File #15252

IN THE MATTER between **HH**, Applicant, and **TP**, 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:

HH

Applicant/Landlord

-and-

TP

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing:	**August 17, 2016**
Place of the Hearing:	**Yellowknife, Northwest Territories**
Appearances at Hearing:	**HH, representing the applicant** **TP, respondent**
Date of Decision:	**November 6, 2016**

REASONS FOR DECISION

An application to a rental officer made by HH as the applicant/landlord against Tanner Pennell as the respondent/tenant was filed by the Rental Office June 9, 2016. The application was made regarding a residential tenancy agreement for a rental premises located in Hay River, Northwest Territories. The applicant personally served a copy of the filed application on the respondent June 16, 2016.

The applicant alleged the respondent had caused damages to the rental premises, had failed to give notice to terminate the tenancy agreement in accordance with the *Residential Tenancies Act* (the Act), and had failed to pay rent for the month of May 2016. An order was sought for payment of rental arrears and payment of costs for repairs and cleaning.

A hearing was scheduled for August 17, 2016, by three-way teleconference. Mr. HH appeared as applicant. Mr. TP appeared as respondent.

Preliminary matters

The application to a rental officer identified the respondent/tenant as Tanner Pennell. The parties agreed at hearing that TP is in fact the respondent/tenant. The style of cause going forward will reflect the respondent/tenant as TP.

Tenancy agreement

The parties agreed that a verbal tenancy agreement had been in place between them commencing in June 2013 for a secondary (basement) suite in Hay River, Northwest Territories. The monthly rent was established at $1,250. I am satisfied a tenancy agreement was in place between the parties in accordance with the Act.

.../3

Rental arrears

The parties agreed that the respondent had given verbal notice on or about April 18, 2016, that he intended to vacate the premises for April 30, 2016. The tenant did vacate by that date. He had no rental arrears at that time.

The applicant sought the rent for May from the respondent due to the respondent having failed to give notice in accordance with the Act. Section 52(1) of the Act does require a tenant to give at least 30 days' written notice to terminate a periodic tenancy for the last day of a period of the tenancy. There is no dispute that the tenant did not give notice as required by section 52(1) of the Act. Therefore, by vacating the premises on April 30th the tenant effectively abandoned the rental premises and the landlord would be entitled to the rent for the subsequent month. However, section 5(2)of the Act requires a landlord to mitigate their losses where a tenant has terminated a tenancy agreement other than in accordance with the Act by renting the rental premises again as soon as is practicable for when the tenant vacates the premises. The respondent may not have given the applicant 30 days' written notice in accordance with the Act, but he did inform the applicant 12 days in advance of his intention to vacate. When questioned, the applicant could not remember when or if he had re-rented the premises after the respondent vacated. Regardless of whether he did or not, as will be discussed later in these reasons, the applicant failed to ensure the rental premises were in compliance with section 30(2) of the Act in which case the premises was unfit for occupancy and the applicant would not be entitled to rent for May 2016. The applicant's claim for the rent for May 2016 from the respondent is denied.

.../4

Damages

Neither an entry nor an exit inspection report was completed for this tenancy. Some photographs taken after the respondent vacated the premises were provided as part of the application to a rental officer. The applicant claimed costs of repairs from the respondent for the following items:

Patching and painting the walls, and cleaning the cupboards	$750.00
Steam cleaning the carpets	$300.10
Replacing all carpets and linoleum	$3,639.68

The photographs support damages consisting of a hole in one wall, gouges in another wall, two carpet stains in one bedroom, another carpet stain in the living room, and one worn spot in the linoleum. The applicant claimed the walls were so dirty they required repainting.

The respondent did not dispute his responsibility for the holes/gouges in the walls. He also acknowledged that he did not steam clean the carpets. The respondent admitted to the two stains in the bedroom, although he does not know where they came from as that was his roommate's room. The respondent questioned the stains in the living room, claiming that there had been repeated water leaks in the living room over the years; those leaks occurred near the window along the exterior wall. He also disputed that the cupboards and walls were not cleaned.

<u>Patching and painting walls</u>

There is no evidence to support that the walls were so dirty as to require repainting. There was also no evidence presented establishing when the walls were last painted. The applicant's claim for repainting the entire premises is denied.

