

IN THE MATTER between **J.W.**, Applicant, and **K.L. and D.D.**, Respondents.

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:

J.W.

Applicant/Landlord

-and-

K.L. and D.D.

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	July 26, 2016
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	J.W., applicant K.L., respondent D.D., respondent
<u>Date of Decision:</u>	September 11, 2016

REASONS FOR DECISION

An application to a rental officer made by J.W. as the applicant/landlord against K.L. and D.D. as the respondents/tenants was filed by the Rental Office March 31, 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 respondents April 1, 2016.

The applicant alleged the respondents had disturbed other tenants enjoyment of the residential complex, had caused damages to the rental premises, had failed to maintain the ordinary cleanliness of the rental premises, had repeatedly failed to pay rent when due, and had accumulated rental arrears. Since being served with the application, the respondents vacated the rental premises after which the applicant amended his application to request an order for payment of rental arrears and payment of costs for cleaning and repairs.

A hearing was scheduled for July 26, 2016, in Yellowknife, Northwest Territories. Mr. J.W. appeared as applicant. Ms. K.L. and Mr. D.D. appeared as respondents. Ms. P.L. also appeared briefly as a witness for the respondents.

Tenancy agreement

The parties agreed and evidence was presented establishing a tenancy agreement between them. The tenancy agreement commenced June 10, 2013, with Ms. L. as the sole tenant. Mr. D. was added to create a joint tenancy commencing March 5, 2016. The tenancy agreement established the monthly rent at \$2,100 at commencement and \$2,400 as of March 1, 2016. The monthly rent included electricity, fuel, and water.

The tenants were given notice by the landlord on March 22, 2016, under section 54 of the *Residential Tenancies Act* (the Act) to terminate the tenancy April 25, 2016. The respondents did not vacate the premises as requested, but did give verbal notice to the landlord on May 16, 2016, that they would be moved out by May 20th. By May 22nd the respondents were not finished moving out of the premises, but agreed to return possession to the applicant when the applicant offered to finish cleaning the premises.

I am satisfied there was a valid tenancy agreement between the parties in accordance with the Act. I am further satisfied that the tenancy effectively ended May 22, 2016, when possession of the premises was returned to the applicant.

Rental arrears and security deposit

The parties agreed the respondents had accumulated rental arrears in the amount of \$5,641.57 representing partial rent for April, full rent for May, and partial rent for June. The partial rent for June was claimed due to the respondents' failure to give 30 days' notice, and the respondents did not dispute their liability for it. The security deposit of \$1,201.32 was appropriately withheld by the landlord against the rental arrears. I find the respondents have remaining accumulated rental arrears in the amount of \$4,440.29.

Repairs and cleaning

Entry and exit inspection reports

Although a walk through of the rental premises was completed at commencement of the tenancy with Ms. K.L. and Ms. P.L. present, the condition of the premises was not documented in an entry inspection report as required under section 15(3) of the Act. Some photographs were taken of the premises some time prior to commencement of the tenancy, but not during the walk through with the respondent.

An inspection of the rental premises was not conducted at the end of the tenancy, nor was the tenant offered reasonable opportunity to participate in an inspection, as required under section 17.1(1) of the Act. An exit inspection report was not completed as required under section 17.1(3) of the Act, although some photographs of the premises were taken by the applicant on March 22, 2016.

Landlord's claims

The applicant made an extensive monetary claim of \$22,981.88 for the following:

- cleaning throughout
- removal and disposal of property and garbage
- replacement and repair of exterior door, jamb, and trim
- replacement and repair of the exterior screen door
- repair of closet shelves
- repair, patch, and paint the entire premises
- repair and replace ceiling tiles
- 42 percent of the replacement costs of the carpet
- repair and replacement of the kitchen counter and cabinet
- repair curtains
- site supervisor fees

Cleaning

The tenants did not dispute that they had not finished cleaning the premises when they agreed to give up possession of the premises. They had attended the premises on May 22nd prepared to complete the necessary cleaning, but were told by the applicant not to worry about it, that he would take care of what was left to do. They appreciated the offer and accepted it in good faith. No reference was made by either party to compensation for completing the cleaning. However, this does not absolve the respondents from their responsibility for ensuring the premises has been kept in a state of ordinary cleanliness, as required by section 45(2) of the Act. They had indicated to the applicant their intention to vacate the premises by May 20th, and it is by then that they should have completed the necessary cleaning.

