File #15296

IN THE MATTER between **LF**, Applicant, and **SI**, 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:

LF

Applicant/Tenant

-and-

SI

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: **January 12, 2017**

Place of the Hearing: **Yellowknife, Northwest Territories**

Appearances at Hearing: **LF, applicant**
OD, representing the respondent

Date of Decision: **May 29, 2017**

REASONS FOR DECISION

An application to a rental officer made by LF as the applicant/tenant against SI as the respondent/landlord was filed by the Rental Office July 15, 2016. The application was made regarding a rental premises located in Hay River, Northwest Territories. The applicant personally served the filed application on the respondent July 22, 2016. Addendums to the application were subsequently served on the respondent by emails dated: August 31, 2016; September 26, 2016; October 11, 2016; and November 24, 2016.

The tenant alleged the landlord had failed to maintain the rental premises and residential complex in a good state of repair, fit for habitation, and in compliance with health, safety, maintenance and occupancy standards required by law. An order was sought for compensation for losses suffered and for the landlord to effect the necessary repairs.

A hearing was originally scheduled for September 28, 2016. The landlord's request for adjournment to a later date was granted peremptory on the landlord. The hearing was re-scheduled for January 12, 2017, by three-way teleconference. LF appeared as applicant. OD appeared representing the respondent.

Tenancy agreements

Based on testimonies of both parties at hearing, I am satisfied that three separate verbal tenancy agreements were entered into between them for rental premises located in the same residential complex. The first tenancy commenced in August 2013 for apartment number 708; the agreed upon rent for that premises was $1,200 per month. The tenant vacated apartment number 708 on February 4, 2014.

The second tenancy commenced June 19, 2015, for furnished apartment number 1507; the agreed upon rent for that premises was $1,275 per month. The tenant vacated apartment number 1507 on November 9, 2016.

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The third and current tenancy commenced November 9, 2016, for apartment number 1506; the agreed upon rent for that premises was $850 per month. I am satisfied a valid tenancy agreement is and was in place between the parties in accordance with the *Residential Tenancies Act* (the Act).

Legal / procedural arguments

The landlord made no replies to either the filed application or to any of the filed addendums until at and after the hearing. The tenant argued that the landlord's failure to make any replies to the application as of September 26, 2016, was part of an attempt by the landlord to circumvent the Rental Officer's jurisdiction and that the landlord should be barred from making any representations. The tenant's argument has no merit. The landlord is not obligated to make any replies or arguments and certainly is not obligated to do so prior to any scheduled hearing.

The tenant argued that the landlord had submitted affidavits containing false information and provided jurisprudence in support of his argument that the making of a false affidavit in a court proceeding is obstruction of justice, in which case the landlord's submissions should not be considered. While the tenant's argument regarding the making of false affidavits in court is accurate, in this case the landlord did not submit any sworn affidavits. The building owner and building manager each submitted written statements, and the landlord's representative at hearing gave sworn testimony. Both the written statements and the sworn testimony have been weighted accordingly in my deliberations. Additionally, all parties have been provided fair opportunity to reply to each other's statements and claims.

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The tenant argued that the written submissions of the building owner and building manager, which were read into the record at hearing and then provided in writing subsequent to the hearing, should be struck from the record because they were not provided to either the Rental Officer or the tenant at least 24 hours prior to the hearing. The telephone hearing information sheets provided to both parties with the notices of attendance do specify that any documentary evidence that is to be relied on at hearing must be provided to the Rental Officer and the other party at least 24 hours prior to the hearing. However, this is to ensure all parties have fair opportunity to make a reply to the evidence presented. In this case, the landlord's representative did neglect to submit the written statements prior to the hearing. At hearing, I permitted the landlord's representative to read the statements into the record on the condition that she forward the written copies to both myself and the tenant immediately after the hearing, which she did. The tenant had an opportunity at hearing to ask any questions of the landlord's representative regarding the contents and authenticity of the statements, and then was also provided with time after the hearing to make any written replies to the statements. I am satisfied that fair opportunity was provided for the tenant to make any replies he wished to the statements. The tenant's request to strike the statements from the record is denied.

The tenant additionally argued that the rules of natural justice require that the parties to an application be given fair opportunity to cross-examine any witnesses. In essence, the tenant is correct. Procedure allows for witnesses or parties to make written submissions as well, and it is for the adjudicator to determine the value of any written submissions given that there has been no opportunity to cross-examine the writer. A sworn affidavit would carry more weight than a written statement. In this case, as previously mentioned, both parties have made various written submissions, both parties have had and were given fair opportunity – both before, at, and after the hearing – to reply to the written submissions, and both parties had opportunity at hearing to ask questions of the representatives who were present. I am satisfied that the rules of natural justice have been followed.

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The tenant argued that the second verbal tenancy agreement commencing June 19, 2015, should be declared null and void because the "lease agreement was void *ab initio* by reason that it was obtained by the landlord's fraud." The fraud alleged is in reference to the landlord's failure to notify the tenant at the commencement of the tenancy of the defects to the rental premises and residential complex and the landlord's failure to effect necessary repairs throughout the tenancy, which will be discussed later in these reasons. The tenant's argument for nullification of the tenancy agreement has no merit. Rights and obligations of both the landlord and tenant are set out in the Act and section 30(3) of the Act goes as far as establishing the landlord's obligation to provide and maintain the rental premises and residential complex even where the tenant had knowledge of any state of non-repair before entering into the tenancy agreement. The existence of any state of non-repair does not nullify a tenancy agreement that has been entered into.

On September 16, 2016, the landlord served the tenant with a notice to terminate the tenancy agreement September 27, 2016, pursuant to section 54(1)(g) of the Act. Section 54(1)(g) of the Act provides for a landlord to give a tenant at least 10 days' written notice to terminate the tenancy agreement where a tenant has repeatedly failed to pay the full amount of rent when due. A copy of the notice was provided by the tenant as part of an addendum to the tenant's application. Although the notice indicated it was copied by the landlord to the Rental Officer, the Rental Office never received a copy prior to the tenant submitting it.

