

IN THE MATTER between **JW**, Applicant, and **FT**, 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:

JW

Applicant/Landlord

-and-

FT

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: February 22, 2017

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: JW, applicant
FT, respondent
GC, on behalf of the respondent

Date of Decision: March 14, 2017

REASONS FOR DECISION

An application to a rental officer made by JW as the applicant/landlord against FT as the respondent/tenant was filed by the Rental Office October 28, 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 October 31, 2016.

The applicant alleged the respondent had failed to pay rent, had caused damages to the rental premises, and had failed to clean the rental premises upon vacating. An order was sought for payment of rental arrears and payment for costs of repairs and cleaning.

A hearing was scheduled for February 22, 2017, in Yellowknife, Northwest Territories. JW appeared as applicant. FT appeared as respondent with GC appearing on behalf of the respondent and WH appearing as witness for the respondent.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them commencing July 1, 2014. The rental premises is a six-bedroom, two-bathroom house. The applicant resides there and rents out the remaining five bedrooms to other individuals. The kitchen and bathrooms are shared amongst the occupants. Of the two bathrooms, the respondent only used the basement bathroom, which was near his room. The respondent's room was identified as the Green Room. The respondent ceased occupying the rental premises in August 2016. I am satisfied a valid tenancy agreement was in place between the parties in accordance with the *Residential Tenancies Act* (the Act).

Rental arrears

The parties agreed that the monthly rent was \$900. The applicant testified that the respondent did not give notice in accordance with the Act of his intention to vacate. The applicant testified that he was not satisfied that the respondent did in fact vacate the rental premises until approximately August 19, 2016.

The respondent confirmed that he did not give the landlord written notice to vacate, although he claims to have indicated to other occupants of the rental premises that he was leaving as early as August 5th, and believed that he had verbally indicated the same to the applicant approximately that time. He further claims he moved in response to a verbal 10-day notice to vacate issued by the applicant. The respondent agreed that he did not complete moving his property out of the rental premises until approximately August 18th. The parties agreed that the keys to the rental premises were not returned to the applicant until approximately August 26th.

The parties agreed that the rent for August had not been paid. Due to the respondent's failure to give adequate notice of his intention to vacate the rental premises, the applicant was unable to re-rent the premises until October 1st. As such, the applicant is claiming rental arrears for both August and September totalling \$1,800.

I am satisfied the respondent failed to give notice in accordance with the Act. I am further satisfied the applicant was unable to secure a new tenant until October 1, 2016. As such, I find the respondent liable to the applicant for the rent for August and September 2016 in the total amount of \$1,800. A security deposit of \$400 acknowledged received at the time of signing the written tenancy agreement on July 2, 2014, has accumulated interest in the amount of \$0.49, the total of which was retained by the applicant against the rental arrears. Accounting for the security deposit, I find the remaining rental arrears owed by the respondent amount to \$1,399.51.

Cleaning and damages

Photographs

The applicant submitted into evidence 27 photographs from throughout the rental premises. Some were taken during the respondent's tenancy; some were taken well after the respondent vacated the rental premises; none were taken either at or near the first and last days of the respondent's tenancy.

Inspection reports

The applicant submitted into evidence an entry and exit inspection report dated July 1, 2014, at entry and October 1, 2016, at exit. The report was signed at both entry and exit by the applicant; it was not signed by the respondent either at entry or exit. The respondent was never provided with a copy of either the entry or exit inspection reports until this hearing and disputes having seen the entry inspection report at the commencement of the tenancy.

The respondent disputed the authenticity of the entry inspection report as being completed at the commencement of the tenancy. In addition to not being provided with a copy of it at the time, the parties agreed that although the respondent slept in the premises overnight on July 1, 2014, the respondent did not get a good look at the premises until July 2, 2014, and the parties did not enter into the written tenancy agreement until July 2, 2014. The written tenancy agreement is dated July 2, 2014, to commence July 1, 2014. The applicant claims the respondent was offered the entry inspection report at the commencement of the tenancy but refused to look at it.