The parties did agree that the premises required extensive cleaning throughout, including washing the walls and cupboards, cleaning the bathroom, sweeping, mopping, vacuuming, and cleaning the appliances. Photographs taken by the applicant on May 22nd corroborate much of the required cleaning.

The applicant claimed \$140 to clean the stove area and the bathroom and \$110 to clean the walls. The rental premises consists of three bedrooms, one bathroom, a living room, kitchen, laundry room, and storage room. The amount claimed by the applicant corresponds with the average local cost for cleaning a premises of this approximate size. The applicant's claim for cleaning costs in the amount of \$250 is granted.

Property and garbage removal and disposal

The applicant claimed two of his workers had helped the respondents remove their belongings over the course of two days and had done three dump runs of disposable items. The tenants did not dispute this claim. I find the respondents liable for the costs of labour and dump run fees to remove and dispose of property in the amount of \$250.

Exterior door

The parties agreed to and photographic evidence was presented establishing the claimed damages to the exterior door, jamb, and trim. The costs for materials amounted to \$499.99 for the pre-hung steel door, \$29.99 for the lockset, \$7.18 for shims, \$19.04 for trim, \$15.89 for paint, \$23.98 for foam sealant, and \$1.99 for metal screws, for a total for materials of \$598.06. As the invoices for labour were not itemized I will allow the average four hours to install an exterior door. The worker who completed the majority of the construction work, including installation of the exterior door, charged out at a rate of \$35 per hour. As such, I am prepared to allow labour costs of \$35 per hour for four hours totalling \$140. I find the respondents liable to the applicant for costs to replace the exterior door, jamb, and trim in the total amount of \$738.06.

Repair, patch, and paint walls

The respondent accepted responsibility for the holes and gouges in the walls throughout the rental premises. Based on photographs that were taken April 4th and May 22nd, there were 11 walls so damaged.

The respondent did dispute responsibility for repairing the wall beside the stove. The landlord claimed that wall was burned due to the respondents' negligence in using the highest setting on the heating elements. The stove is placed directly against an interior wall. Photographs of the wall in question show the wall was dirty with spatter and grease, but they are not clear in whether or not there is any heat damage. Also not evident in the photographs is any kind of heat shield to protect the wall from the heat generated by the stove. I expect the placement of the stove against an interior wall would necessitate some sort of heat shield on the wall. This is not the tenant's responsibility, it is the landlord's responsibility. The tenant is entitled to use the stove to its fullest capacity under normal circumstances. To call the respondents' use of the stove at its highest settings for anything that requires it as negligent is ridiculous. If anything, the applicant is at fault for failing to properly maintain the rental premises for not installing a heat shield on the wall. The applicant's claim for costs to repair the wall by the stove is denied as any such heat damage would constitute normal wear and tear in these circumstances. The cleaning of that wall would be covered under the cleaning costs previously discussed.

The applicant's claim for repairs, patching, and painting of the 11 damaged walls is allowed. The applicant claimed labour costs for repairing, patching, and painting the entire premises at a cost of \$6,045 plus materials costing \$724.27 for a total of \$6,769.27. The premises was last painted in 2012, about a year before the respondents moved in. The average useful life of interior paint in residential tenancy premises is five years. As such, the applicant has benefited from 80 percent of the useful life of the paint job in this unit. There is no evidence that the walls other than the 11 admitted to were damaged in any way. They did require some cleaning, but that cost is covered under the cleaning costs previously discussed. Other than for the walls that required repairs, I am not satisfied the remaining walls required painting due to damages caused by the respondents' negligence, wilful or otherwise. Estimating that there are 32 walls in the premises, the 11 damaged walls comprise approximately 34 percent. I find the respondents liable to the applicant for 34 percent of the costs to repair, patch, and paint the interior walls of the premises in the total amount of \$2,301.55.