The purpose of the tenant submitting the notice as part of his addendum was to argue that the "notice is fraudulent and intended to mislead the court." The basis for this argument is the tenant's dispute as to the accuracy of the landlord's accounting, which will be addressed later in these reasons. As a consequence of the "fraudulent" and misleading nature of the reasons for issuing the notice to terminate the tenancy, the tenant requested an order declaring the "Notice to the Tenant to Vacate is a nullity." The tenant's request is denied.

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The landlord was within their rights to give the tenant notice pursuant to section 54(1)(g) of the Act. The landlord did not complete the action in accordance with the Act, as section 54(4) of the Act requires the landlord to follow up a notice to terminate given under section 54(1) with an application to a rental officer; no such application was made independently by the landlord, although during the hearing for this application the landlord did make a request for payment of rental arrears and termination of the tenancy agreement. At any rate, had the landlord made their own formal application, the tenant would have had his day before this tribunal to make his arguments against the landlord's claim that he had repeatedly failed to pay his rent and the presiding rental officer would have made a decision then on whether or not the termination of the tenancy was justified. Regardless, the issue of the validity of the termination notice is moot given the landlord did not seek to enforce it in accordance with the Act and since the tenancy at apartment 1507 continued until November 8, 2016, when the tenant moved to apartment 1506.

Security deposit

The tenant testified that when he entered into the first tenancy agreement he paid a security deposit of $1,200. He provided into evidence an email he sent to the landlord on July 16, 2013, indicating a "$1200 CIBC bank draft" payable to SI had been sent to HS that day under Canada Post tracking number LT795935138CA.

At the end of the first tenancy agreement the tenant expected his future return to the community and claims to have made verbal arrangements with the landlord for his security deposit to remain in trust with the landlord so it could be applied against his future (second) tenancy. The tenant claimed the retained security deposit had not been accounted for against either the second or third tenancies and sought either the return of the security deposit or the application of it against the security deposit for his current tenancy.

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The landlord's representative claimed that the security deposit had not been accounted for in the second or third tenancies because it had never been paid in the first tenancy. The landlord's representative could not provide statements, receipts, or ledgers from the period of the first tenancy because those documents were lost in a basement flood, but was able to locate a reference to a money order that was received against the tenant's first tenancy which was deposited July 23, 2013. This entry is noted in the landlord's statement of account.

The burden of proving the security deposit was paid lies with the tenant in this case. The tenant has provided evidence that $1,200 was forwarded to the landlord prior to the commencement of the first tenancy, but that email clearly identifies the money was "for rent Aug 1, 2013 unit #708". As such, there is no evidence that the tenant paid $1,200 security deposit for the first tenancy and I am not satisfied that it was paid. The tenant's request for that security deposit to either be returned to him or applied against the security deposit for his current tenancy is denied.

Lobby floor

The tenant claimed that the lobby flooring had been torn apart and the repairs left incomplete for at least six months at the time the application was made, and that the condition of the floor was hazardous and unsafe. The tenant provided a photograph of part of the lobby showing a section where tiles had been removed and the plywood underlay was left exposed. While it is clear the landlord had failed to complete repairs to the lobby floor, the exposed plywood appears to be in good shape, if unfinished. There do not appear to be any tripping hazards or defects which could cause harm. No evidence was presented from which to establish that the lack of finish is non-compliant with the National Building Code or any other territorial or federal legislation. No evidence was presented from which to establish any losses suffered by the tenant as a direct result of the unfinished floor. The landlord made no submissions regarding the lobby floor. I am not satisfied the unfinished floor disturbed the tenant's enjoyment or possession of the rental premises or residential complex. The tenant's claim for compensation in this regard is denied.

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Laundry facilities

A coin-operated laundry room was provided within the residential complex for exclusive use of the residential tenants, of which there are more than 100. The tenant claimed that as of September 23, 2016, nine of the ten washing machines were non-functioning. A photograph of the laundry room was provided showing six washing machines and empty spaces for four more washing machines. The landlord made no submissions regarding the laundry facilities. No evidence was provided establishing whether or not the washing machines have been repaired or replaced. I am satisfied laundry facilities were provided as part of the tenancy. I am satisfied that 90 percent of the washing machines are not functioning. I find the landlord has failed to comply with his obligation to maintain the services and facilities provided in the residential complex in a good state of repair. The tenant did not request monetary compensation for the reduced services, nor did the tenant provide any evidence of monetary losses he has suffered as a direct result of the reduced services. Having found the landlord in breach of his obligation and having no evidence before me to suggest the landlord has effected the necessary repairs, and in consideration that the dramatic reduction of laundry facilities for the significant number of tenants in the residential complex creates an unreasonable disturbance to the tenant's enjoyment of the residential complex, I am prepared to grant the tenant a 2.5 percent rent abatement retroactive to September 2016 and continuing each month until such time as at least 50 percent of the washing machines in the laundry facilities are repaired. The retroactive abatement for September 2016 to January 2017 – accounting for differing rents over the second and third tenancies – amounts to a credit total of $130.33. The abatement of rent during the third (current) tenancy starting in February 2017 amounts to a credit of $21.25 per month.

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Mailboxes

The residential complex provides for secure mail boxes for residents of the building. Appendix B of Canada Post Corporation's Delivery Planning Standards Manual sets out the building owner's obligations respecting mail boxes for multi-unit dwellings (apartment buildings), including that it is the building owner's responsibility to supply, install, and maintain the mail delivery equipment according to Canada Post specifications. Section 5 of Appendix B sets out the specifications for lockbox assemblies. Section 11 of Appendix B sets out the building owner's responsibility to regularly inspect, clean, and repair the lock boxes, and ensure they are kept free from defects and obstructions, at the owner's expense, and that if the lockbox assembly or unit are considered unsafe or insecure, and are not repaired within a reasonable period of time, Canada Post may suspend mail delivery until such time as the condition is corrected.

