

IN THE MATTER between **RE**, Applicant, and **JB**, 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:

RE

Applicant/Landlord

-and-

JB

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: September 27, 2016

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: RE, applicant
JB, respondent

Date of Decision: September 27, 2016

REASONS FOR DECISION

An application to a rental officer made by RE as the applicant/landlord against JB as the respondent/tenant was filed by the Rental Office July 27, 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 August 5, 2016.

The applicant alleged the respondent had failed to pay the full security deposit, the respondent had failed to comply with his obligation not to smoke in the rental premises, had failed to comply with his obligation to ensure automatic fuel delivery to the rental premises, had repeatedly failed to pay the full amount of rent when due, had accumulated rental arrears, and had caused damages to the rental premises. An order was sought for payment of the outstanding security deposit, payment of rental arrears, payment for costs of repairs, termination of the tenancy agreement, and eviction.

A hearing was scheduled for September 27, 2016, in Yellowknife, Northwest Territories. Mr. RE appeared as applicant. Mr. JB appeared as respondent.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them commencing October 26, 2015. I am satisfied a valid tenancy agreement is in place in accordance with the *Residential Tenancies Act* (the Act).

Rental arrears

The parties agreed the respondent had been repeatedly late paying his rent when it was due, although the respondent indicated the applicant was fully aware of his situation each month and the rent was paid within the month it was due. The agreed exception was the rents for July, August, and September, which the respondent acknowledged he inappropriately withheld upon being served by the applicant with a section 54 notice to terminate the tenancy. There was no dispute between the parties of the amount of rental arrears accumulated to date of \$4,500. I am satisfied the respondent has repeatedly failed to pay his rent on time. I find the respondent has accumulated rental arrears in the amount of \$4,500.

Automatic fuel delivery and smoking

Section 7 of the tenancy agreement specifies the tenant's obligation to keep the fuel delivery on automatic. It was explained at hearing the obligation was included to ensure there were no issues – accidental or otherwise – with running out of fuel during the cold months. The respondent acknowledged his obligation in this regard and had initially believed the automatic fuel delivery had been arranged with the fuel provider. He only learned some time later that there was a problem with the arrangement. Regardless, he accepted responsibility for any issues caused by his potential failure to ensure the fuel tank was filled as needed. I am satisfied the respondent has failed to comply with his obligation to ensure automatic fuel delivery continues.

Section 9 of the tenancy agreement specifies the tenant's obligation to keep the house smoke free. The applicant testified to personally observing ashtrays at the home and the tenant's co-occupants smoking in the premises. The respondent confirmed that his co-occupants (employees) do smoke in the premises. He acknowledged his obligation to ensure the house remained smoke free and accepted responsibility for the breach. I am satisfied the respondent failed to comply with his obligation to ensure the rental premises remained smoke free.

I find the respondent has failed to comply with reasonable additional obligations as required under section 45(1) of the Act.

Damages

The applicant testified and provided evidence of a broken living room window requiring replacement. The photograph of the broken window confirmed the break was on the interior pane, and a large circular section had in fact come out. An invoice from All-West Glass was provided documenting the cost to replace the window at \$718.58. The entry inspection report signed October 26, 2015, indicated the living room window was “new”, which the applicant clarified meant the window was undamaged and there were no issues. The respondent confirmed he participated in the entry inspection and signed the entry inspection report acknowledging the condition of the premises was accurately documented. He testified a small crack had formed which expanded into a larger crack. He acknowledged the larger crack could have been contributed to by occupants leaning back in the chair against the window, but argued that the crack did not originate by any actions of himself or his co-occupants that he was aware of. The respondent confirmed that when the circular crack formed he removed the piece to ensure it did not fall out and shatter or cause harm to himself or his co-occupants. He confirmed that he did not in fact notify the landlord when the original crack was observed.

Although it is possible the original crack in the window may have occurred by means other than the direct actions of the respondent or his co-occupants, I have no evidence to support that as the case. The evidence presented confirms the window was undamaged when the respondent moved in to the premises and that the damage was to the interior pane. An aggravating factor to the issue is the respondent’s failure to notify the applicant of the damage; it was left for the applicant to discover on his own, at which point the applicant had the window replaced. I am satisfied the respondent is responsible for the damages to the living room window. I find the respondent liable for the costs of repairs in the amount of \$718.58.

Termination of the tenancy agreement and eviction

In consideration of the respondent's repeated failure to pay his rent on time and the substantial amount of rental arrears accumulated, I am satisfied termination of the tenancy agreement and eviction are justified. The respondent had no objection to this and understood its necessity under the circumstances. The respondent indicated he expected to secure a new rental premises for October 1, 2016, but would require extra time to move all his property both inside and outside the premises. The applicant was agreeable to a delayed eviction order to accommodate the respondent's request, conditional on the respondent's responsibility to pay rent for the days he continued to occupy the rental premises. The respondent had no issue with this proposal.

Security deposit

The parties agreed the security deposit required under the tenancy agreement was for \$1,500 and that the respondent had only paid \$1,000 of that amount to date. Considering the tenancy will be ordered terminated for September 30, 2016, ordering the payment of the outstanding \$500 security deposit would be pointless. It was agreed the \$1,000 would not be applied against the amounts to be ordered from this hearing and that the applicant would deal with the security deposit at the end of the tenancy as required by the Act.

Orders

An order will issue requiring the respondent to pay rental arrears in the amount of \$4,500; to pay for the costs of repairs in the amount of \$718.58; terminating the tenancy agreement September 30, 2016; evicting the respondent from the rental premises October 15, 2016; and requiring the respondent to compensate the applicant for use and occupation of the rental premises at a rate of \$49.32 for each day he remains there after September 30, 2016.

Adelle Guigon
Rental Officer