File #20-14836 and #20-14884

IN THE MATTER between **INUVIK HOUSING AUTHORITY**, Landlord, and **DANIELLE ELANIK AND BRUCE NOKADLAK**, Tenants;

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

AND IN THE MATTER of a Hearing before, **HAL LOGSDON**, Rental Officer, regarding the rental premises at **INUVIK, NT.**

BETWEEN:

INUVIK HOUSING AUTHORITY

Landlord

- and -

DANIELLE ELANIK AND BRUCE NOKADLAK

Tenants

ORDER AND EVICTION ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 63(4)(a) of the *Residential Tenancies Act*, the tenants shall be evicted from the premises known as WN7104, 31-104 Wolverine Road, Inuvik, NT on November 5, 2015.

2. Pursuant to section 63(4)(b) of the *Residential Tenancies Act*, the tenants shall pay the applicant compensation for use and occupation of the rental premises in the amount of five thousand five hundred fifty six dollars and forty four cents ($5556.44) plus,

a) fifty two dollars and forty two cents ($52.42) for each day in October after October 13, 2015 that the tenants remain in possession of the rental premises and,

b) fifty four dollars and sixteen cents ($54.16) for each day in November, 2015 that the tenants remain in possession of the rental premises.

DATED at the City of Yellowknife, in the Northwest Territories this 13th day of October, 2015.

Hal Logsdon
Rental Officer

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Landlord

-and-

DANIELLE ELANIK AND BRUCE NOKADLAK

Tenants

REASONS FOR DECISION

Date of the Hearing:	**September 17, 2015**
Place of the Hearing:	**Yellowknife, NT via teleconference**
Appearances at Hearing:	**Kim Burns, representing the landlord** **Diane Day, representing the landlord** **Brian Larman, representing the landlord** **Danielle Elanik, tenant** **Bruce Nokadlak, tenant**
Date of Decision:	**October 13, 2015**

REASONS FOR DECISION

The landlord filed an application on July 24, 2015 and the tenants filed an application on August 31, 2015. Both applications refer to the same tenancy agreement and the same rental premises. With the consent of the parties, both applications were heard at a common hearing.

The tenant's application was filed against the Inuvik Housing Authority and Kim Burns. Ms Burns is the manager of the Inuvik Housing Authority and is not the landlord. The style of cause of this order shall omit Ms Burns from the style of cause. The landlord's application named Avakana (Bruce) Nokadlak as a respondent. Notwithstanding that Mr. Nokadlak is named in this style on the tenancy agreement, he stated that he customarily uses Bruce as his first name and asked that the style of cause reflect his preference. There was no objection from the landlord. The style of cause of the order has been amended accordingly.

The landlord submitted that the parties entered into a term tenancy agreement which commenced on June 1, 2015 ending on June 30, 2015. The landlord notified the tenants in writing on June 23, 2015 that they would not be renewing the tenancy agreement due to disturbances directed at the tenants living next door. However, the landlord set out in the same notice, an offer to enter into a new tenancy agreement for another unit. The tenants refused the offer. The landlord sought an order evicting the tenants and an order for compensation for use and occupation of the premises after June 30, 2015. The premises are subsidized public housing.

In their application, the tenants set out a number of alleged breaches by the landlord, including,

> "harassment, being singled out, privacy breach, tampering with documents, neglecting their duties, not putting our complaints through to the board, not telling the truth at board meetings, attempting to intimidate, threats to my children....and conspiring [sic] a police officer to do the same."

As was pointed out to the tenants at the hearing, the *Residential Tenancies Act* sets out obligations of landlords and obligations of tenants and, through a dispute resolution mechanism involving an application and a hearing, enables a rental officer to provide remedies set out in orders. A rental officer may only deal with alleged breaches of the Act or tenancy agreements. While some of the allegations contained in the tenants' application may serve them in defending themselves against the allegations of landlord, most are not in themselves breaches of the Act or the tenancy agreement.

However, the area of "neglecting their duties" could apply to any of the obligations of the landlord that are set out in the Act and the tenants have specifically set out two of these in their application. They alleged that the landlord had failed to repair the back steps and had failed to repair a cracked window frame which has allegedly allowed water and air infiltration in an upstairs room. Both of these items can be addressed pursuant to section 30 of the Act.

Section 51(4) of the *Residential Tenancies Act* sets out a special provision for tenancy agreements for subsidized public housing that are made for 31 days or less.