The tenant testified that by March 2016 the condition of the mail box assembly had deteriorated to the point that Canada Post suspended mail delivery. A date stamped, hand-written notice was posted on the mail box assembly notifying the tenants to pick up their mail at the post office until further notice. For the first three months the tenant picked up his mail at the general delivery counter of the post office. The mail box assembly at the residential complex had not been repaired by the landlord during this time and remained defective. To ensure the continued receipt of his mail, the tenant was compelled to purchase a four-month mail forwarding service for delivery of his mail from the rental premises to the post office on June 2, 2016, in the amount of $55.60. On August 23, 2016, when the mail box assembly remained defective, the tenant paid for the three-month rental of an individual mail box at the post office for $76.65. On October 12, 2016, when the mail box assembly continued to remain defective, the tenant purchased another four-month mail forwarding service for the amount of $55.60. On November 21, 2016, when the mail box assembly continued to remain defective, the tenant extended his mail box rental for another three-months at a cost of $60.90. Receipts were provided for all four of the costs claimed.

Section 30(1)(a) of the Act states: “A landlord shall 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.”

Residential complex is defined under section 1(1) of the Act as meaning “a building, related group of buildings or mobile home park, in which one or more rental premises are located and includes all common areas, services and facilities available for the use of tenants of the building, buildings or park.”

Services and facilities is defined under section 1(1) of the Act as including “furniture, appliances and furnishings, parking and related facilities, laundry facilities, elevator facilities, common recreational facilities, garbage facilities and related services, cleaning or maintenance services, storage facilities, intercom systems, cable television facilities, heating facilities or services, air conditioning facilities, utilities and related services, and security services or facilities.”

The use of the word ‘includes’ or ‘including’ before a list implies the list is not exhaustive. The landlord is obligated under Canada Post Corporation’s standards as a multi-unit building owner to provide and maintain safe and secure mail boxes for the tenants of the building. To my mind, the provision of the mail boxes is a service the landlord is obligated to provide and maintain pursuant to section 30(1) of the Act.

Section 30(2) of the Act identifies any substantial reduction in the provision of services and facilities as a substantial breach of section 30(1). Not only is the condition of the mail boxes in the residential complex defective to the point of being unsafe and insecure, it is to the point where Canada Post Corporation has refused to deliver mail to the residential complex because of those deficiencies. The landlord is clearly aware of the deficiencies and has failed after 11 months to repair them. The landlord made no submissions with regard to the defective mailboxes.

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None of the tenants in the residential complex should be forced to pick up their mail anywhere other than the mail boxes provided for the purpose within the residential complex. It is evident the mail boxes have been provided as part of the building to serve the tenants since its inception. The applicant/tenant has provided evidence of monetary losses he has suffered as a direct result of the landlord failing to comply with his obligation to maintain the mail boxes in a good state of repair and I am satisfied the tenant is entitled to compensation for those losses from the landlord. I find the landlord liable to the tenant for losses suffered as a direct result of failing to maintain the mail boxes in a good state of repair in the total amount of $248.75. This credit will be accounted for in the calculation of rental arrears.

The costs allowed are those for mail delivery services which were set to expire by the end of February 2017. As there is no evidence to support that the mailboxes have been repaired, it seems likely that the tenant will be required to continue forwarding his mail and renting a mailbox at the post office until they are repaired. As a consequence, the tenant is entitled to compensation for those continued costs. I am prepared to grant the tenant an abatement of rent in the amount of $34.20 per month commencing in March 2017 and each month thereafter until the mailboxes are repaired and Canada Post Corporation resumes mail delivery to the residential complex.

In-unit fire alarm

The landlord installed a new fire alarm in the tenant's second rental premises (apartment 1507) in May 2016 in response to an order of the Fire Marshal. The tenant claimed that the alarm was either installed incorrectly or was defective because since installation it has self-activated randomly at all hours and whenever there is a general power failure. Between May and July 2016 the tenant claimed the alarm went off without cause at least 10 times, disturbing his enjoyment of the rental premises. The tenant notified the landlord of the problem both verbally and in writing. As of the date the application was filed, the alarm had not been repaired.

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The landlord made no submissions in reply to the tenant's claim regarding the alarm. The tenant made no further submissions regarding whether or not the alarm had been repaired since filing of the application or if the reported problems persisted. I am satisfied the in-unit fire alarm was not operating properly from May to July 2016 and that it's random activations disturbed the tenant's enjoyment of the rental premises. I find the landlord failed to comply with his obligation not to disturb the tenant's enjoyment of the rental premises and I am prepared to grant the tenant an abatement of rent for the months of May, June, and July 2016 at a rate of 2.5 percent, or $31.88 per month, for a total credit of $95.64.

Floods

June 2, 2016

There is no dispute between the parties that a flood occurred in the tenant's rental premises on June 2, 2016. It appears a water pipe was damaged in the apartment directly above the tenant's, causing a substantial amount of water to pour into the tenant's premises.

The tenant claimed the flood damaged items in the tenant's bedroom, bathroom, kitchen, and living room. The items the tenant claimed replacement costs for are: one handwritten address book valued at $7.99 (no receipt) and two soiled pillowcases valued at $9.44 (receipt provided). The tenant also claimed laundry facility costs (coin-op machines) to clean the linens and clothing that had been soaked in the amount of $9.00 (no receipt). The landlord made no reply to this claim. I am satisfied the damages claimed occurred as a direct result of the flood. The flood was not caused by the tenant's wilful or negligent conduct and therefore is the landlord's responsibility under section 30(1) of the Act. I find the landlord liable to the tenant for the costs of replacing the address book and two pillowcases, and for cleaning soiled linens and clothing, in the total amount of $25.99.

