

IN THE MATTER between **Midwest Property Management**, Applicant, and **Adle Abdullah**, 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 city of Yellowknife in the Northwest Territories**.

BETWEEN:

MIDWEST PROPERTY MANAGEMENT

Applicant/Landlord

- and -

ADLE ABDULLAH

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 45(4)(a) and 45(4)(b) of the *Residential Tenancies Act*, the respondent must comply with his obligation to maintain the rental premises in a state of ordinary cleanliness, and the respondent must not breach this obligation again.
2. Pursuant to sections 45(4)(e) and 83(2) of the *Residential Tenancies Act*, the lease agreement between the parties for the rental premises known as #306, 700 Gitzel Street, in Yellowknife, Northwest Territories, will terminate September 30, 2014, and the respondent must vacate the rental premises on or before that date, unless the respondent has returned the rental premises to a satisfactory state of ordinary cleanliness.

DATED at the City of Yellowknife in the Northwest Territories this 22nd day of July 2014.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Midwest Property Management**, Applicant, and **Adle Abdullah**, 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:

MIDWEST PROPERTY MANAGEMENT

Applicant/Landlord

-and-

ADLE ABDULLAH

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: July 16, 2014

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: Tuan Thai, representing the applicant
Kevin Crowell, representing the applicant
Adle Abdullah, respondent
Farook Ghaleb, interpreter/translator for the respondent

Date of Decision: July 16, 2014

REASONS FOR DECISION

An application to a rental officer made by Midwest Property Management as the applicant/landlord against Adle Abdullah as the respondent/tenant was filed by the Rental Office June 26, 2014. The application was made regarding the rental premises known as #306, 700 Gitzel Street, in Yellowknife, Northwest Territories. The applicant served the filed application package on the respondent by registered mail signed for July 15, 2014.

The applicant alleged the respondent had failed to comply with his obligation to maintain the rental premises in a state of ordinary cleanliness and had permitted additional occupants to reside in the premises without the landlord's consent. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for July 16, 2014. Mr. Tuan Thai and Mr. Kevin Crowell appeared representing the applicant. Mr. Adle Abdullah appeared as respondent with Mr. Farook Ghaleb attending as interpreter/translator for Mr. Abdullah.

Mr. Thai testified that Mr. Abdullah has been a tenant at the rental premises known as #306, 700 Gitzel Street, in Yellowknife, Northwest Territories, since May 2008. The applicant conducts annual inspections of their premises. At an inspection in June 2012 the applicant noted the unsanitary condition of the rental premises and requested the tenant remedy the situation, citing the tenant's obligation to maintain the rental premises in a state of ordinary cleanliness. In February 2013 another inspection was made of the rental premises at which time the applicant again found it to be in an unsanitary state. The tenant was notified of the applicant's observance of this breach of the lease agreement and given until March 1, 2013, to remedy the situation. An inspection conducted in May 2014 again found the rental premises in an unsanitary state; the tenant was given approximately two weeks to remedy the situation.

On May 28, 2014, a follow-up inspection was done and photographs of the rental premises were taken. The photographs corroborate the applicant's testimony as to the condition of the rental premises being unsanitary: the floors, walls, and counters were not clean, the stove and fridge had greasy stains, the floor beneath and walls behind the stove and fridge were greasy and dirty, the carpet had not been vacuumed, and the balcony was inaccessible with various items stored on it.

The applicant further testified that it appeared based on their observance of multiple mattresses in the premises that there was more than the tenant residing there. The applicant cited section 2.1 of the lease agreement, which requires a tenant to obtain written consent from the landlord for other occupants to reside in the premises for periods greater than one week.

Mr. Abdullah acknowledged the condition of the rental premises and testified that the unit has since been cleaned as requested. With respect to the condition of the balcony, he stated the items stored on the balcony consist of recycling materials and fuel for cooking appliances for his restaurant. Mr. Abdullah argued that the rental premises had not been renovated during his tenancy; the carpets and cabinets needed to be replaced and the walls needed to be painted.

Mr. Abdullah also confirmed that he does have two other occupants residing with him, employees working at his restaurant. He stated he did inform the landlord they would be coming to stay with him and provided the landlord with completed application forms as requested. Mr. Abdullah testified that the landlord denied their applications without explanation, but his employees required a place to stay while working for him so he permitted them to stay with him.

Mr. Thai confirmed Mr. Abdullah's apartment is included in the landlord's list of units that need renovation and they would like to arrange a mutually convenient time to conduct the necessary upgrades, however, the landlord is not prepared to do so until the rental premises is cleaned by the tenant.