I am not satisfied either that the respondent was given opportunity to participate in the entry inspection or was offered a copy of the entry inspection report. Additionally, I am not satisfied the exit inspection report reflects the condition of the premises at the time the respondent vacated because the respondent vacated August 18th but the report was completed October 1st. I find the entry and exit inspection reports submitted into evidence to be of limited value as I cannot have confidence that the condition of the rental premises at the either the beginning or end of the tenancy is accurately represented.

Cleaning

The applicant claimed that throughout the tenancy the respondent had failed to keep his room clean and had left it in an unclean condition at the end of the tenancy. The applicant also claimed that the respondent's body odour and foot sweat was excessive and permeated the walls and carpets, and as a result he had to clean the walls and carpets with bleach to get the odours out at the end of the tenancy. He also claimed the respondent had not cleaned the bathroom upon vacating.

The applicant claimed that the respondent introduced carpet beetles into the premises. He testified that two carpet beetles were found in the hallway during the tenancy, one in front of the respondent's room, the other in front of another tenant's room. He also claimed to have found carpet beetles in a cloth grocery bag moved from the respondent's room to another area of the rental premises after he moved out.

The applicant claimed costs for cleaning the walls and ceiling, treating the carpets for carpet beetles, and steam cleaning the carpets in the total amount of \$967.68.

The respondent disputed all of these allegations. He admitted that his room was full, but not cluttered. The photographs submitted by the applicant support the respondent's assertion. He cleaned his room and the bathroom regularly, including vacuuming and emptying his garbage can. The respondent disputed having either a body odour or foot sweat problem, as he practices good hygiene. Additionally, he heard no complaints from any of the other four tenants in the rental premises.

The respondent testified that the walls were stained from water and glycol leaks which came from within the ceiling above his room, and the carpets were old and had suffered during his tenancy from water damage. The respondent's witness corroborates the respondent's testimony, having observed the water and glycol leaks and stains in the ceiling and on the walls. The witness further corroborates the respondent's testimony regarding the condition of the carpet, and confirmed observing mushrooms growing out of part of the carpet. The respondent denies ever having spilled liquids or foods in his room which would have stained the carpets. The respondent testified that the odours in the room were coming from wet carpet, mushrooms, and leaks, not his body odour. The applicant confirmed there had been water leaks and seepage, and there had been a glycol leak.

The respondent disputes that he can or should be held accountable for introducing the carpet beetles to the premises. He was one of six occupants of the rental premises, the carpets were old, and the carpet beetles were found in the hallway, not in his room. He further denies that the cloth grocery bags the applicant claims to have found more carpet beetles in were his as he had removed all his property, including his cloth grocery bags, from the room to his new premises.

To my mind, the applicant's suggestion that the respondent's body odour permeated the walls and carpet of the rental premises is unfounded. There is no supporting evidence to suggest the bathroom had not been cleaned when the respondent vacated the rental premises. The applicant did not dispute that there had been water and glycol leaks in the room which caused stains to the ceiling and walls, and that the carpet had been soaked with water during the tenancy. The age of the carpet could not be determined, other than to say it was not new when the respondent moved into the rental premises. I am not satisfied that the respondent left the rental premises in an unclean condition or caused any staining or odours requiring cleaning.

I am also not satisfied the presence of carpet beetles can be traced back to the respondent. The carpet beetles were not found in the respondent's room. There were a sufficient number of people residing in the premises that the carpet beetles could have been introduced by any of them. Additionally, considering the age and condition of the carpets, it is possible the carpet beetles were introduced before the respondent's occupancy commenced.

The applicant's claim for cleaning costs are denied in their entirety.

Chair and vacuum

The parties agreed that the desk chair which was provided as part of the furnished room had been damaged by the respondent. Although the respondent disputed that the replacement chair he procured was not good enough, he agreed to recompense the applicant for the cost to replace the chair after the applicant disposed of it.

The parties further agreed that the vacuum had been damaged when the respondent was using it. Additionally, the vacuum was clogged with hair and debris. Ultimately, the parties agreed that the respondent was responsible for the exterior damage but not for the clog, as the respondent is not the only person residing in the premises who would have shed hair. The parties agreed to split the cost of repairing the vacuum.

The cost to replace the chair amounted to \$89.94 and half the cost to repair the vacuum amounted to \$180. The applicant acknowledged the respondent had paid \$80 towards those costs. The parties agreed the remaining outstanding amount is \$189.94.