> **51.(4) Notwithstanding subsection (3), where a tenancy agreement for**

> **subsidized public housing specifies a date for termination of the agreement that is 31 days or less after the commencement of the agreement, it terminates on the specified date.**

Termination of the tenancy agreement is automatic and does not require any specific notice by the landlord or any reason. There is no security of tenure for this type of term agreement. Unless a new tenancy agreement is formed, the tenancy agreement ends and if the tenant does not give up possession of the premises at the end of the term they become an overholding tenant.

Section 63(4) of the *Residential Tenancies Act* sets out two criteria to be met for the issuance of an eviction order.

> **63.(4) A rental officer who <u>terminates a tenancy or determines that a tenancy has been terminated in accordance with this Act</u>, and who determines that an <u>eviction is justified</u>, may make an order**
> **(a) evicting the tenant on the date specified for the termination of the tenancy in the agreement, notice or order, or on the earliest reasonable date after the date of termination of the tenancy; and**
> **(b) requiring the tenant to compensate the landlord for the use and occupation of the rental premises, calculated for each day the tenant remains in occupation following the termination of the tenancy.**

There is no doubt that the tenancy agreement, duly executed by the parties and made for a term of 31 days or less, was terminated at the end of the term on July 31, 2015 in accordance with section 51(4). I must only then consider if the eviction of the tenants is justified. In order to make that determination, it is necessary to examine the rather lengthy record of disputes between the tenants, their neighbours and the landlord.

Events Leading up to the Termination of the Tenancy Agreement

The rental premises (Unit WN7104) consist of a unit in a row housing complex of nine units. Since April, 2014 there have been numerous complaints from the tenants concerning alleged noise created by their next-door neighbours (Unit WN7103) and their neighbours have also filed noise complaints against the tenants. The landlord has issued written warnings to both parties.

On May 1, 2015 the landlord served a notice of termination on the tenants terminating the previous term tenancy on the expiry date of May 31, 2015 for noise and disturbance. The notice indicated that the tenants could appeal this termination through the NWT Housing Corporation's appeal process. The first level of appeal is to the Inuvik Housing Authority Board of Directors. The board heard the matter and dismissed the appeal. The tenants were informed that they could proceed to a level 2 appeal through the NWT Housing Corporation District Office.

The tenants proceeded with the level 2 appeal and were notified in writing by Ms Alana Mero, District Director for the NWT Housing Corporation, on June 3, 2015 that the termination of their tenancy agreement had been rescinded, a month-to-month tenancy agreement would be offered to them and that the Inuvik Housing Authority would offer to transfer them to another suitable unit when one became available. Another letter from Ms Mero dated June 5, 2015 reiterated that the termination had been rescinded and that a month-to-month tenancy agreement would be offered to the tenants. Neither letter set out any reasons for the decision but the District Director noted in the June 5 correspondence that,

> "Rescinding the termination is in no way a criticism of the steps taken by Kim Burns,

> the staff at IHA or their Board of Directors.
>
> The rescinding of the termination is a last chance. This means that any further substantiated disturbances on your part will result in termination."

Rather than proceeding with the execution of a month-to-month tenancy agreement as indicated in Ms Mero's correspondence, a tenancy agreement with a term of 30 days was executed on June 4, 2015. The landlord stated at the hearing that the 30 day tenancy agreement was a stipulation of continuing the tenancy and was clearly set out at the level 2 appeal and that the terminology used in the June correspondence was incorrect. The tenants stated that they signed the 30 day tenancy agreement because they did not wish to lose their house.

The landlord testified that they received a written complaint from the tenants in WN7103 outlining another disturbance on June 16. The landlord testified that the alleged disturbance occurred at 6:00 PM when Mr. Nokadlak used abusive and threatening language directed at his neighbour in WN7103. The written complaint was not provided in evidence nor were the complainants at the hearing to testify. The landlord stated that they did not have direct knowledge of the alleged incident.

The landlord paraphrased the written complaint stating that the complainant had returned home from work and was cleaning out his vehicle and Mr. Nokadlak was outside on his deck saying "such a pussy - too scared to get out of your car" - also telling him "hang tough, hang tough". The neighbour got out of his car and walked up his stairs and Bruce said to Danielle, "such a pussy - wouldn't mind to smash up him and his family." The landlord also stated that the neighbour noted continued banging and slamming of doors in the written complaint. The landlord stated that the complainant noted that the incident was reported to the RCMP who had provided a file number.

The tenants disputed the testimony of the landlord concerning the event. Ms Elanik testified that she was on the deck with Mr. Nokadlak at the time. She testified that Mr. Nokadlak only called out to the neighbour "hang tough, hang tough" which Mr. Nokadlak described as a nickname of the neighbour's father. Both Mr. Nokadlak and Ms Elanik testified that none of the other alleged words were uttered. Ms Elanik testified that the RCMP did not attend the premises following the event.