Repairing the closet shelves

The applicant claimed the closet shelving appeared forced from its wall supports, creating significant damage to the wall itself as well as the supports. The respondents did not dispute that the shelves were damaged, but claimed the shelves had not been properly secured to studs and therefore could not support the weight of items stored on them. Photographs taken May 22nd only show the closet without the shelves, not the area where the damage occurred. Photographs taken June 26th show the repaired shelves. From the photographs provided I am unable to determine the type and extent of damages.

The respondents' claim that the shelves were improperly secured seems unlikely. As such, I must find the respondents liable for the costs to repair the closet shelves. The labour costs were included within labour claimed for all work to the premises and not itemized by job. As such, I must estimate a reasonable time for effecting the necessary repairs at four hours at a rate of \$35 per hour for total labour costs to repair the shelves of \$140. Materials claimed amounted to \$71.32. The respondents are liable to the applicant for costs to repair the closet shelving in the amount of \$211.32.

Kitchen counter and cupboard

The applicant claimed costs associated with re-levelling the counter top, replacing the arborite, and repairing the cupboards.

The applicant claimed the kitchen counter was level when the respondents moved in, but not when the respondents moved out. The respondents disputed this claim. No explanation was offered for how the counter went off kilter. A photograph taken some time before the respondents moved in is of insufficient quality to accurately confirm whether the counter was level at the time.

The applicant claimed costs to replace the arborite as it was lifting and had burn marks on the stove side of the counter. No reasonable explanation was offered for how the respondents could have caused the arborite to lift. The likelihood exists that the sagging of the counter top may be the result of the arborite lifting which would have exposed the base to moisture.

Photographs taken April 4th and May 22nd are not of sufficient quality to show whether or not the burn marks existed at that time. Photographs taken June 20th do show the burn marks, however, this was a month after the respondents moved out of the premises during which time repairs and renovations had been taking place. The possibility that the burn marks occurred after the respondents vacated the premises exists.

No reliable evidence was provided to support any damages to the cupboards for which the respondents might be liable.

I am not satisfied that there is sufficient evidence to substantiate the respondents' responsibility for the damages to the kitchen counter and cupboards. The applicant's claim for these costs is denied.

Curtains

The applicant claimed that some of the curtains provided with the rental premises were missing, however, the respondents indicated that any curtains that were not hanging were left in the laundry room. The parties did ultimately agree that some of the curtains had been pulled on excessively by the respondents' children causing the seams and hems to be compromised. I am not satisfied any curtains were missing, but I am satisfied that some of the curtains required re-hemming and repairs. The applicant's claim of \$30 to repair the curtains is reasonable and granted.

Screen door

The applicant claimed the screen door was damaged, with a large hole in the screen. The respondents deny any knowledge of or responsibility for the hole in the screen door. There is no evidence to support the condition of the screen door at commencement of the tenancy. The only photograph of the hole in the screen door was taken June 2nd – 11 days after the respondents vacated the rental premises and during which time cleaning and repairs had begun. The possibility that the damage to the screen door occurred after the respondents vacated exists. I am not satisfied there is enough evidence to support the claim that the respondents are liable for the damaged screen door. The applicant's claim for this repair is denied.

