

IN THE MATTER between **MARGARET BEAUCHAMP**, Applicant, and **NPR LIMITED PARTNERSHIP**, 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, **HAL LOGSDON**, Rental Officer, regarding the rental premises at **YELLOWKNIFE, NT**.

BETWEEN:

MARGARET BEAUCHAMP

Applicant/Tenant

- and -

NPR LIMITED PARTNERSHIP

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 30(4)(d) and 34(2)(c) of the *Residential Tenancies Act*, the respondent shall pay the applicant compensation for failure to provide and maintain the rental premises in a good state of repair and for disturbance of the applicant's quiet enjoyment of the rental premises in the amount of three thousand one hundred sixty eight dollars and sixty nine cents (\$3168.69).

DATED at the City of Yellowknife, in the Northwest Territories this 18th day of July, 2014.

Hal Logsdon
Rental Officer

IN THE MATTER between **MARGARET BEAUCHAMP**, Applicant, and **NPR LIMITED PARTNERSHIP**, 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 **Hal Logsdon**, Rental Officer.

BETWEEN:

MARGARET BEAUCHAMP

Applicant/Tenant

-and-

NPR LIMITED PARTNERSHIP

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: July 8, 2014

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Margaret Beauchamp, applicant
Caroline Johnson, representing the applicant
Jordan Cochrane, witness for the applicant
Aya Burshan, representing the respondent
Colleen Wellborn, representing the respondent
Scott Lefrancois, witness for the respondent
Kelly Betsina witness for the respondent
Gordon Stewart, witness for the respondent
Connie Diener, witness for the respondent

Date of Decision: July 16, 2014

REASONS FOR DECISION

The application was filed with the incorrect legal name of the respondent. The style of cause of the order has been amended to reflect the legal name of the respondent.

On May 12, 2014 there were multiple breaks in the water supply pipes in the applicant's apartment resulting in significant water escape. The applicant left the apartment until repairs were completed, initially staying in a hotel at her expense, then in a hotel at the landlord's expense and in private accommodation. At the time of the hearing, the repairs had not been completed. The applicant has continued to pay the monthly rent for the premises. The applicant sought an order requiring the respondent to complete the repairs to her apartment and to pay compensation.

The applicant testified that she and her son returned to the apartment the evening of May 12 to find water escaping from a wall in the hallway. She stated that she immediately called the landlord and was told they would be there in about 10 minutes. She contacted her other son who arrived and was able to shut off the water supply. She provided a video of the leak which was behind a panel giving access to the water supply for the tub.

The landlord's maintenance staff arrived and while one was attending to the leak, another noticed a leak at the water supply for the toilet. This was also attended to. As well as the water escape, there were two apparent shorts in outlet boxes in the living room and adjoining bedroom. A

contractor was called in and began mopping up the water in the apartment. Before the landlord's staff left the apartment they checked all of the other fixtures for leaks and discovered a small leak under the kitchen cupboard. They put a temporary shut off valve on the water line and told the applicant that they would return in the morning to complete the repairs. The applicant stated that later that evening, there was a loud bang and a severe water escape under the kitchen cupboard where the temporary repair had been made. The landlord's maintenance staff returned and the leak stopped but the apartment was severely flooded. The applicant spent the night in a hotel at her expense.

The applicant testified that on May 13 she contacted the landlord and was informed that they would transfer her to another apartment but would not pay moving expenses. This is consistent with the statement of the respondent's witness, Ms Diener. The parties agree that the applicant was shown four apartments that day. Only one was deemed acceptable by the applicant however it was later determined that the apartment was not, in fact, available. The applicant stated that the available apartments were not acceptable due to factors such as distance from her workplace, higher rent, or condition. The parties agree that at the end of the day, the applicant was told that the landlord would continue to look for another apartment but would not pay for a hotel.

The applicant testified that on May 14 the landlord contacted her and informed her that they would provide a hotel room at Capital Suites until Friday, May 16. On Thursday, May 15 the applicant was informed that her stay would be extended until May 20. On May 17 the applicant had an opportunity to house-sit and vacated Capital Suites on that day.

The applicant was again provided a one bedroom suite and a standard room for her son at Capital Suites on June 2 and continues to occupy the rooms there at the landlord's expense.

The respondent and their witnesses gave testimony concerning the chain of events and the nature of the various leaks. The testimony concerning the chain of events was, for the most part, consistent between the witnesses and the applicant. The respondent provided a number of work orders for other units in evidence and submitted that they responded to this problem and others in an expeditious manner. A statement by the general manager of Capital Suites stated that the value of the 40 days of hotel accommodation provided to the applicant and her son at their discounted rate was \$10,095.75.