On June 23, 2015 the tenants were served with a notice transferring them to another unit and notifying them that their 30 day term agreement, ending on June 30 would not be renewed due to the disturbance complaint from their neighbours. The landlord gave the tenants until June 26, 2015 to accept or decline the transfer. The tenants declined the transfer, stating at the hearing that the unit, contained in an apartment building, was not fit for children due to the continual disturbances of "crackheads" and others in the building.

The landlord extended the offer to relocate until July 7, 2015. The respondents failed to vacate the premises and the landlord filed the application to evict the tenants on July 24, 2015.

Previous Complaints about the Neighbours

The tenants have made numerous complaints to the landlord about their neighbours in WN7103 and have made several inquiries to the Rental Office about how to proceed. *The Residential Tenancies* Act contains provisions for the resolution of these types of complaints in section 44 and the tenants were advised of the process.

> **44. (1) Where a tenant informs his or her landlord that the tenant has been affected by another tenant's breach of the obligation imposed by subsection 43(1), the landlord shall inquire into the complaint and take appropriate action, including the making of an application under subsection 43(3).**
>
> **(2) Where, after receiving a complaint of a tenant under subsection (1), the landlord does not make an application under subsection 43(3) and the tenant is not satisfied with the action, if any, that the landlord has taken, the tenant may give a written notice to that effect to the landlord and the rental officer**
>
> **(3) Where a rental officer receives a notice under subsection (2), the rental officer shall inquire into the matter and, where the rental officer is of the opinion that there are reasonable grounds for an application under subsection 43(3), shall attempt, by whatever reasonable means the rental officer considers necessary, to resolve the complaint by agreement between the landlord and the tenant who made the complaint.**
>
> **(4) Where the rental officer is of the opinion that the rental officer has been unable to resolve the complaint within a reasonable time,**
> **(a) an application by the landlord under subsection 43(3) against the tenant alleged to have breached the obligation imposed by subsection 43(1) is deemed to have been made; and**
> **(b) the landlord, the tenant who made the complaint and the tenant alleged to have breached the obligation are parties to the application.**

The tenants did proceed pursuant to section 44(1)(3) on June 5, 2015 and a rental officer conducted an inquiry into the matter. The rental officer throughly reviewed the complaints made by the tenants, complaints made by the neighbours, the notices and warnings issued by the landlord to both parties and reviewed RCMP occurrence reports. The rental officer concluded in a report dated July 13, 2015 that the landlord had a reasonable policy dealing with tenant complaints regarding other tenants and that the policy had been applied fairly and consistently with both the tenants and their neighbours. The rental officer also found that the majority of complaints made to the RCMP by the tenants were considered unfounded on investigation. The rental officer found that of the disturbances that were verifiable, none were of such significance to warrant deeming an application pursuant to section 44(4). The tenants clearly disagree with the rental officer's findings in this matter and repeatedly tried to reopen the issue at the hearing despite the fact that it is not a matter that can be dealt with via an application by a tenant. They claim that the RCMP withheld information from the rental officer and that there were more calls of complaint than were disclosed by the police.

The landlord noted several other incidents which have occurred since the tenancy agreement was terminated. On August 24, 2015 the tenants complained that their neighbour had left a garbage bag out and the contents were strewn about the yard. The landlord attended the complex and found only a secure bag of recycling items. The landlord asked the neighbour to clean up the recycling bags as they could attract bears. The tenants accused the landlord of alerting the neighbour so they had a chance to clean up all the garbage before the landlord attended the property.

The landlord also alleged that they had been intimidated by the tenants when serving the notices.

They alleged that Mr. Nokadlak came out of the premises, shirtless, flexing his muscles, puffing out his chest and getting in their face. Mr. Nokadlak denied that his demeanor intimidated the landlord and stated that due to an injury, he was advised to assume that pose to relieve pain.

The Tenants' Application

In my opinion, the tenants' application is largely a statement of defence rather than allegations concerning breaches of the Act or the tenancy agreement by the landlord. Many of the allegations such as alleged threats to the tenants' children and conspiring with the police are completely outside the jurisdiction of the *Residential Tenancies Act* and are devoid of any evidence whatsoever. In my opinion, the allegations against the landlord stem mainly from the tenants' dislike of their neighbours, their perception that the landlord is not doing anything about their complaints and is unfairly blaming them.

However the tenants' allegations did contain several elements that do fall under the jurisdiction of the Act. The tenants alleged that the landlord had failed to repair a window in the upstairs front bedroom after a windstorm. They alleged that the damage allowed water and air infiltration. The tenants also alleged that the landlord had failed to repair the back stairs.