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The tenant claimed that no assistance was provided to clean up the mess left behind and that he had to complete the clean-up job himself. He claimed costs for purchasing the following cleaning products: one squeeze mop, dish soap, Oxiclean spot remover and gel stick, and paper towel (receipts provided), totalling $36.25. The tenant is also seeking compensation for 11.5 hours spent cleaning the immediate effects of the flood to the apartment between June 2nd and 3rd. The tenant is claiming compensation at an hourly rate of $50. The landlord made no reply to the specific claim regarding cleaning the premises. I am satisfied the tenant was left to his own devices to clean the rental premises. I am satisfied the landlord neither offered nor provided any assistance with the necessary cleaning. With respect to the supplies the tenant had to purchase to effectively clean the rental premises of the effects of the flood, I am satisfied the claim is reasonable. I am satisfied that the hours claimed by the tenant to do the cleaning are not unreasonable in light of the extent of the flooding which occurred. I am not satisfied that the hourly rate the tenant is claiming is reasonable. In my experience, the average hourly rate in regional centres of the Northwest Territories for cleaning services range from $20 to $25 per hour per cleaner, including supplies. I am prepared to grant the tenant a rate of $20 per hour for cleaning the apartment of the effects of the flooding. I find the landlord liable to the tenant for cleaning and supplies in the total amount of $266.25.

The landlord provided two electric heaters for between two and four days to try and dry out the carpets, after which the landlord had the water-damaged carpet removed and replaced with laminate flooring. The tenant claims he was unable to use the rental premises for 10 days while waiting for the carpet to be replaced and is seeking an abatement of 1/3 of the rent amounting to $425. No evidence was provided to substantiate either that the rental premises was uninhabitable or that the tenant resided elsewhere for the 10-day period of time claimed. The tenant is also claiming increased electrical costs during the period the electric heaters were used to dry out the carpets in the amount of $20. The tenant provided a statement from Northland Utilities Ltd. which documents a substantial increase in kilowatt hours used in June 2016 as compared to May 2016.

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I am not satisfied either that the rental premises was uninhabitable or that the tenant did not reside at the rental premises for the 10 days claimed. Although the landlord did effect the necessary repairs to the rental premises within 10 days of being notified of the damages in compliance with section 30(6) of the Act, the damages to the carpet created an undesirable living environment causing a disturbance to the tenant's enjoyment of the rental premises. I am satisfied that the premises was in a condition that interfered with the tenant's enjoyment of the premises for the period of June 2nd to June 12th for which the landlord is liable under section 34 of the Act. I find the tenant is entitled to a 25 percent abatement of rent for the 10-day period of June 2nd to June 12th, amounting to a total credit of $106.30. I am satisfied the tenant's claim of increased electricity costs which were incurred as a direct result of the use of the electric heaters is made out and I am prepared to grant the tenant's request for compensation in the amount of $20.

The tenant claimed that no assistance was provided by the landlord to move the furniture and property around the rental premises to accommodate the replacement of the carpets. As a result, the tenant claimed eight hours of work on June 8th, 9th, and 10th, to move the furniture and tidy up himself. In his written submissions, the tenant states that a worker was provided and that the tenant sent the worker away because he scratched the tenant's stereo speakers. The landlord's written submissions claimed the furniture was removed and put back at the landlord's cost, implying that a worker was provided to do this work. I am satisfied that the landlord provided a worker to move the furniture as necessary to accommodate the replacement of the carpets. It appears to be the tenant's choice to dismiss the worker and do the moving himself, and I heard no evidence suggesting that the tenant notified the landlord that he dismissed the assigned worker. Perhaps if the landlord had been notified of the problem with the assigned worker he would have been able to assign a different worker. I am not satisfied the tenant is entitled to compensation for doing work the landlord was both prepared to take responsibility for doing and had arranged for a worker to do. The tenant's claim for compensation for eight hours of work is denied.

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The tenant claimed that he had to take three days off work. The first day off was to clean the premises June 3rd. The second and third days off were taken June 13th and 14th due to an injury to the tenant's right hand, arm, and shoulder claimed to have occurred while moving the furniture. The tenant is seeking compensation for loss of income for the three days off work at a rate of $50 per hour for a total of $1,125. The tenant is also seeking compensation for time spent away from work to attend medical appointments regarding the claimed injury; hours away from work accumulated to date amount to 14 hours against which the tenant is claiming a rate of $50 per hour for a total of $1,050. The tenant provided a screenshot of his timesheet indicating he claimed two days' sick leave on June 13th and 14th, however, no evidence was provided demonstrating monetary losses suffered by the tenant for taking the time off work. No evidence was provided substantiating the tenant's claimed hourly wages. And while there was evidence provided supporting the tenant's claim that he attended physiotherapy appointments, no evidence was provided either specifying what injuries the appointments were treating or when those injuries occurred. I am not satisfied the tenant has established either the amount of his hourly wages or the amount of lost income he is claiming. I am also not satisfied there is sufficient evidence to establish that the claimed injuries occurred as a result of any negligence on the landlord's part. The tenant's claim for lost income is denied.

Also in relation to the injuries, the tenant claimed compensation for pain and suffering in the amount of $5,000. The remedies available under the Act are limited to demonstrable monetary losses suffered as a direct result of a breach. As such, the tenant's claim for pain and suffering is denied.

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August 26, 2016

The tenant claimed that water leaked from the ceiling into the rental premises the evening of August 26, 2016. Upon discovery the tenant moved his speakers, which were directly below the leak, placed buckets there to catch the water, and cleaned up the pool of water which had accumulated on the floor. The tenant then contacted the landlord's building manager, who allegedly told the tenant that nothing could be done about the leak because rain water had penetrated the floor(s) above the rental premises, and that the flashing was corroded and not replaceable. In the building manager's written statement he denies making any statements that the leaks from the roof would not be repaired. No evidence was provided establishing whether or not the leak has since been repaired. I am satisfied there was a water leak from the ceiling in the tenant's rental premises. I am satisfied the tenant is not responsible for the leak. I find the landlord failed to comply with his obligation to maintain the rental premises in a good state of repair pursuant to section 30(1) of the Act.

