

IN THE MATTER between **GBH Holdings Ltd.**, Applicant, and **Kathleen Mangelana**,  
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 Inuvik in the Northwest Territories.**

BETWEEN:

**GBH HOLDINGS LTD.**

Applicant/Landlord

- and -

**KATHLEEN MANGELANA**

Respondent/Tenant

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 43(3)(d) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the rental premises known as #38, 40 Tununuk Place, in Inuvik, Northwest Territories, will terminate August 31, 2015, and the respondent must vacate the rental premises on or before that date.

DATED at the City of Yellowknife in the Northwest Territories this 8th day of May 2015.

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Adelle Guigon  
Deputy Rental Officer

IN THE MATTER between **GBH Holdings Ltd.**, Applicant, and **Kathleen Mangelana**,  
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.

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**GBH HOLDINGS LTD.**

Applicant/Landlord

-and-

**KATHLEEN MANGELANA**

Respondent/Tenant

**REASONS FOR DECISION**

<b><u>Date of the Hearing:</u></b>	<b>May 5, 2015</b>
<b><u>Place of the Hearing:</u></b>	<b>Inuvik, Northwest Territories</b>
<b><u>Appearances at Hearing:</u></b>	<b>Gregory Murphy, representing the applicant Kathleen Mangelana, respondent Daniel Rogers, witness for the respondent</b>
<b><u>Date of Decision:</u></b>	<b>May 7, 2015</b>

### **REASONS FOR DECISION**

An application to a rental officer made by GBH Holdings Ltd. as the applicant/landlord against Kathleen Mangelana as the respondent/tenant was filed by the Rental Office March 26, 2015. The application was made regarding a residential tenancy agreement for the rental premises known as #38, 40 Tununuk Place, in Inuvik, Northwest Territories. The applicant personally served a copy of the filed application on the respondent April 4, 2015.

The applicant alleged the respondent had repeatedly and unreasonably disturbed the landlord's and other tenants' enjoyment of the residential complex. An order was sought to terminate the tenancy. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for May 5, 2015, in Inuvik, Northwest Territories. Mr. Gregory Murphy appeared representing the applicant. Ms. Kathleen Mangelana appeared as respondent.

Mr. Murphy gave testimony and evidence alleging a total of 12 occurrences since September 2014 causing disturbances to himself and other tenants in the residential complex attributed to Ms. Mangelana and/or her guests. The complaints included:

- one for permitting visitors into the rental premises for a greater period of time than permitted by the tenancy agreement;
- five for personally harassing Mr. Murphy;
- three for Ms. Mangelana's guests seeking entry to the residential complex by means other than using the door buzzer (i.e. banging on the wall and yelling into the apartment);
- one for Ms. Mangelana's guest using the door buzzer to gain entry to the residential complex at 4:20 a.m.; and
- two for excessive noise coming from Ms. Mangelana's apartment.

Mr. Murphy received telephone calls from other tenants regarding three of the above documented incidents – one for banging on the outside wall to gain entry and two for excessive noise after midnight from inside the complex. The telephone calls led Mr. Murphy to investigate the disturbances and he was able to personally observe the entry of the person who banged on the

outside wall to Ms. Mangelana's apartment and to locate the source of both of the interior noise disturbances to Ms. Mangelana's apartment. The remaining documented incidents were all personally observed or experienced by Mr. Murphy directly. He issued written notices of the complaints to Ms. Mangelana for each of the above mentioned incidents, thereby documenting them and informing Ms. Mangelana of them.

Ms. Mangelana did not dispute receiving the written notices. She did dispute the reason for several of them and expressed frustration at receiving so many, citing the majority of them being nothing more than Mr. Murphy's attempt to provoke her. She further argued that Mr. Murphy had no real proof of the complaints alleged.

Ms. Mangelana did not dispute the complaints of harassment against Mr. Murphy, qualifying them as her response to his constant practice of blaming her for everything. The harassment consisted of using aggressive, vulgar language towards Mr. Murphy. She confirms raising her voice at him but never yelling.

Ms. Mangelana and her common-law husband Daniel Rogers both testified against the two noise complaints coming from their apartment, stating that they heard the disturbances too but did not report them.

With respect to the three complaints of banging on the exterior wall or yelling to gain entry to the residential complex, Ms. Mangelana did not dispute these incidents occurring but did argue that she could not control the manner in which someone chooses to gain her attention to enter the building; if they choose to use the buzzer or bang on the wall.

With respect to the one instance of someone buzzing for entry at 4:20 a.m., Ms. Mangelana and Mr. Rogers both indicated that they did not let that person into the building and were surprised when she knocked at their apartment door.

Ms. Mangelana explained the extended visitors that Mr. Murphy complained of were her son, his wife, and their child who came for a visit for a few days. She also cited previous discussions with a Rental Officer indicating that guests and visitors to tenants cannot be restricted by the landlord.