The respondent did not offer as a defence any specific allegation that the flooding was a result of any negligence or willful act of the applicant nor did the respondent file any cross application alleging any breach of section 42 by Ms Beauchamp. However, some of the evidence appears to be designed to raise such a possibility, particularly a letter from a plumbing contractor and the evidence provided by the applicant concerning physical evidence being provided to the RCMP by the respondent. I have ignored this evidence because in my opinion, it is irrelevant unless offered as a defence or an allegation contained in a cross application by the landlord. It was offered as neither.

Prior to the hearing, the respondent offered another apartment for the same monthly rent for the duration of the applicant's existing term. The applicant stated that she would accept the offer if

her moving expenses were paid and the prohibition of pets removed from the tenancy agreement. The landlord agreed to move the applicant's contents with their own forces if she packed and to waive the no pets provision. The parties have advised me that the previous tenancy agreement has been terminated and a tenancy agreement for the new premises has been executed. Therefore I need not consider any order to repair the previous unit. I need only deal with the matter of compensation.

The applicant sought the following compensation:

1. Expenses incurred in December related to a previous water escape - \$962.95
2. Expenses related to May 13, 2014 water escape:

Lost wages	\$759.00
Hotel, May 13	155.30
Dinner, May 13	43.76
Rent, June	1540.00
Rent, July	1540.00
Electricity	35.40
Reconnect fees	<u>127.45</u>
Total	\$4200.91

The relevant sections of the *Residential Tenancies Act* are section 30 and 34.

30. (1) A landlord shall

- (a) provide and maintain the rental premises, the residential complex and all services and facilities provided by the landlord, whether or not included in a written tenancy agreement, in a good state of repair and fit for habitation during the tenancy; and
 - (b) ensure that the rental premises, the residential complex and all services and facilities provided by the landlord comply with all health, safety and maintenance and occupancy standards required by law.
- (2) Any substantial reduction in the provision of services and facilities is deemed to be a breach of subsection (1).
- (3) Subsection (1) applies even where a tenant had knowledge of any state of

non-repair before the tenant entered into the tenancy agreement.

- (4) Where, on the application of a tenant, a rental officer determines that the landlord has breached an obligation imposed by this section, the rental officer may make an order**
 - (a) requiring the landlord to comply with the landlord's obligation;**
 - (b) requiring the landlord to not breach the landlord's obligation again;**
 - (c) authorizing any repair or other action to be taken by the tenant to remedy the effects of the landlord's breach and requiring the landlord to pay any reasonable expenses associated with the repair or action;**
 - (d) requiring the landlord to compensate the tenant for loss that has been or will be suffered as a direct result of the breach; or**
 - (e) terminating the tenancy on a date specified in the order and ordering the tenant to vacate the rental premises on that date.**
- (5) A tenant shall give reasonable notice to the landlord of any substantial breach of the obligation imposed by subsection (1) that comes to the attention of the tenant.**
- (6) A landlord shall, within 10 days, remedy any breach referred to in subsection (5).**

- 34. (1) No landlord shall disturb a tenant's possession or enjoyment of the rental premises or residential complex.**
- (2) Where, on the application of a tenant, a rental officer determines that the landlord has breached the obligation imposed by subsection (1), the rental officer may make an order**
 - (a) requiring the landlord to comply with the landlord's obligation;**
 - (b) requiring the landlord to not breach the landlord's obligation again;**
 - (c) requiring the landlord to compensate the tenant for loss suffered as a direct result of the breach; or**
 - (d) terminating the tenancy on a date specified in the order and ordering the tenant to vacate the rental premises on that date.**

The applicant also filed the application pursuant to section 33 which pertains to the withholding of a vital service, specifically water. In my opinion the broader disturbance of possession encompasses the disturbance of the water supply and is the more appropriate section of the Act given these circumstances.

It is clear from the photographic evidence and my inspection of the premises, that the premises were not in a good state of repair or fit for habitation after the flood. To date, the repairs to the premises have not been completed and the applicant has not been able to resume occupation of the apartment. Regardless of the cause of the water escape the landlord is still obligated to provide and maintain the apartment in a good state of repair and fit for habitation during the tenancy pursuant to section 30. I find that the landlord has been in breach of section 30 since the evening of May 12 when the water escape occurred.

Subsections 5 and 6 suggest that any breach of section 30 should be repaired within ten days of the tenant's notice. However, it is important to note that subsections 5 and 6 do not serve to define a breach of section 30 only if the landlord fails to make the repairs within ten days. These subsections serve, in my opinion, to recognize that there must be a balance between the landlord's right and obligation to make repairs and the tenant's right to quiet enjoyment of the premises. They require a rental officer to consider this balance when considering remedies for breaches of section 30.