The tenant claimed that the water which leaked onto his speaker damaged the finish, devaluing the speaker, and sought compensation to have the speaker professionally refinished by a southern vendor in the amount of $490. No photographs were provided of the speaker to establish the claimed damages. No receipts were provided demonstrating the claimed costs incurred to repair the speaker. The landlord did not make any submissions regarding the tenant's claim for costs of repairing the speaker. I am not satisfied either that the tenant has established the speaker was damaged or that he has demonstrated any monetary losses to repair the speaker. The tenant's request for compensation to repair the speaker is denied.

The tenant claimed costs to clean the area where the water leak occurred in the amount of $50 for approximately one hour's work. As the cleaning was made necessary through no fault of the tenant, I am satisfied the tenant's request for compensation is reasonable. However, as previously discussed, I am not satisfied that $50 per hour is a reasonable rate for cleaning services. I am prepared to grant the tenant $20 for cleaning the water leak area.

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The tenant requested an abatement of rent until the cause of the leak is repaired. While I am satisfied that there is a leak which the landlord is required to repair, the effects of the leak on the tenant are limited to when it is raining. The inconvenience of the leak, any damages the leak may cause, and any cleaning that may be required are sporadic occurrences at best and do not interfere with the tenant's enjoyment of the rental premises on any regular or constant basis. I am not satisfied an abatement of rent is justified and therefore the tenant's request is denied.

September 10, 2016

The tenant claimed that water leaked from the ceiling into the rental premises on September 10, 2016. The leak was described by the tenant as "water again cascaded from the ceiling in the living room for two hours". The tenant placed a bucket beneath the leak to catch the water and cleaned the water from the area. The tenant again contacted the landlord's building manager, who allegedly told the tenant that nothing could be done about the leak, that it was up to the tenant to clean the mess, that eight units were affected by the leak, that the landlord could not afford to repair the leak, and that the problem had persisted for a number of years. In the building manager's written statement he denies making any statements as to the number of units subjected to habitual rainwater leaks from the roof or that the landlord would not repair the roof leak. No evidence was provided establishing whether or not the leak has since been repaired. I am satisfied there was a water leak from the ceiling in the tenant's rental premises. I am satisfied the tenant is not responsible for the leak. I find the landlord failed to comply with his obligation to maintain the rental premises in a good state of repair pursuant to section 30(1) of the Act.

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The tenant again claimed that the water leak damaged his speaker and sought additional compensation in the amount of $100. No photographs were provided of the speaker to establish the claimed damages. No receipts were provided demonstrating the claimed costs incurred to repair the speaker. The landlord did not make any submissions regarding the tenant's claim for costs of repairing the speaker. I am again not satisfied either that the tenant has established the speaker was damaged or that he has demonstrated any monetary losses to repair the speaker. The tenant's request for compensation to repair the speaker is denied.

The tenant claimed costs to clean the area where the water leak occurred in the amount of $75 for approximately 1.5 hour's work, and claimed costs to launder the towels used to clean up the water in the amount of $6. As the cleaning was made necessary through no fault of the tenant, I am satisfied the tenant's request for compensation is reasonable. However, as previously discussed, I am not satisfied that $50 per hour is a reasonable rate for cleaning services. I am prepared to grant the tenant $30 for cleaning the water leak area and $6 for the costs to launder the towels used to clean up the water.

<u>September 20, 2016</u>

The tenant claimed that water leaked from the ceiling into the rental premises again on September 20, 2016. The tenant placed a bucket beneath the leak to catch the water and cleaned the water from the area. There was no indication whether or not the landlord was notified of the leak this time, but it was clearly referred to in the tenant's written submissions of September 26, 2016, and the landlord made no submissions in reply to the claim. Additionally, no evidence was provided establishing whether or not the leak has since been repaired. I am satisfied there was a water leak from the ceiling in the tenant's rental premises. I am satisfied the tenant is not responsible for the leak. I find the landlord failed to comply with his obligation to maintain the rental premises in a good state of repair pursuant to section 30(1) of the Act.

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Although no specific claim for compensation was made by the tenant for this particular instance, I am satisfied the tenant is entitled to compensation for cleaning the water leak area and I am prepared to grant the tenant $20 for doing so.

Moving expenses

On November 9, 2016, the tenant moved from apartment number 1507 to apartment number 1506. The tenant had become aware that 1506 was vacant and learned from the previous tenant that it did not have any leaks. The tenant extended an offer to the landlord to move into 1506 in an effort to mitigate any further damages from 1507. The landlord accepted the offer and a verbal agreement was entered into for 1506 at a rent of $850 per month on an "as-is-where-is-basis", as described by both the landlord and the building manager in their written submissions.

The tenant claimed costs associated with moving from apartment 1507 to apartment 1506. He makes this claim on the basis that the transfer between apartments was necessary due to the leaking roof in apartment 1507. He claimed $57.75 to transfer his electricity account and $195.55 to transfer his internet and telephone account.

The leak in apartment 1507, while annoying and constituting a breach of the landlord's obligations to maintain the rental premises and residential complex in a good state of repair, did not make the rental premises uninhabitable. The transfer from apartment 1507 to 1506 was proposed by the tenant for his own convenience and comfort. I am not satisfied the landlord should be liable for the tenant's claimed moving costs. The tenant's claim in this regard is denied.

Repairs and cleaning - Apartment #1506

The tenant claimed that when he moved into apartment 1506 the windows had yellow smoke stains, the flooring was stained and dirty throughout, the stove was dirty, and the walls needed to be painted. No evidence was presented establishing whether or not an entry inspection was completed for apartment 1506. The tenant alleged the building manager told him to hire one of the building's contract workers to do the necessary work. In the building manager's written submission, he disputed asking the tenant to use a building contractor at the landlord's cost.