I am satisfied the respondent caused the damages to the chair and vacuum as agreed. I find the respondent liable to the applicant for costs to replace the chair and repair the vacuum in the remaining amount of \$189.94.

Patching and painting

The applicant claimed costs for patching and painting the walls in the respondent's room. There were two reasons claimed for this cost: cleaning the walls with bleach caused the paint to fade in spots and there were screw holes left in the walls where the respondent moved an existing shelving unit from.

With respect to the bleach spots, all costs associated with that repainting are denied as I have already found the respondent not liable for cleaning the room. Therefore, the respondent is not liable for the consequential costs to repair the damages caused by the applicant's cleaning efforts.

With respect to the screw holes, the parties agreed that a wall-mounted shelving unit had been installed in the room by the applicant; the room was provided furnished with at least the shelves, a desk, a chair, and a bed. The respondent admitted that upon discovering that the shelves had not been screwed to a stud he had taken the initiative to move them a few inches to the side where a stud was located so they would be capable of safely bearing adequate weight. The respondent did not consult the applicant prior to initiating this action. Nor did the respondent subsequently repair the resulting the screw holes from the shelves' prior location. As a consequence, I must find the respondent liable to the applicant for costs associated with patching and painting the original screw holes in the wall as it is the respondent's actions which caused the damage.

The total costs claimed by the applicant for patching and painting the entire room is \$803.84. However, I do not find the respondent liable for patching and painting the entire room; I find him liable for the patching and painting of one section of one wall. An educated estimate of the costs for patching and painting the screw holes, based on previous findings for similar claims, is \$160 and this is what I will grant the applicant.

Computer replacement

The applicant claimed \$9,000 to replace his computer, software, and the data contained in the computer. No evidence was presented to support the costs claimed, the age of the computer, the various software being used, or the amount of data originally stored.

The applicant testified that his computer crashed and he lost all functionality and data when a breaker tripped in the rental premises. He claims that the breaker tripped when the respondent used a microwave in his room at the same time that the applicant turned his computer on.

Upon questioning, the applicant confirmed the house was built in the mid-1970s and although the electrical wiring was to code at the time it has not since been upgraded. The house was built as a single-family dwelling, not originally intended to accommodate six independent tenants. The applicant claimed that being a knowledgeable electrical engineer he could install additional dedicated sockets where necessary to ensure the electrical system was not overloaded. He claims he eventually prohibited the tenants from using microwaves and mini-fridges in their rooms in an effort to reduce the likelihood of tripping breakers. Regardless, he did not install a dedicated socket for his computer, let alone dedicated sockets for the tenants to use in their rooms without fear.

The respondent denied any liability for the applicant's computer. He acknowledged that the breaker tripped when he used the microwave in his room; he was not aware the applicant had turned on his computer at the same time. He believed the tenant in the neighbouring room had used his microwave at the same time. The respondent agreed the applicant did request the tenants not use small appliances in their rooms, but that request came at least a year and a half after the respondent had been using small appliances in his room. The applicant claimed he did not know the neighbouring tenant also had a microwave in his room until the breaker tripped.

In consideration of the questions raised regarding the adequacy of the electrical system for a six-bedroom rental premises and in consideration that there was more than one appliance used by more than one tenant in the rental premises that could have caused the breaker to trip, I am not satisfied the respondent can be found responsible for either the breaker tripping or the consequential damage to the applicant's computer.

Under section 30 of the Act, the landlord is ultimately responsible for ensuring the rental premises is provided and maintained in a good state of repair and in compliance with all health, safety, occupancy and maintenance standards required by law, and in this case reasonable doubts have been raised bringing the landlord's compliance with this section into question. However, this application and hearing did not delve into these specific landlord obligations and I am not prepared to make any findings in that regard at this time. Suffice it to say that the questions and answers that were posed raised reasonable doubts to the respondent's liability for the damages claimed by the applicant. The applicant's claim for costs to replace his computer hardware, software, and data is denied.

Orders

An order will issue for the respondent to pay rental arrears in the amount of \$1,399.51 and to pay for costs of repairs in the amount of \$349.94.

Adelle Guigon
Rental Officer