The applicant's possession and quiet enjoyment of the premises have been seriously affected by the flooding of the apartment. However, there is no compelling evidence that the landlord caused the rupture of the pipes resulting in the flooding. Therefore it can not be said that it was the landlord who initially disturbed the applicant's quiet enjoyment or possession of the premises or that the landlord's initial efforts to make repairs were anything but timely. However, when a landlord fails to make the necessary repairs within a reasonable period of time, the tenant's loss

of full enjoyment or possession of the premises must be considered to be a direct result. A tenant's temporary discomfort caused by repairs undertaken by the landlord does not necessarily constitute a breach of section 34. A breach of section 34 occurs when the disturbance is unreasonable or protracted.

The required repairs to the respondent's apartment involve removal of water and dehumidifying, inspection and repair of the water supply lines, replacement or reinstallation of flooring, installation of baseboards, thresholds and trim and inspection and any necessary repair of the electrical system. I accept that the respondent reacted quickly to stop the escape of water and to initiate the mop-up of the apartment but in my opinion, all of the necessary repairs could have been easily completed within 10 days. It has been fifty seven days since the flood occurred and the applicant is still deprived of the possession and quiet enjoyment of the premises. Therefore I find the respondent in breach of section 34 from May 22, 2014 to present.

I shall not consider the compensation of \$962.95 for a previous flood in December, 2013. This incident was not a part of the application and is mentioned only in passing by the applicant.

There was no specific evidence regarding this incident provided at the hearing except for the amounts of compensation requested. The applicant is granted leave to file another application regarding this matter provided that such an application is made on or before September 30, 2014.

In my opinion, the lost wages of \$759 do not represent a loss which is a direct result of the landlord's failure to repair. While I accept that the applicant endured significant stress during the

initial week of this dispute, I cannot find that the landlord's failure to complete repairs during this period prevented the applicant from working. The relief for lost wages is denied.

Given the severity of the flooding, it was not unreasonable for the applicant to find shelter in a hotel and have dinner at a restaurant on the night of the incident. In my opinion, the costs are a direct result of the landlord's failure to repair and because the premises were uninhabitable, the landlord should have provided alternate accommodation or paid for these costs. I find the relief requested of \$199.06 to be reasonable.

The tenancy agreement between the parties has remained in place and the applicant has continued to pay rent. However the applicant has not been able to occupy the premises since May 12. Rent is provided to a landlord in exchange for the right to occupy rental premises - that is the essence of the contract between landlord and tenant. The tenancy agreement has not been frustrated. The landlord has simply failed to meet their obligation to provide and maintain the rental premises in a habitable condition. The applicant has paid a significant amount of rent for the right to occupy the apartment and has not been able to exercise that right. In my opinion the rent paid should be a component of the compensation. The total amount of rent which has been paid from May 12 to the commencement of the new tenancy agreement between the parties is \$3179.36 calculated as follows:

May 12-31	20 days	\$993.55
June 01-30	30 days	1540.00
July 1-13	13 days	<u>645.81</u>
Total		\$3179.36

The respondent submitted that since they provided hotel accommodation to the applicant and her son at their expense, stated to be \$10,095 or more, there should be some offset to the compensation for rent requested by the applicant. I agree to an extent. When the applicant was forced to leave the apartment, the landlord did provide, albeit reluctantly, hotel accommodation. Was this equivalent to the tenant's possession of her apartment? Clearly it was not, but it did provide comfortable shelter and facilities and offset to a degree the tenant's loss of possession during the ten day period when the landlord should have repaired the premises. In my opinion, the hotel accommodation provided to the applicant offsets 75% of her loss of rent during the ten days when the repairs should have been done. I calculate that amount to be \$372.58 ($10/31 \times \$1540 \times 75\% = \372.58).

As I have stated previously, the repairs should have been completed by May 22. I find the respondent in breach of section 34 from that date to present. In my opinion, the landlord's failure to repair the premises in a reasonable time period has deprived the applicant of possession of the premises. The applicant should not have had to continue to bear the inconvenience of staying at a hotel when the repairs could have been made and her occupancy reestablished in her own apartment. In my opinion, no offset should be considered after May 22.

I find reasonable compensation for the loss of rent paid to be \$2806.78 calculated as follows:

Rent paid - May 12 - July 14	\$3179.36
Less offset for hotel	<u>372.58</u>
Total compensation for rent	\$2806.78

I find the cost of electricity during the period the applicant was unable to reside in the apartment to be reasonable as well as the re-connection fees which will apply to the new premises.

In summary, I find the respondent in breach of section 30 and section 34 of the *Residential Tenancies Act* and find reasonable compensation to the applicant of \$3168.69 calculated as follows:

Hotel, May 13	\$155.30
Dinner, May 13	43.76
Rent	3179.36
less offset for hotel	(372.58)
Electricity	35.40
Reconnect fees	<u>127.45</u>
Total	\$3168.69

An order shall issue requiring the respondent to pay compensation to the applicant of \$3168.69.

Hal Logsdon
Rental Officer