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The parties agreed that the tenant asked the landlord if he could have apartment 1506 painted. The building owner and building manager agreed in their written submissions that the request to paint the rental premises was authorized on the condition that the tenant do it at his own cost, not the landlord's.

Neither the landlord nor his representatives made any submissions regarding the condition of the rental premises when the tenant took occupancy, although I would note their description of taking the apartment "as-is-where-is" certainly suggests an awareness that the premises was not in a desirable condition.

Section 30(1) of the Act, as has previously been mentioned in these reasons, sets out the landlord's obligation to provide and maintain the rental premises and residential complex in a good state of repair and fit for habitation during the tenancy. Section 30(3) of the Act establishes that section 30(1) applies even where a tenant had knowledge of any state of non-repair before the tenant entered into the tenancy agreement.

The tenant identified certain aspects of the condition of the rental premises which would support his claim for cost of cleaning supplies (receipts provided) in the amount of $28.83, that being to clean the floors, stove, and windows. I am satisfied on a balance of probabilities that apartment number 1506 was not clean when the tenant moved in and as such the tenant is entitled to compensation for having to bring the rental premises to a state of ordinary cleanliness. I am satisfied the cost of cleaning supplies of $28.83 is reasonable. Although the tenant did not make a specific claim for the time spent cleaning the premises, I am satisfied it would be reasonable to compensate the tenant for this effort by estimating time spent cleaning this bachelor apartment at three hours and applying the previously established cleaning rate of $20 per hour. I find the landlord liable to the tenant for cleaning costs in the total amount of $88.83.

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I have included in the above cleaning time estimation the likelihood that the walls also required cleaning. No evidence was presented which would substantiate whether or not the walls were sufficiently damaged so as to require painting, and no evidence was presented establishing the last time the rental premises was painted. No photographs were provided and no entry inspection was completed. I cannot be satisfied that painting the rental premises was necessary due to any pre-existing damages or due to any normal wear and tear for which the landlord would be liable. The tenant's claim for costs to paint apartment number 1506 are denied.

The tenant also made a claim for costs to "work on electrical hook up" in the amount of $80. No elaboration was made on what necessitated this work or what exactly the work entailed. I am not satisfied there is any evidence to support the claim and, as such, it is denied.

Balconies

Some time prior to October 24, 2014, the landlord was notified by the Fire Marshal of structural deficiencies to the balconies of the residential complex which required repair and were unsafe for tenants to access. The landlord notified all tenants by notice dated October 24, 2014, of the requirement to prevent tenant access to the balconies. The notice also told the tenants that the landlord would be attending the rental premises to post notices to that effect on the balcony doors and asked the tenants not to access the balconies. In the landlord's written submissions to this application the landlord claimed to have restricted tenant access to the balcony doors by securing them with bolts and putting notices up on each patio door.

As has been previously established, the tenant had moved out of apartment number 708 by February 4, 2014, and moved into apartment 1507 on June 19, 2015. The tenant denies ever having been notified that the balcony was off limits, let alone being so informed at the commencement of his second tenancy. The tenant claims that he first learned of the restriction near the end of October 2015 when he discovered a small notice dated October 24, 2014, glued to the lower half of the balcony door which had been obscured from view by the drapes. The tenant immediately contacted the landlord and was told by the landlord that the balcony was safe to use, despite the notice stating otherwise.

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On February 23, 2016, the Fire Marshal and Hay River Fire Chief inspected the residential complex and identified several outstanding deficiencies and violations of the *Fire Prevention Act* and Codes and Standards adopted under the *Fire Prevention Regulations*, including that all the exterior balconies were "structurally unsafe as areas of refuge for the safe evacuation of persons in the case of fire or an alarm fire" and that their use in the event of a fire "would likely cause the balconies to become a hazard to life or property." The Fire Marshal issued an order requiring the landlord to "complete the repair of the exterior balconies so that each and every exterior balcony becomes structurally safe and to ensure that the said balconies comply with Sentence 3.3.1.7(5) of the" National Building Code, to complete this work by no later than September 30, 2016, and to immediately take all steps necessary to secure the exterior balconies and ensure they are not accessed or used by any person other than those carrying out the necessary repair work.

The landlord posted a notice dated April 23, 2016, in the lobby of the residential complex informing the tenants of the Fire Marshal's order to secure the exterior balconies and ensure that they were not accessed by the tenants. The notice indicated the work to secure the balconies from access would occur "from tomorrow morning until the end of the next week" and the tenants' cooperation was requested to permit access to the persons requiring entry to the respective apartments. I am satisfied that it is more likely than not that the previously mentioned bolts securing the balcony doors closed were not installed until after the April 23, 2016, notice.

The Fire Marshal confirmed to me by email on March 17, 2017, that the order to complete repairs to the balconies by September 30, 2016, has not been complied with to date. I have no evidence definitively substantiating whether or not any or all of the other defects identified in the Fire Marshal's order have been complied with; at any rate the other deficiencies do not form part of this application.

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While the landlord may very well have informed his tenants in 2014 that the balconies were unsafe to use and the landlord did apparently place notices on the balcony doors to this effect, I am not satisfied that the landlord specifically notified the tenant to this application of the issue when the tenant moved back into the residential complex. The structural deficiencies were first identified by the Fire Marshal after the tenant vacated the residential complex in February 2014, in which case the tenant would not have been notified when everyone else who was still occupying the building was notified. Additionally, the placement of the notice on the lower half of the balcony door seems inadequate to ensure that anyone attending the rental premises would be made aware of the restriction preventing use of the balcony.

I am satisfied that there are structural deficiencies to the balcony of the rental premises as identified by the Fire Marshal which contravene the *Fire Prevention Act* and *Fire Prevention Regulations*. I find the landlord has failed to comply with his obligations under sections 30(1)(a) and 30(1)(b) of the Act to provide and maintain the rental premises and residential complex in a good state of repair and fit for habitation, and to ensure the rental premises and residential complex complies with all health, safety, maintenance, and occupancy standards required by law.