There is evidence to support, and no dispute regarding, the holes/gouges in two walls. I am satisfied the respondent is responsible for their repair. The invoice provided by the applicant does not define the costs between those for patching, those for painting, and those for cleaning cupboards. I am prepared to allow the applicant costs for patching and painting the two damaged areas, but will grant an educated estimate of the costs at a rate of $150 per wall. I find the respondent liable for the costs to repair two walls in the total amount of $300.

Cleaning cupboards

There is no evidence to support the cupboards required additional cleaning. More likely than not, any cleaning of cupboards may have been necessary as a result of the patching and painting work rather than the respondent failing to clean them upon vacating. The applicant's claim for cleaning the cupboards is denied.

Steam cleaning

The respondent admitted that he did not steam clean the carpets. Stains in the carpet are evident from the photographs provided, and are not disputed by the respondent. The presence of the stains does justify the necessity to steam clean the carpets, if for no other reason that to attempt to remove the stains. The applicant's claim for steam cleaning the carpets is granted in the amount of $300.10, as supported by the work order for same provided into evidence.

Carpet replacement

The applicant claimed full costs for replacing all the carpets in the premises. The applicant provided photographic evidence of three stains: two in one of the bedrooms and one in the living room. I am not satisfied that any of the three stains are from the claimed water leaks; the two stains in the bedroom are clearly from something being spilled on the carpet and the stain in the living room is nowhere near the exterior wall. I am satisfied the respondent is liable for the costs to repair those three areas of carpet. No evidence was presented establishing the age of the carpets, as such I am not prepared to hold the respondent liable for the full cost of replacing the all carpets in either of the rooms with stains, let alone all the carpets in the premises.

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I have estimated the size of the stained areas from the photographs provided as a total of 0.33 square yards in the bedroom and 0.92 square yards in the living room, for a total stained area of approximately 1.25 square yards. Based on the quotation for carpet replacement provided by the applicant, the total carpeted area for the two-bedroom premises is 85.34 square yards. The stained area represents 1.46 percent of the total carpeted area. The total costs claimed, based on the quotation, to replace the carpets in the two bedrooms and living room, including GST, is $2,866.07 of which 1.46 percent is $41.84. I find the respondent liable to the applicant for costs to repair the stained areas of carpets in the amount of $41.84.

Linoleum

The kitchen is floored with linoleum. The applicant claims costs to replace all the linoleum due to a single worn area. A photograph is provided showing the area in question. The respondent claims the area was worn through not by any particular damage the respondent is responsible for, but from having a chair placed in the area throughout the tenancy. The photograph does appear to support that the area in question was not torn or cut or gouged; it appears to be as already described: worn through. No evidence was presented establishing the age of the linoleum. I am not satisfied the damage to the linoleum was as a result of the respondent's wilful or negligent conduct. The applicant's claim for replacement costs of the linoleum is denied.

Allowed claim

I find the respondent liable to the applicant for costs associated with repairs as follows:

Patching and painting two walls	$300.00
Steam cleaning the carpets	$300.10
Repairing three stains to the carpets	$41.84
Total	$641.94

.../7

Condition of the rental premises

The respondent made claims during the hearing regarding the condition of the rental premises during his tenancy as being in non-compliance with safety standards. The respondent was not made aware of any issues with the premises when he moved in, but approximately a year afterwards it was brought to his attention that the premises may not be in compliance with safety standards required by law. The respondent contacted the local fire chief, who confirmed that the premises had been found in non-compliance with safety standards and the National Building Code, and the applicant was told not to re-rent the premises until it was brought into compliance. The respondent brought the matter to the applicant's attention and requested a transfer to a different property, but the applicant never responded to the tenant. The respondent testified that when he approached the fire chief again a few months later, the fire chief chose not to force the respondent to vacate the premises in consideration of the approach of winter. The respondent chose to remain in the premises despite now being aware of the deficiencies.

The applicant disputed that the premises was no longer compliant. He claimed that he was told he could install stairs between the basement suite and the main floor suite, thereby essentially making it one premises, and that would suffice to make the premises as a whole compliant with safety standards.

The hearing was adjourned *sine die* to permit the applicant to obtain and submit documentary evidence to support his claim that the basement suite was compliant, after which I would render my decision. The applicant did not provide any supporting documents. I contacted the Hay River fire chief directly and requested any correspondence or information he could provide regarding the status of the rental premises in question. The fire chief replied by email on August 22, 2016, and provided correspondence which had been sent to the applicant dated April 18, 2014. The email and attachment were shared with the applicant and respondent, and they were given until September 30, 2016, to make any written replies to the documents. Neither party made any further submissions.