Ceiling tiles

The applicant claimed costs to repair and replace ceiling tiles in the master bedroom, living room, and bedroom #3. He claims the tiles in the master bedroom and living room were hanging loose and needed to be screwed or stapled back in and the tiles in bedroom #3 were sagging due to moisture accumulated over time from the fresh air intake which passes through the roof there. The applicant claims the respondent was told at commencement of the tenancy to leave the bathroom fan on to prevent the condensation from accumulating around the fresh air intake, however, the applicant and her witness – who were both present during the entry walk through – deny the applicant gave any such instruction. The respondents dispute they are responsible for any of the ceiling tiles, claiming they were loose and sagging at commencement of the tenancy. As there is no evidence to support the condition of the ceiling tiles at commencement of the tenancy and it seems more likely than not that the sagging ceiling tiles were caused by maintenance issues rather than any wilful or negligent conduct of the respondents, I am not satisfied the respondents are liable for the damages to the ceiling tiles. The applicant's claims for costs to repair the ceiling tiles is denied.

Carpets

The applicant claimed 42 percent of the costs to replace the carpets throughout the rental premises. Photographs taken some time prior to the commencement of the tenancy only show the carpeting in the three bedrooms and suggest that those carpets were in good condition at the time. There are no photographs of the carpets in the hallway and living room from before or at commencement of the tenancy.

Photographs taken May 22nd show various small sections of the carpets confirming they required vacuuming and cleaning, however, no stains or tearing are evident in those limited photographs. Photographs taken June 26th - a month after the respondents vacated the rental premises and during which time cleaning and repairs had taken place – show six stains on the carpet and three torn areas, but their locations are not defined.

Because neither an entry nor an exit inspection report was completed when the respondents moved in and out of the rental premises, and the photographs taken when the respondents vacated the rental premises do not support the presence of stains and tears in the carpets at that time, the possibility that the stains and tears occurred after the respondents vacated the rental premises and during the period when cleaning, disposal, and repairs were taking place exists. I cannot be satisfied the claimed damages to the carpet occurred during the respondents tenancy and cannot make a finding that they are liable for the repairs claimed.

However, the May 22nd photographs do support the condition of the carpets as requiring more than just vacuuming, being in a deplorably unclean condition. To my mind steam cleaning would have been justified to attempt to return the carpet to a satisfactorily clean state. I am prepared to grant the applicant the average cost of steam cleaning in the amount of \$300.

Site supervisor fees

The applicant claimed 48 hours of work for himself to supervise the workers he hired to complete the cleaning, disposal, and repairs to the premises. He claimed the average hourly rate for professional project managers to supervise such projects at \$85. While I can appreciate an extra administrative cost may be incurred by a landlord for work that becomes necessary due to damages beyond normal wear and tear, there is an inherent cost of doing business which comes with the care and maintenance of rental premises for which the tenant cannot be held liable.

I find the applicant's claim of \$85 per hour to supervise his workers completely unreasonable. Many public housing providers and some private housing providers do charge an administrative fee of 10 to 15 percent on costs to repair and clean beyond normal wear and tear. However, those landlords inform their tenants of that charge, usually at commencement of the tenancy as part of the tenancy agreement or at least when the tenant gives proper notice to terminate the tenancy. The tenant then has been made aware in advance of the additional cost should they choose not to clean the premises themselves or effect necessary repairs prior to vacating. In this case, the applicant did not inform the tenant in advance of their vacating the rental premises that there would be an additional cost over and above the costs for cleaning and repairs, nor was this cost defined within the tenancy agreement. The applicant's claim for site supervisor fees is denied.

Summary

The claims for which the applicant is granted are as follows:

Cleaning throughout	\$250.00
Property and garbage removal and disposal	\$250.00
Replacement of exterior door, jamb, trim	\$738.06
Repair, patch, paint 11 walls	\$2,301.55
Repair closet shelving	\$211.32
Repair curtains	\$30.00
Steam cleaning of carpets	\$300.00
Sub-total	\$4,080.93
5% GST	\$204.05
Total	\$4,284.98

Administrative claims

The landlord also claimed costs for the rental office application filing fee, printer cartridges, and photocopying fees, all of which are denied as a cost of doing business.

Orders

An order will issue requiring the respondents to pay rental arrears in the amount of \$4,440.29 and costs of repairs and cleaning in the amount of \$4,284.98.

Adelle Guigon
Rental Officer