The tenant is seeking a retroactive and continuing abatement of rent for the entire period of his tenancy that the balconies have been and continue to be unsafe and unusable. I am satisfied this is a reasonable request as the inability to use the balcony has prevented the tenant from enjoying the safe and secure use of the full rental premises area which was agreed to be provided in exchange for the monthly rent. Section 30(3) of the Act further specifies that the landlord's obligations under section 30(1) apply even where a tenant had knowledge of any state of non-repair before the tenant entered into the tenancy agreement, therefore the abatement of rent would reasonably extend over both the second and third tenancy periods.

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The rental premises for the second tenancy (apartment 1507) was a 1-bedroom apartment which would have included five rooms: kitchen, bathroom, living room, bedroom, and balcony. I am satisfied that it was unsafe for the tenant to use 20 percent of the rental premises during the second tenancy and therefore an abatement of 20 percent of the rent for the second tenancy will apply. The monthly rent for the second tenancy was established at $1,275. The second tenancy lasted 16 months and 23 days for which the tenant was charged prorated rent totalling $21,377.50. Of that amount, $637.50 was charged by the landlord for 11 days in June 2015. The tenant moved into the rental premises June 19, 2015. The appropriate prorated amount for the 11 days is calculated by dividing the monthly rent of $1,275 by 30 days and multiplying by 11 days: $1,275 per month / 30 days = $42.50 per day x 11 days = $467.50. The rent for November 1 to 8, 2016, was correctly calculated by the landlord. As such, the corrected total amount of rent charged for June 19, 2015, to November 8, 2016, is $21,207.50 of which 20 percent equals $4,241.50.

The rental premises for the third tenancy (apartment 1506) is described as a studio apartment which would have included the bedroom, living room, and kitchen accommodated in one large open space and then the bathroom and balcony – so effectively three rooms of various sizes. I am satisfied that it remains unsafe for the tenant to use approximately 25 percent of the rental premises during the third tenancy and therefore an abatement of 25 percent of the rent for the third tenancy will apply. The monthly rent for the third tenancy was established at $850 of which 25 percent equals $212.50. The tenant moved into the third rental premises November 9, 2016, and as of the hearing date of this application (January 12, 2017) the tenant had been charged prorated rent up to and including January 31, 2017, totalling $2,323.33 of which 25 percent equals $580.83.

The monthly rent for the third tenancy will remain at $850, but the 25 percent abatement of rent will continue to apply until the Fire Marshal's order to repair the balconies is complied with. Until then, the tenant may deduct $212.50 from his rent each month starting in February 2017 and thereafter until the balcony is repaired in satisfaction of the Fire Marshal's order.

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I am not going to issue an order that the landlord effect the necessary repairs as I am of the opinion that the Fire Marshal's order already requires that and it is binding on the landlord. I will issue an order for the landlord to comply with his obligation to provide and maintain the rental premises in compliance with sections 30(1)(a) and 30(1)(b) of the Act and that he not breach those obligations again.

Additional defects

I compelled the Fire Marshal's order from the Fire Marshal subsequent to the hearing for the specific purpose of clarifying the issues around the condition of the balconies. The Fire Marshal's order was shared with the landlord and tenant to inform them of this new evidence and provide them with the opportunity to reply to it. The tenant was first made aware of the additional defects to the residential complex other than the balconies upon receipt of the Fire Marshal's order and immediately made a request for further abatement of rent during the current tenancy. None of the defects identified in the Fire Marshal's order other than the balconies were specified in the tenant's application or any of the addendums to the application, nor were any of them discussed at hearing. The landlord was not aware the tenant would make a request regarding those issues and was not provided fair opportunity to reply to them. As a result, the tenant's request for consideration of the previously unidentified defects is denied as they do not form part of the tenant's application and were not raised at hearing.

Rental arrears

In the tenant's application when filed he requested a suspension of his obligation to pay rent until the application was resolved. There are no provisions in the Act under which a tenant can make any such request. Section 32(1) of the Act does provide for a tenant to pay the rent to a rental officer to hold in trust where the landlord has failed to comply with their obligation to remedy a substantial breach under section 30(5) of the Act, but an application to a rental officer must be made and the rent monies must accompany the application. The tenant's application in this regard failed to meet the requirements set out under the Act and the requested suspension was not pursued further.

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The landlord made a claim for rental arrears prior to and at hearing, alleging that the tenant had repeatedly failed to pay his rent on time. The tenant disputed that he had been late paying his rent prior to July 2016 and provided evidence of all the payments he has made between June 19, 2015, and January 13, 2017. The tenant admitted to withholding the full amounts of rent for July, August, September, and December 2016 and January 2017, and partial amounts for October and November 2016.

The landlord submitted into evidence a spreadsheet representing the landlord's accounting of monthly rents and payments received against the tenant's rent account. The tenant disputed the validity of the landlord's accounting spreadsheet, calling it "contrived" and "unreadable". In my opinion, the spreadsheet is neither. It is clear to me what charges were applied for rent, what payments the landlord has a record of, and what the totals of each column and amount of rental arrears claimed are. The tenant disputed the accuracy of the accounting, citing two payments which are not reflected in the landlord's account: June 19, 2015, in the amount of $425 for the June 2015 rent and July 31, 2015, in the amount of $1,275 for the August 2015 rent. I note as well that the landlord's entry for the tenant's November 9, 2016, payment incorrectly states $637 when it should state $637.50. The remainder of the entries are accurate and agreed to by the parties. As previously mentioned in these reasons, the tenant provided evidence of the payments he has made and I am satisfied the tenant's accounting of payments made against his rent account is accurate.