Two previous rental officer orders were issued against both parties: 20-10752 ordered Ms. Mangelana to comply with her obligation not to disturb the landlord or other tenants and not create any future disturbances; 20-14172 ordered both Mr. Murphy and Ms. Mangelana to comply with their respective obligations not to disturb each other's possession or enjoyment of

the rental premises or residential complex. The parties were asked what they respectively felt would be a satisfactory resolution to their ongoing dispute this time. Mr. Murphy reiterated termination of the tenancy, citing what he perceived as Ms. Mangelana's unhappiness with residing at this residential complex. He expressed a willingness to give Ms. Mangelana plenty of time to find alternate accommodations, suggesting June 30, 2015, as a termination date. Ms. Mangelana requested proof of complaints of other tenants in the form of signed complaints from them to go directly to her and that Mr. Murphy stop giving her notices he could not prove the substance of. She felt requiring the other tenants to approach her directly would reveal the truth of things. She confirmed recent consideration of moving and expressed an intention to start making applications for alternate accommodations.

Other issues that were raised in the application and at hearing were regarding repeatedly late payment of rents and a refusal on the part of the landlord to provide receipts for rent payments. Ms. Mangelana did not dispute that she is usually late paying her rent but always pays the full amount within the month it is due, and until recently that has not been an issue. Mr. Murphy did not dispute refusing to provide receipts, stating that he would be willing to provide amended receipts upon return of the original receipts the amended receipt would replace.

#### *Tenancy agreement*

The residential tenancy agreement entered into evidence establishes a tenancy agreement between the parties for the rental premises known as #38, 40 Tununuk Place, in Inuvik, Northwest Territories, commencing August 18, 2010. I am satisfied a valid tenancy agreement is in place in accordance with the *Residential Tenancies Act* (the Act).

#### *Late payment of rent and receipts*

The landlord provided into evidence copies of several late rent reminders dated between July 2, 2014, and January 19, 2015, referencing rent due for the months of July, October, December, and January. Ms. Mangelana did not dispute that she has been late paying her rent, but expressed a lack of appreciation for being repeatedly reminded about it. Schedule A to the tenancy agreement specifies the rent is due the first day of each month. I find the respondent has failed to comply with her obligation to pay the full amount of rent when it is due.

There is currently no requirement under the Act for a landlord to provide receipts for payments of rent. However, I would take this opportunity to inform the parties that amendments to the Act are expected to come into force in the next couple of months which include a requirement for landlords to provide receipts to tenants upon request.

#### *Overcrowding*

The applicant alleged the tenancy agreement has a condition restricting how long visitors can stay with tenants and that the respondent had breached this condition by permitting her family to stay with her for more than the allowed time without his permission. A thorough review of the tenancy agreement does not reveal any such restriction, and even if it did I would cite it as an unenforceable rule due to its unreasonableness. In my opinion, no landlord has the right to say who can or cannot visit tenants or for how long.

The applicant made further argument that the number of occupants in the rental premises was restricted and that by permitting her visitors to stay overnight the respondent breached the overcrowding condition. Section 45(3) of the Act does specify that 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 tenancy agreement. However, there is no condition in the tenancy agreement specifying the maximum occupants for the respondent's residence, nor were the respondent's visitors occupying the rental premises on a continuing basis. Additionally, the applicant did not provide any territorial or federal legislation that establishes maximum occupancy standards for residential premises. The allegation of breaching section 45(3) of the Act is dismissed.

#### *Early morning guest entry*

The applicant alleged a guest of the respondent was permitted entry to the residential complex at 4:20 a.m. after the guest used the buzzer to gain entry. The applicant claimed the act of using the buzzer at that time of morning disturbed his sleep, causing him to get up and investigate. The applicant observed the guest enter the building and go to the respondent's apartment. The respondent did not dispute that someone came to her apartment on the morning in question, but did dispute letting that person into the residential complex. The respondent's witness confirmed entry to the building was not permitted by them.

My first observation on this particular incident is why the main entry buzzer would be loud enough to wake anybody in an apartment other than the one it is buzzing. This problem was previously addressed in my reasons for decision in rental officer order #20-14172, stating that the volume of the main door buzzer is not in the tenants' control should be addressed by the landlord. If the volume of the door buzzer had been adequately addressed, the landlord may not have been woken and would not have observed where the guest who was granted entry went. My second observation is that while the respondent's apartment is where the guest went it does not necessarily stand to reason that the respondent is the person who was buzzed and permitted entry into the building. The respondent and her witness both dispute being the parties who answered the person's request for entry. Both the applicant and respondent agree the person who gained entry was intoxicated at the time; it is not unlikely the person pressed the buzzer for any other apartment and was automatically granted entry. My third observation is the implied irritation of the applicant at anybody buzzing to enter the residential complex at 4:20 a.m. I would submit in conjunction with my opinion regarding it being unreasonable for a landlord to restrict who may visit a tenant and for how long that a landlord has no right to restrict when a tenant receives a visitor. Section 43(2) of the Act specifies that a disturbance caused by a person permitted by a tenant to enter the residential complex is deemed to be a disturbance caused by the tenant. The disturbance in this instance is alleged to be the act of buzzing for entry and that act disturbed the landlord's quiet enjoyment. However, the respondent/tenant did not permit the person who buzzed for entry to enter the residential complex and as such cannot be held accountable for the alleged disturbance. The complaint of disturbing the landlord by buzzing into the residential complex at 4:20 a.m. is dismissed.

