

IN THE MATTER between **S.W. and J.A.**, Applicant, and **K.W.**, 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**, Rental Officer,

BETWEEN:

S.W. and J.A.

Applicants/Landlords

-and-

K.W.

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	June 17, 2016
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	P.S., representing the applicants K.W., respondent A.W., for the respondent
<u>Date of Decision:</u>	September 5, 2016

REASONS FOR DECISION

An application to a rental officer made by TPM on behalf of S.W. and J.A. as the applicants/landlords against K.W. as the respondent/tenant was filed by the Rental Office March 18, 2016. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The applicant personally served a copy of the filed application on the respondent April 1, 2016.

The applicant alleged the respondent had accumulated rental arrears, caused damages to the rental premises, and left the rental premises in an unclean condition. An order was sought for payment of rental arrears and payment of costs for repairs and cleaning.

A hearing was scheduled for June 17, 2016, in Yellowknife, Northwest Territories. Ms. P.S. appeared representing the applicants. Ms. K.W. appeared as respondent, with Ms. A.W. appearing in her support.

Tenancy agreement

The parties agreed and evidence was presented establishing a tenancy agreement between S.W. and J.A. as the landlords with TPM as their agent and K.W. and A.M. as the tenants. The joint tenancy agreement commenced May 1, 2015, for a fixed term to May 31, 2016.

Mr. M. notified the landlord by email June 25, 2015, that he was no longer living at the rental premises and requested his name be removed from the lease. Section 22 of the *Residential Tenancies Act* speaks to assignments of tenancy agreements and specifies that the tenant may not transfer their right to occupy the rental premises until they have occupied the rental premises for at least six months. Additionally, any assignment of the tenancy agreement must be agreed to by all parties in writing. Because the tenancy agreement in this instance had

only been in place for barely two months when Mr. M. left, it was not eligible for assignment. At any rate, there was no agreement in writing between all parties to assign the fixed-term tenancy agreement from the joint tenants to Ms. W. as sole tenant. Alternatively, the applicants and Ms. W. could have entered into a new sole fixed-term tenancy agreement which would have effectively ended the joint fixed-term tenancy agreement; this was not done either. As such, the joint fixed-term tenancy agreement remained effective and both Ms. W. and Mr. M. remain jointly and severally responsible for the terms of the tenancy agreement.

For clarity, jointly and severally responsible means that both tenants are equally responsible for the terms of the tenancy. Regardless of what their personal arrangement is between themselves to ensure the terms are complied with, all that matters to the landlord is that they are complied with. Should any breaches occur the landlord has the option to pursue resolution from either or both of the joint tenants. In this case, the landlord has opted to pursue resolution of matters against Ms. W. only, presumably in recognition that Mr. M. has not resided at the rental premises for the majority of the tenancy.

On January 27, 2016, the respondent gave the applicants' representative notice by email of her intention to vacate the rental premises for March 1, 2016. She acknowledged in that email that she was 'breaking her lease'. She confirmed by email on March 1, 2016, that she had moved out of the rental premises. The applicants' representative successfully secured new tenants for March 15, 2016.

I am satisfied a valid tenancy agreement was in place between the parties in accordance with the Act. I am satisfied the respondent vacated the rental premises on or before March 1, 2016.

Rental arrears

The agreed upon monthly rent was \$1,850 due the first of each month. Section 41(2) of the Act and section 3 of the *Residential Tenancies Regulations* (the Regulations) specify that a tenant who is late paying their rent is liable to a penalty calculated at a rate not to exceed \$5 for the first day plus \$1 for each subsequent day to a maximum of \$65.

The applicants' representative testified that the February rent was paid March 15, 2016. Calculated strictly in accordance with the Act and Regulations, the applicants would be entitled to late payment penalties for the February rent of as much as \$48. However, the applicants' representative instead claimed only \$35, which I am satisfied is reasonable.