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The correspondence from the fire chief to the applicant dated April 18, 2014, referred to a fire which had occurred at the rental premises on January 11, 2012, from which an investigation and subsequent inspection of the secondary suite was conducted. The applicant was informed on January 12, 2012, directing the applicant to shut down the suite "until such time as repairs were made to the facility to make it safe for occupancy."

A subsequent complaint was received by the fire chief regarding the safety of tenants in the secondary suite from which another inspection was conducted on April 17, 2014. The fire chief learned then that the required repairs were not carried out and that the applicant had re-rented the premises to another tenant.

The fire chief detailed how the condition of the secondary suite puts the safety of the tenant and firefighters in jeopardy. Issues were identified under National Building Code A-9.7.1.2(2), National Building Code A-9.7.1.2(1), National Building Code 9.9.9.3(2), National Building Code 9.10.9.14, National Building Code 9.10.10.3(1), 2010 National Building Code 9.8, and National Building Code 9.10, which pertain to window openings, fire separations, fire ratings, and other matters. Additional issues were identified regarding: carbon monoxide and smoke alarms; compliance of fuel tank, chimney, heating appliances, fire safety valves, etcetera; STC rating for sound control between suites; compliance of ventilation system; combustion air for equipment; emergency lights and exit signs; and fire extinguishers.

The fire chief also confirmed that his investigation at the time did not find the issuance of any development permits to make the residence a multi-family residential unit, which supports the conclusion that the work was not completed as directed. The fire chief informed the applicant he would require a development permit to complete the necessary work to be able to use the premises as a multi-family residential unit, which would also require submittals of plans to the Office of the Fire Marshall for their approval prior to doing any of the modifications required to bring the building to code. The fire chief specifically identified the secondary suite as being in contravention of National Building Codes, that it was a threat to the safety of the tenants, and that it should no longer be used as a secondary rental suite until it is brought to code.

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The fire chief confirmed in his email to me of August 22, 2016, that to the best of his knowledge the condition of the secondary suite has not improved, from which I infer that the necessary permits and inspections have not been requested by the applicant to bring the secondary suite to code. Had the applicant done so, the fire chief would be aware of it as he is in the chain of parties who would be conducting the necessary inspections.

Section 30 of the Act states:

> 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.

It is evident to me that this secondary (basement) suite was not in compliance with safety standards required by law – specifically National Building Codes and fire codes – creating an premises unfit for occupancy. I find the applicant has failed to comply with his obligations under section 30 of the Act. As such, to my mind, the respondent is entitled to compensation from the applicant.

The premises has not been compliant since prior to the commencement of the tenancy with the respondent; the applicant consequently had no legal right to rent the secondary suite out. The risk to the tenant's safety – unbeknownst to the tenant – was high. However, the fire chief did not enforce condemnation of the secondary suite and the tenant chose to remain in the premises for approximately another two years after learning of the deficiencies.

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The respondent did not specifically request compensation. However, I feel it would be inappropriate not to consider it as a means of enforcing the landlord's statutory obligations under section 30 of the Act. Balancing the rents paid by the respondent against the costs incurred by the landlord for utilities during the respondent's occupancy and the period during which the respondent chose to remain in the premises despite the deficiencies once he became aware of them, I am satisfied reasonable compensation to the respondent would be: 75 percent of the rent paid for June 2013 to April 2014, being the period the respondent was unaware of the deficiencies; and 25 percent of the rent paid for May 2014 to April 2016, being the period the respondent was aware of the deficiencies and chose to remain. As there is no direct evidence of the actual average costs of utilities for the secondary suite I have estimated those costs at approximately 25 percent of the rent, limiting the utilities to water, electricity, and heating fuel. The compensation is calculated as follows:

75% of $1,250 = $937.50 x 11 months = $10,312.50 for June 2013 to April 2014

25% of $1,250 = $312.50 x 24 months = $7,500 for May 2014 to April 2016

Total compensation to the respondent: $10,312.50 + $7,500 = $17,812.50

Orders

An order will issue requiring the respondent to pay to the applicant costs for repairs to the rental premises in the amount of $641.94.

An order will issue requiring the applicant to compensate the respondent for providing a rental premises that was not in compliance with safety standards required by law in the amount of $17,812.50.

Adelle Guigon
Rental Officer

References: Cote v. Armsworthy, 2012 NSSC 15