

IN THE MATTER between **Heather Coakwell and Jason Coakwell**, Applicants, and **Estate of Barry Sanderson**, 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:

HEATHER COAKWELL and JASON COAKWELL

Applicants/Landlords

- and -

ESTATE OF BARRY SANDERSON

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent must pay to the applicants rental arrears in the amount of \$4,426.80 (four thousand four hundred twenty-six dollars eighty cents).
2. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondent must pay to the applicants expenses associated with the repair of damages to the rental premises in the amount of \$2,849.39 (two thousand eight hundred forty-nine dollars thirty-nine cents).

DATED at the City of Yellowknife in the Northwest Territories this 6th day of January 2014.

Adelle Guigon
Deputy Rental Officer

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REASONS FOR DECISION

Date of the Hearing: **October 25, 2013**

Place of the Hearing: **Yellowknife, Northwest Territories, via Teleconference**

Appearances at Hearing: **Heather Coakwell, representing the Applicants**

Date of Decision: **December 30, 2013**

REASONS FOR DECISION

An application to a rental officer made by Heather Coakwell and Jason Coakwell as the applicants/landlords against the Estate of Barry Sanderson as the respondent/tenant was filed by the Rental Office on August 6, 2013. The application was made regarding a tenancy agreement for the rental premises known as 46-61 Woodland Drive in Hay River, Northwest Territories. The applicants served a copy of the filed application package on Mrs. Mary Sanderson – mother of the tenant – as executrix of the estate by registered mail signed for August 20, 2013.

Mr. Barry Sanderson, the tenant, passed away in May 2013. The applicants alleged Mr. Sanderson had accumulated rental arrears at the time of his death and that there were repairs required to the unit which were beyond normal wear and tear. Evidence submitted in support of the allegations is listed in Appendix A attached to this order.

A hearing was scheduled for October 25, 2013. Both parties were served notices of hearing by registered mail sent September 30, 2013. Mrs. Heather Coakwell appeared representing the applicants. Mrs. Mary Sanderson, mother of the tenant, was deemed served the notice on October 7, 2013, pursuant to section 71(5) of the *Residential Tenancies Act* (the Act).

The notices of attendance directed the parties to attend the hearing in person in Hay River, at which time I would be attending by telephone. Recognizing Mrs. Sanderson resides in Fort Resolution, I contacted her on October 21, 2013, to inform her of the scheduled hearing and to offer her the opportunity to appear at the hearing by three-way conference. She confirmed she is Mr. Barry Sanderson's mother. She agreed to the offer of attending by three-way conference, although she did not feel she had anything to say at the hearing and did not see the point of attending. I called her back October 22, 2013, and left the telephone number for her to dial into on her voice mail. She did not appear at the hearing, nor did anyone else appear to represent her or the estate.

At hearing I questioned Mrs. Coakwell regarding her determination of Mrs. Sanderson as the appropriate representative of Mr. Sanderson's estate. She advised she had been told by Mr. Sanderson's sister Cyndi [sp] Cardinal that her mother, Mary Sanderson, was the executrix for her brother's estate and that there was no will.

Section 53 of the Act states:

53. (1) Notwithstanding any other provision of this Act,

(a) where a tenant dies...

the tenant, his or her heirs, assigns or legal or personal representative may terminate the tenancy agreement by giving notice, in accordance with section 55.

Black's Law Dictionary offers the following definitions:

- lineal heir: A person who is either an ancestor or a descendant of the decedent, such as a parent or a child.
- acting executor: One who assumes the role of executor – usually temporarily – but is not the legally appointed executor or the executor-in-fact.
- next of kin:
1. The person or persons most closely related to a decedent by blood or affinity;
 2. An intestate's heirs – that is, the person or persons entitled to inherit personal property from a decedent who has not left a will.

In my opinion, it was not unreasonable to determine Mrs. Mary Sanderson as the tenant's next of kin and lineal heir for the purposes of speaking to the residential tenancy matters that were before me. I found that reasonable notice of the purpose of the application and the hearing date and time had been given to the estate and we proceeded in the absence of a representative of the estate, pursuant to section 80(2) of the Act.