*Two complaints of excessive noise*

Both of the incidents of excessive noise are reported as occurring after Midnight. Both of the incidents of excessive noise were investigated by the landlord after he received telephone complaints from other tenants in the building. In both instances the landlord tracked the disturbances to coming from the respondent's apartment, testifying that he personally heard the disturbances and their source from as far away as the corner of the hallway. The respondent and her witness both dispute that the disturbances came from their apartment and indicate they too heard the noises but did not report them. The landlord's testimony specifically confirmed being able to hear the noise upon investigation from the corner of the hallway. He returned to his apartment and completed the noise complaint notices. I believe that there were disturbances

reported by other tenants in both instances, but I also have no concerns regarding the respective parties' credibility under oath. Their respective testimonies have been consistent throughout this hearing. I am simply not satisfied that there is enough evidence that the source of the disturbances was the respondent's apartment and as such both complaints are dismissed.

*Method of guests seeking entry*

Three complaints were documented regarding persons banging on the residential complex wall or yelling for entry to the building, rather than using the main entrance buzzer. One of those complaints was made to the landlord by telephone from another tenant in the building, from which the landlord investigated and observed the person being permitted entry by the respondent. The remaining two instances were directly observed from their first instance by the landlord. The respondent did not dispute these occurrences and admitted to permitting those individuals entry to the building and her apartment. As previously referenced, Section 45(2) specifies the tenant is responsible for the actions of persons they permit to enter the residential complex or the rental premises. By banging on the wall and/or yelling, the persons in these instances did disturb the quiet enjoyment of the complex for other tenants and the landlord. By permitting those persons in the complex and premises, the respondent accepted responsibility for those persons' actions as if the actions were the respondent's own. As such, I find the respondent failed to comply with her obligation not to disturb the landlord's or other tenants' enjoyment of the residential complex.

*Harassing the landlord*

Five instances were documented of the respondent verbally abusing the landlord. The respondent did not dispute these occurrences, other than to indicate she only raises her voice, never yells. The respondent rationalized the verbal abuse as a result of the landlord provoking her by constantly laying blame at her feet for disturbances he could not prove and for repeatedly giving her notices regarding late payment of rent. The landlord's notifications to the respondent respecting anything that might come up – be it complaints of disturbances or late rent payments or anything else – are an important tool that is not unreasonable for the landlord to use to document issues as they arise and keep tenants informed of other matters. They do not by any means justify verbally abusing the landlord.



While there is evidence to suggest an excessive use of authority by the landlord in matters pertaining to this tenant, by and large there is more evidence of disturbances for which the tenant is responsible. The burden of proof in administrative tribunals such as this one is not beyond reasonable doubt; it is on a balance of probabilities. It has previously been acknowledged in rental officer order #20-14172 that the parties appear to have a contentious relationship. Five additional documented and uncontested occurrences of verbal abuse against the landlord create a repeated pattern of unacceptable behaviour. Two previous rental officer orders required the respondent to comply with her obligation not to disturb the landlord's or other tenants' possession or enjoyment of the residential complex. I find the respondent has failed to comply with those orders and has again failed to comply with her obligation not to disturb the landlord's enjoyment of the residential complex.

*Termination of the tenancy agreement*

In light of the repeated pattern of behaviour and the clear animosity between both the landlord and the respondent, and having already exhausted the only other options for remedies available under section 43 of the Act, I am satisfied termination of the tenancy agreement is the only viable option left. In consideration of the low vacancy rate in Inuvik, adequate time will be granted to find alternate accommodation.

An order will issue terminating Ms. Kathleen Mangelana's tenancy at the rental premises known as #38, 40 Tununuk Place, in Inuvik, Northwest Territories, on August 31, 2015, and requiring her to vacate the rental premises on or before that date.

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Adelle Guigon  
Deputy Rental Officer

APPENDIX A

Exhibits

Exhibit 1: Residential tenancy agreement dated August 18, 2010

Exhibit 2: Applicant's violation of building rules warning notices to respondent dated: March 21, 2015; January 27, 2015; January 23, 2015; January 17, 2015; December 17, 2014; October 6, 2014; September 27, 2014; July 25, 2014

Exhibit 3: Applicant's late rent reminders to respondent dated: January 19, 2015; January 6, 2015; January 2, 2015; December 20, 2014; December 7, 2014; October 7, 2014; July 15, 2014; July 7, 2014; July 2, 2014

Exhibit 4: Respondent's written submissions