The landlord stated that the window was not damaged but that the surrounding wall surface was damaged, most likely by settling or shifting of the foundation. The landlord stated that they suspected the water infiltration was the result of condensation but had been unable to access the attic due to wet ground conditions throughout the summer and the inability to use large equipment. They stated that they intended to address the problem when conditions permitted. The landlord stated that the tenants reported the problem with the back stairs to the fire department and the Authority had made repairs. A letter from the fire department was provided in evidence indicating that the repairs had been completed to their satisfaction. The tenants stated that the repairs were not done to their satisfaction but provided no detail as to any remaining deficiencies.

Conclusions

I cannot determine the reasons that led to the conclusion that the Housing Authority's decision to terminate the tenancy agreement should be rescinded. They were not specifically stated in the correspondence. As previously mentioned, it was noted by the District Director that the decision did not represent a criticism of the board or the management of the Authority. It appears then, that the District Director determined that the alleged disturbance of June 16, 2015 was not severe enough to warrant termination yet was nevertheless a breach of the tenancy agreement. I have similar misgivings about the June 16 allegation. I also question why the Housing Authority proceeded to offer only a 30 day tenancy agreement rather than observe the decision handed down by the District Director to enter into a monthly agreement. However, even a monthly tenancy agreement may be terminated by the landlord's notice.

Weighing the sworn testimony of the tenants concerning the alleged June 16 incident (described by Ms Burns as June 10 in her testimony) against the unsworn complaint, which was not entered into evidence but paraphrased by the landlord, makes it difficult to conclude without doubt that the incident was all that disturbing or unfolded as alleged by the landlord.

However, taking into consideration all of the unfounded and trivial complaints that the tenants have made against their neighbours in WN7103, I believe there is sufficient evidence to issue an eviction order. It is abundantly clear that the tenants do not get along with or like the neighbours in WN7103. It is also clear to me that the tenants take every opportunity to complain of their neighbours' behaviour, no matter how petty. They become quite agitated with any party, including the landlord, the rental officer and the RCMP who do not agree with them that their neighbours continually and seriously disturb them and should be evicted.

Of the 13 complaints made to the RCMP by the tenants, only two were found to have any substance. Any single complaint, such as alleging that orange peels and cigarette butts were thrown in the driveway, would perhaps not warrant termination or eviction, but the continuous litany of petty, vexatious and often unfounded complaints is tantamount to harassment.

All of the units in the residential complex share at least a common wall and have an adjoining yard yet I heard no evidence that the tenants in WN7102 shared the tenants' concerns about their neighbours in WN7103 nor did I find any evidence that the tenants had any difficulties with any other neighbours in the residential complex. This leads me to believe that there is much more to the strife between these parties than the myriad of petty complaints that have been made.

I am inclined to agree with the landlord that perhaps the best solution to this matter is to separate the parties by offering the tenants another residence. However they have rejected one offer of a transfer and there are no current vacancies available. The tenants will no doubt protest this option asking, why us and not our neighbours? It is not because the neighbours in WN7103 have not created any disturbance. As outlined in the rental officer's report of July 13, 2015, the landlord has issued two final warnings to the tenants in WN7103. However the tenants in WN7103 do not seem intent on harassing their neighbour. That is not the case with the tenants.

The tenants were offered other accommodation by the landlord and refused. In my opinion, the eviction is justified. The tenants in WN7103 should not be expected to continue to deal with these disturbances.

An eviction order to be effective on November 5, 2015 shall be issued and the tenants shall be ordered to pay compensation for use and occupation of the rental premises since June 30, 2015 in the amount of $5556.44 plus $52.42/day for each day in October after October 13, 2015 and $54.16 for each day in November, 2015 that the tenants continue to occupy the premises.

July	$1625.00
August	1625.00
September	1625.00
October 1-13	681.44
Total	$5556.44

For each day in October after October 13/15	$52.42/day
For each day in November, 2015	$54.16/day

The evidence indicates that the problem with the back stairs has been repaired. Although the tenants would not acknowledge that the stairs had been satisfactorily repaired, the letter from the fire department suggests that the repairs are adequate. I accept the fire departments opinion, and find no breach of the landlord's obligation.

The evidence concerning the problem with the upstairs window suggests that there may be a potential problem. As the tenancy agreement has been terminated and an eviction order will be issued, no remedy pursuant to section 30, other than an order for compensation, would benefit the tenants. The Act is intended to be remedial in nature. I find no evidence that would support a request for compensation. I suggest that the landlord investigate this problem and undertake any repairs that may be necessary but shall not issue any order in this regard.

Hal Logsdon
Rental Officer