Mrs. Coakwell provided into evidence a receipt written to Mr. Sanderson dated March 15, 2009, for a total amount of \$1,425 representing \$475 for half a month's rent plus \$950 for the damage [security] deposit. Mrs. Coakwell was unable to provide a copy of the original written tenancy agreement as Mr. Sanderson was one of the landlords' first tenants, the landlords themselves had moved in the duration, and the tenancy agreement was likely buried in one of their packed boxes.

She advised the original tenancy agreement was with Mr. Sanderson and his wife Sandy Sanderson. Mr. Sanderson and his wife split up in 2010, and in July 2010 the landlords and Sandy Sanderson agreed in writing to remove her from the joint tenancy agreement, effectively terminating her tenancy and continuing the tenancy with Mr. Sanderson alone. At the time of Mr. Sanderson's death the landlords accepted the termination of the tenancy agreement as of May 31, 2013.

Mrs. Coakwell described Mr. Sanderson as a nice guy who needed help now and then with paying his rent. She stated the agreement was for \$950 per month for rent and that utilities were the tenant's responsibilities. Mr. Sanderson was unable to secure the power account in his name, so the landlords would pay the monthly bill and forward it to Mr. Sanderson to pay them back. Mr. Sanderson would usually pay the water/sewer bill from the Town of Hay River himself directly to the Town. There is one water/sewer bill in September 2011 that was not paid by Mr. Sanderson, rather by the Coakwells, in the amount of \$270.95, as well as the final amount owing on the account as of May 31, 2013, of \$576.15, for a total amount owing to the Coakwells for water/sewer invoices of \$847.10.

Mr. Sanderson's pattern of payments would be to make partial payments to the landlord for the rent owing, accumulate arrears, and then make large payments usually resulting in a credit balance which would carry him for a short time. Mrs. Coakwell indicated they did not really mind accommodating Mr. Sanderson in this fashion as they recognized his difficulties and he usually did come through with payments. At the time of his death, Mr. Sanderson had accumulated rental arrears, including the power and water invoices to May 31, 2013.

Upon regaining possession of the rental premises, the landlords assessed damages to the rental premises beyond normal wear and tear as follows:

- deck damaged
- yard uncared for, debris throughout
- broken windows
- water pipe insulation damaged
- cigarette smoke damage to walls and ceilings throughout
- holes and scrapes to the walls throughout
- interior doors damaged

These damages required the deck to be torn down, the yard to be cleaned up and the debris disposed of, two windows to be repaired, the water pipe to be boxed in, the interior doors to be repaired and reinstalled, and the walls, ceilings, and interior doors throughout the premises to be repaired and repainted. Photographs of the premises taken prior to repairs being undertaken were submitted into evidence.

Mrs. Coakwell also claimed \$150 for the repair of the front door window occurring in December 2012. She testified the window had been smashed in, Mr. Sanderson had been billed, and as of the time of his death had not paid the bill.

Tenancy Agreement

The receipt dated March 15, 2009, is made out to Sandra and Barry Sanderson acknowledging payment of \$475 for half a month's rent and \$950 for the [security] deposit. The agreement signed July 20, 2010, terminates Sandra Sanderson's tenancy with the landlords effective July 31, 2010. Although the written tenancy agreement was not entered into evidence, I am satisfied the receipt and the agreement establish both that a tenancy agreement was entered into by the parties on March 15, 2009, and that Sandra Sanderson ceased to be a tenant on July 31, 2010.

Rental Arrears

The Town of Hay River transaction list dated May 22, 2013, specifically names Barry Sanderson as the account holder for 46-61 Woodland Drive. The transaction list is an accounting for the water/sewer charges and payments made for the premises between April 27, 2009, and May 22, 2013. Mrs. Coakwell testified that Mr. Sanderson had made all payments against this account except the \$270.95 paid September 9, 2011. Mrs. Coakwell also testified that the landlords had paid the \$270.95, as well as the final balance of \$576.15, resulting in a total amount owing to the landlords for water/sewer payments made on the tenant's behalf of \$847.10. I am satisfied this transaction list accurately reflects payments made against the account.

