respondent terminating tenancy July 18, 2013
- Exhibit 8: Correspondence from Evans Fagan McKay Barristers to the respondent dated August 19, 2013
- Exhibit 9: Transcript of October 3, 2013, sentencing hearing held at Territorial Court
- Exhibit 10: Correspondence from Richard Cunningham, M.D., dated November 18, 2013