The following table reflects the accepted monthly rent charges and payments received against the rent account between June 19, 2015, and January 12, 2017:

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Month	Rent	Payment	Date Payment Recorded	Balance
Apt. 1507 - June 19 - 30, 2015	$467.50	$425.00	June 19, 2015	$42.50
July 2015	$1,275.00	$1,275.00	June 29, 2015	$42.50
August 2015	$1,275.00	$1,275.00	July 31, 2015	$42.50
September 2015	$1,275.00	$1,275.00	August 31, 2015	$42.50
October 2015	$1,275.00	$1,275.00	September 25, 2015	$42.50
November 2015	$1,275.00	$1,275.00	October 23, 2015	$42.50
December 2015	$1,275.00	$1,275.00	November 20, 2015	$42.50
January 2016	$1,275.00	$1,275.00	December 31, 2015	$42.50
February 2016	$1,275.00	$1,275.00	January 29, 2016	$42.50
March 2016	$1,275.00	$1,275.00	February 26, 2016	$42.50
April 2016	$1,275.00	$1,275.00	March 29, 2016	$42.50
May 2016	$1,275.00	$1,275.00	April 26, 2016	$42.50
June 2016	$1,275.00	$1,275.00	May 20, 2016	$42.50
July 2016	$1,275.00		Withheld	$1,317.50
August 2016	$1,275.00		Withheld	$2,592.50
September 2016	$1,275.00		Withheld	$3,867.50
October 2016	$1,275.00	$1,200.00	October 7, 2016	$3,942.50
November 1-8, 2016	$340.00		Withheld	$4,282.50
			Rental arrears for apartment 1507	$4,282.50
Apt. 1506 - November 9-30, 2016	$623.33	$637.50	November 9, 2016	$28.33
December 2016	$850.00		Withheld	$878.33
January 2017	$850.00		Withheld	$1,728.33
			Rental arrears for apartment 1506	$1,685.83
			Total rental arrears for both tenancies	$5,968.33

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I am not satisfied that the tenant repeatedly failed to pay his rent prior to July 2016. There are no provisions in the Act which permit the tenant to arbitrarily withhold rent for any reason. In this case, the tenant did exactly that, effectively, willingly, and repeatedly failing to comply with his obligation to pay the full amount of his rent when due since July 2016. I find the tenant in breach of his obligation to pay the full amount of his rent when due and I find the tenant has accumulated rental arrears in the amount of $5,968.33.

The landlord has also requested late payment penalties be accounted for. Section 41(2) of the Act specifies that a tenant who is late paying their rent is liable to a late payment penalty calculated in accordance with the *Residential Tenancies Regulations* (the Regulations). Section 3 of the Regulations specify late payment penalties must not exceed $5 for the first day the payment is late and $1 for each subsequent day late, to a maximum of $65. I am satisfied the landlord is entitled to late payment penalties calculated up to and including the date of hearing, January 12, 2017, which amount to $453.

The abatement credits awarded to the tenant will be applied against the accumulated rental arrears, and an order will issue for the tenant to pay the remaining balance in the amount as follows:

Total rental arrears	$6,421.33
Less abatements:	
Laundry facilities - September 2016 to January 2017	$130.33
Mailboxes - June 2016 to February 2017	$248.75
In-unit fire alarm - May to July 2016	$95.64
Flood - June 2 to June 12, 2016	$106.30
Balconies - June 15, 2015, to January 31, 2017	$4,822.33
Balance of rental arrears	**$1,017.98**

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Termination of the tenancy agreement

The landlord requested termination of the tenancy agreement due to the tenant's repeated failure to pay his rent and, to quote from the landlord's written submission, "to move out of my building for the sake of his safety."

I am not satisfied the tenant's failure to pay his recent rent justifies termination of the tenancy agreement. Although he improperly withheld his rent, the tenant has expressed an acknowledgement of his obligation to pay his rent and a commitment to comply with his obligation to pay rent going forward.

Although the balconies of the residential complex are clearly in a state of disrepair which make it unsafe for the tenants to use, the rental premises has not been declared uninhabitable. Any issues or concerns related to the safe occupancy of the residential complex for tenants must be addressed by the landlord, not the tenant. I am not satisfied the condition of the rental premises warrants the termination of the tenancy and, therefore, the landlord's request is denied.

Tenant's claim for costs

The tenant made a claim for costs in the amount of $520 for his time spent making this application to a rental officer, related photocopying and compiling of evidence, and the application filing fee. This claim for costs is denied as they do not represent losses suffered as a direct result of a breach of the Act. Additionally, the Act and Regulations do not provide for the awarding of costs related to the making of an application to a rental officer.

Orders

An order will issue as follows:

1. The landlord must apply a credit in the amount of $21.25 per month against the tenant's rent starting in February 2017 and each month thereafter until at least 50 percent of the washing machines in the laundry facilities to the residential complex are repaired.

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2. The landlord must apply a credit in the amount of $34.20 per month against the tenant's rent starting in March 2017 and each month thereafter until the mailboxes located in the lobby of the residential complex are repaired and Canada Post Corporation resumes mail delivery to the residential complex.

3. The landlord must pay to the tenant costs for cleaning and damages in the total amount of $477.07.

4. The landlord must apply a credit in the amount of $212.50 per month against the tenant's rent starting in February 2017 and each month thereafter until the balconies are repaired in satisfaction of the Fire Marshal's order.

5. The landlord must comply with his obligation to provide and maintain the rental premises in a good state of repair, fit for habitation, and in compliance with all health, safety, maintenance, and occupancy standards required by law, and must not breach that obligation again.

6. The tenant must pay to the landlord rental arrears in the amount of $1,017.98.

7. The tenant must pay his rent on time in the future.

For clarity with respect to how parts 1, 2, and 4 affect the tenant's future rent: the tenant must pay rent for February 2017 in the amount of $616.25; the tenant must pay rent for March 2017 and each month thereafter until the defined repairs are effected in the amount of $582.05 per month.

Adelle Guigon
Rental Officer