The Stittco Utilities customer account history report is an accounting of power charges for the premises between January 12, 2011, and August 16, 2013. Mrs. Coakwell testified the power charges were paid by the landlords and reimbursed by Mr. Sanderson with his monthly rent payments. I am satisfied this report accurately represents payments made against the account by the landlords on Mr. Sanderson's behalf.

The statement of rent and utilities submitted by the applicants as part of the application package lists the monthly rent and payments made by Mr. Sanderson between June 2011 and May 2013. I am satisfied it accurately reflects payments made by Mr. Sanderson to the landlords during that time frame.

Section 1(1) of the Act defines rent as including the amount paid by a tenant to a landlord for the right to occupy rental premises and for any services and facilities the landlord provides for the tenant, whether or not a separate charge is made for the services and facilities. Services and facilities are defined as including utilities and related services. In this case, the rent is comprised of the monthly amount of \$950 plus the costs for the water/sewer and power. My calculations of the rent, power, and water/sewer less payments made between April 2011 and May 2013 are as follows:

Rent for June 2011 to May 2013	\$22,800.00
Power for April 2011 to May 2013	\$5,699.55
Water/Sewer for April 2011 to May 2013	<u>\$847.10</u>
Sub-total	\$29,346.65
Less payments made between June 2011 and May 2013	<u>\$23,950.00</u>
TOTAL RENTAL ARREARS	<u>\$5,396.65</u>

I find the respondent has accumulated rental arrears of \$5,396.65.

Tenant Damages

The photographs of the rental premises submitted by the landlords establish the condition of the rental premises at the time shortly after Mr. Sanderson's death. Having reviewed them, I am satisfied the claims for repairs made by the landlords are reasonable and that they are for damages for which the tenant is responsible. The total cost of repairs, based on the invoices and receipts received and claimed, is \$2,849.39.

The landlords' claim of \$150 for the repair of the front door window in December 2012 was not substantiated with an invoice for this repair. I am not satisfied it is a justified claim and will not include it in this order.

I find the respondent responsible to compensate the applicants for the costs of repairing damages to the rental premises in the amount of \$2,849.39.

Security Deposit

The receipt dated March 15, 2009, identifies a security deposit amount of \$950 was received. The applicants' statement of rent and utilities lists the credit of this amount against the arrears and repairs costs claimed. Interest on the security deposit was not included in the calculation of the security deposit credit. Calculating the interest in accordance with the Act and the *Residential Tenancies Regulations*, I find the landlords owe the respondent \$950 for the return of the security deposit plus \$19.85 in interest on the security deposit, for a total amount of \$969.85. This will be applied against the rental arrears.

An order will issue requiring the respondent to pay to the applicants rental arrears less security deposit in the amount of \$4,426.80 and compensation for expenses associated with the repair of damages to the rental premises in the amount of \$2,849.39.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Applicants' Statement of Rent and Utilities
- Exhibit 2: Two Stittco Utilities Statements of Account dated April 30, 2013, and May 31, 2013
- Exhibit 3: Two Town of Hay River Notices of Arrears dated May 6, 2013, and April 15, 2013
- Exhibit 4: Town of Hay River Transaction List dated May 22, 2013
- Exhibit 5: Michael Thompson Invoice #100 for Repairs to Rental Premises dated June 18, 2013
- Exhibit 6: Michael Thompson Invoice #101 for Repairs to Rental Premises dated June 28, 2013
- Exhibit 7: Home Building Centre Statement dated June 30, 2013, with referenced invoices attached
- Exhibit 8: Two Home Hardware Receipts dated June 10, 2013, and June 11, 2013
- Exhibit 9: Set of 27 photos of the rental premises
- Exhibit 10: Applicants' receipt for rent and security deposit dated March 15, 2009
- Exhibit 11: Agreement to terminate tenancy signed July 20, 2010, between applicants and Sandra Sanderson
- Exhibit 12: Stittco customer account history report for January 12, 2011, to August 16, 2013