As the respondent's responsibility for rent for the rental premises under a fixed-term tenancy agreement does not end until either the end of the fixed-term period or until a new tenant takes occupancy of the rental premises, and in consideration of new tenants taking occupancy of the rental premises in this case on March 15, 2016, I am satisfied the respondent was liable for the rent for March 1st to 15th of \$925. This pro-rated rent was not paid as of March 15th and the applicants claimed another \$35 late payment penalty. However, this late payment penalty amount exceeds that allowed under the Act and Regulations, which amount to \$19.

The applicants appropriately withheld the security deposit of \$456.44 against the rental arrears. I find the respondent liable for rental arrears of \$925 plus late payment penalties of \$54 less the security deposit of \$456.44 for a total remaining amount of rental arrears of \$522.56.

Repairs and cleaning

On March 9, 2016, the applicants' representative conducted an exit inspection of the rental premises in the respondent's absence. The following issues were documented which were not documented at check in:

- animal urine and faeces throughout the yard
- garbage and other items left in the yard
- holes in two walls
- all floors were dirty
- food was left behind in cabinets
- oven was dirty
- one wall was poorly patched

- a light shade was missing in the living room and the bathroom
- living room blinds were missing
- hallway smoke alarm was disconnected
- second bedroom smoke alarm did not have batteries
- bathroom door handle was broken
- items were left in the utility room
- keys to the premises were not returned
- interior premises had not been adequately cleaned, including presence of pet hair

Of those documented issues, the applicants' representative claimed costs for the following:

Patching and painting two walls	\$169.00
Replacing the kitchen window screen	\$30.00
Replacing the living room blinds	\$45.00
Cleaning the yard (three times as snow melted)	\$752.50
Replace locks (labour)	\$65.00
replace batteries and reinstall smoke alarms, repair door handle, remove utility room items, repair master bedroom wall (labour)	\$65.00
New door locks and smoke alarm batteries (materials)	\$42.96
Interior cleaning throughout	\$225.00
Sub-total	\$1,394.46
5% GST	\$69.72
Total	\$1,464.18

The respondent did not dispute the necessary patching and painting of two walls. I find the respondent liable to the applicant for those repairs in the amount of \$169.

The respondent disputed the costs to replace the kitchen window screen, claiming that it was not present at commencement of the tenancy. The applicants' representative could not confirm or deny this and agreed to withdraw the \$30 claim.

The respondent disputed that the living room blinds were missing, claiming that they were in fact left in the storage room. The entry/exit inspection report confirms the blinds were installed in the living room window at commencement of the tenancy. The removal of the blinds from the window during the tenancy constitutes damages for which the respondent is liable to repair. To my mind a charge of \$45 to reinstall the blinds is not unreasonable. I find the respondent liable to the applicants for the reinstallation of the living room blinds.

The respondent did not dispute that the yard required extensive cleaning, but she did dispute being charged in excess of the average hourly wage for a portion of it. She also argued that the pet messes were partly her roommate's fault and partly from other animals in the area. With respect to how the messes originated, the respondent is ultimately responsible for the cleaning of them within the rental premises property. The amount of faeces uncovered by the melted snow (supported by photographs) cannot be accounted for as occurring primarily within the last two weeks of March. On a balance of probabilities, the vast majority of the mess occurred during the winter months that the respondent occupied the premises. With respect to the amount charged for the cleaning of the yard, two of the 10.5 hours labour were charged out at \$100 rather than \$65. The applicants' representative explained this discrepancy as the cost of her personally having to participate in the cleaning of the yard because none of her regular workers were available when it needed to be done. She further defended the charge because attempts were made to arrange for the respondent to do the clean up herself without successful communication. I am in agreement with the respondent that the applicants' representative's workers' availability is not the respondent's liability and charging an extra fee for the inconvenience is inappropriate. The claim of 10.5 hours to effectively clean the yard is not unreasonable given the condition of the property and I am prepared to allow those hours to be claimed at a rate of \$65 per hour. I find the respondent liable to the applicants for cleaning the yard in the amount of \$682.50.