Lease agreement

The parties agreed they have had a lease agreement since May 2008, and have since entered into a new lease agreement made June 3, 2013, for a fixed term from September 1, 2013, to August 31, 2014. I am satisfied a valid lease agreement is in place between the parties.

Ordinary cleanliness

Section 12 of the lease agreement and section 45(2) of the *Residential Tenancy Act* (the Act) both speak to the requirement of the tenant to maintain the ordinary cleanliness of the rental premises during the tenancy. As well, Schedule A, section 1.1, of the lease agreement specifies the requirement of tenants to dispose of garbage in a proper and regular manner and in the areas designated for such by the landlord.

The photographs submitted into evidence were taken May 28, 2014, as testified to by the applicant. Mr. Abdullah did not dispute the accuracy of the photographs in representing the condition of his rental premises on the date they were taken. I am satisfied these photographs accurately represent the condition of the rental premises on May 28, 2014.

I find Mr. Abdullah has failed to comply with his obligation to maintain the rental premises in a state of ordinary cleanliness and to dispose of garbage (recycling included) in a proper and regular manner.

Additional occupants

The above mentioned photographs show at least two mattresses in the rental premises. The rental premises is a two-bedroom apartment. Mr. Abdullah confirmed he does have two other occupants in the rental premises with him.

Section 45(3) of the Act specifies a tenant shall not permit such number of persons to occupy the rental premises on a continuing basis that results in the contravention of health, safety, or housing standards required by law or in a breach of the lease agreement. Section 2(1) of the lease agreement lists the names of additional occupants of the rental premises other than the tenant; in this instance there are none. Section 2.1 of the lease agreement specifies that no other persons will be permitted to occupy or live in the premises for longer than one week without the consent in writing of both the landlord and the tenant.

Section 10 of the Act deems a tenancy agreement to include the provisions of the form of a tenancy agreement set out in the *Residential Tenancies Regulations* (the regulations) and states that any provision that is inconsistent with the provisions of the form in the regulations has no effect. Section 12(1) of the Act permits a landlord and tenant to include in a written tenancy agreement additional rights and obligations that are not inconsistent with the Act and regulations. Section 10 of the tenancy agreement form under the regulations specifies the maximum number of persons that can occupy a rental premises on a continuing basis.

The Act and regulations do not require tenants to specifically identify individuals occupying a rental premises with the tenant, nor is it a requirement to receive consent prior to permitting additional occupants. The legislated restrictions speak only to the number of people that can occupy a rental premises, that number being identified either by legislated health, safety, and occupancy standards or as proscribed in a written tenancy agreement. In this instance, a maximum number of occupants has not been identified in the lease agreement. I find sections 2(1) and 2.1 of the lease agreement are inconsistent with the Act and therefore of no effect and unenforceable.

Termination of the tenancy agreement

The testimony and evidence presented shows the tenant has repeatedly breached their obligation to maintain the rental premises in a state of ordinary cleanliness. The last three annual inspection reports revealed the unclean state of the rental premises each time, and each time the tenant was notified and asked to clean up the apartment. A conditional termination order is justified in this instance should the tenant fail to comply with their obligation to keep the apartment clean.

An order will issue requiring Mr. Adle Abdullah to comply with his obligation to maintain the rental premises in a state of ordinary cleanliness, not to breach this obligation again, and terminating the tenancy agreement September 30, 2014, unless the rental premises has been cleaned to the landlord's satisfaction.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Applicant's notice to terminate tenancy correspondence to respondent dated June 9, 2014
- Exhibit 2: Statement of Tuan Thai, Maintenance Manager for applicant, dated June 9, 2014
- Exhibit 3: Set of 13 photographs
- Exhibit 4: Applicant's notice of entry correspondence to respondent dated May 27, 2014
- Exhibit 5: Applicant's suite condition correspondence to respondent dated May 14, 2014
- Exhibit 6: Annual suite inspection - maintenance report dated May 13, 2014
- Exhibit 7: Applicant's suite condition correspondence to respondent dated February 15, 2013
- Exhibit 8: Annual suite inspection - maintenance report dated May 9, 2013
- Exhibit 9: Applicant's suite condition correspondence to respondent dated June 20, 2012
- Exhibit 10: Condition check-in report dated May 1, 2008
- Exhibit 11: Lease agreement made June 3, 2013
- Exhibit 12: Written statement of Joyce Dust - Site Manager McNiven Place dated July 15, 2014