The respondent did not deny failing to return the keys to the rental premises. I am satisfied the locks to the rental premises had to be replaced to ensure its security. The applicants' representative claimed \$42.96 for the new locks and the batteries for the smoke detector on their invoice number 2001. Actual receipts were not provided to define how much for each item, but a search of the Canadian Tire website showed a four-pack of AA batteries costs \$6.29. Deducting \$6.29 from \$42.96 suggests the locks cost \$36.67, which I do not find unreasonable. The applicants' representative claimed an hour's labour to replace the locks at a rate of \$65, which I also do not find unreasonable. I find the respondent liable to the applicants for the replacement of the door locks in the amount of \$101.67.

No dispute was pursued at hearing regarding the smoke alarms. One was claimed as having been removed from its base (supported by a photograph) and the batteries had been removed from the other. The section on smoke detectors in the tenancy agreement requires the tenant to test the smoke detectors at least once per month, ensure they are in operating condition, and to notify the landlord immediately in writing of any defect, malfunction, or failure. I am satisfied the respondent is liable for the re-installation and replacement of batteries in the smoke detectors. The cost of batteries in the amount of \$6.29 is allowed. Cost of labour will be discussed later.

The respondent disputed costs for repairing the bathroom door handle, claiming it was hanging and bent when she moved in. However, there is no evidence to support this claim as the entry/exit inspection report makes no reference to it and there was nothing provided suggesting the respondent had notified the applicants' representatives of the problem. I am satisfied the respondent is liable for the damaged bathroom door handle. No claim was made for materials, only for labour which will be discussed later.

The respondent disputed that the items found in the utility (storage) room were there at the commencement of the tenancy and did not belong to her, which is why she did not take them. The items included a baby mattress. The respondent is a single, young woman without children. It does not seem reasonable to associate the storage of baby items with this respondent. The entry/exit inspection report indicates the utility room was dusty at entry. I think it is likely that the baby items were missed at commencement of the tenancy and unlikely that they belonged to the respondent. The applicants' representative's claim for labour to remove the items from the utility room is denied.

The respondent did not dispute the condition of the master bedroom wall, indicating it was her attempt to effect adequate repairs. Photographs support the applicants' representative's claim that the repairs were not adequate and required further minor repair.

The applicants' representative claimed one hour's labour at a rate of \$65 to replace the smoke alarm batteries and reinstall the smoke alarm, repair a door handle, remove items from the utility room, and repair master bedroom wall. The only part of this claim that has been denied is the removal of items from the utility room, of which I would estimate the time taken would have been no more than 15 minutes. Deducting a quarter of an hour from the labour costs claimed, I find the respondent liable to the applicant for labour to address the smoke alarms, door knob, and one wall in the amount of \$48.75.

The respondent did not dispute the interior of the rental premises required additional cleaning, as evidenced by the inspection report and supporting photographs. The applicants' representative claimed cleaning costs in the amount of \$225, which I find reasonable. I find the respondent liable to the applicant for cleaning costs in the amount of \$225.

The allowed claims, including GST, are:

Patching and painting two walls	\$169.00
Reinstalling the living room blinds	\$45.00
Cleaning the yard (three times as snow melted)	\$682.50
Replace locks (labour)	\$65.00
replace batteries and reinstall smoke alarms, repair door handle, and repair master bedroom wall (labour)	\$48.75
New door locks and smoke alarm batteries (materials)	\$42.96
Interior cleaning throughout	\$225.00
Sub-total	\$1,278.21
5% GST	\$63.91
Total	<u>\$1,342.12</u>

Orders

An order will issue requiring the respondent to pay rental arrears in the amount of \$522.56 and to pay costs of repairs and cleaning in the amount of \$1,342.12.

Adelle Guigon
Rental Officer