

IN THE MATTER between **ALM**, Applicant, and **JN**, 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:

ALM

Applicant/Landlord

-and-

JN

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: March 30, 2017

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: JL, representing the applicant
JN, respondent

Date of Decision: June 7, 2017

REASONS FOR DECISION

An application to a rental officer made by ALM as the applicant/landlord against JN as the respondent/tenant was filed by the Rental Office January 4, 2017. The application was made regarding a residential tenancy agreement for a rental premises located in Enterprise, Northwest Territories. The applicant served the filed application on the respondent by registered mail signed for January 17, 2017.

The applicant alleged the respondent had repeatedly failed to pay rent, had accumulated rental arrears, had failed to give proper notice to terminate the tenancy agreement, had failed to pay utilities, had caused damages to the rental premises, and had failed to clean the rental premises. An order was sought for payment of rental arrears, payment of utilities, and payment for costs of repairs and cleaning.

A hearing was scheduled for March 30, 2017, by three-way teleconference. JL appeared representing the applicant. JN appeared as respondent. Darryl Larocque was also in attendance on behalf of the respondent.

At hearing, the parties were granted until April 21, 2017, to provide additional supporting documentary evidence and written submissions for consideration, after which I made the following decisions:

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them. The respondent was granted early occupancy of the rental premises at 216 NLS on June 20, 2015. The tenancy agreement was for a fixed-term from July 1, 2015, to June 30, 2016. The parties agreed to a transfer from 216 NLS to 214 NLS effective September 15, 2015, and that the existing fixed-term tenancy remained effective. The parties agreed that the respondent vacated the rental premises in mid-July 2016, although a specific date was not identified. I am satisfied a valid tenancy agreement was in place between the parties in accordance with the *Residential Tenancies Act* (the Act).

Condition of the rental premises

The respondent made references to several alleged deficiencies in the condition of the rental premises throughout the hearing and subsequent submissions. No application has been made regarding the condition of the rental premises and compliance with the Act in that regard.

Under section 68(2) of the Act a rental officer could permit a tenant to raise any issue that could be the subject of an application if the application being heard requested termination of the tenancy agreement and/or eviction. This application was not made for termination and/or eviction. The respondent was informed at hearing that the issues regarding the condition of the rental premises would not be considered in this application and that should she choose to make a claim regarding those issues she has the option to make her own application to a rental officer to make her case.

It would be remiss of me not to mention at this point that section 68(1) of the Act specifies that an application to a rental officer must be made within six months after the situation referred to in the application arose. Section 68(3) of the Act allows for the Rental Officer to extend the time for making an application where the Rental Officer is of the opinion that it would not be unfair to do so.

Rental arrears

The applicant made a claim of rental arrears in the amount of \$4,400. The monthly rent was established at \$1,000. The amount of rental arrears claimed represents \$400 outstanding rent from April 2016 and the full rent of \$1,000 for each of May, June, July, and August 2016.

The respondent admitted to withholding the rents for June and July due to the condition of the rental premises throughout the tenancy. She made no reference to the rents for April and May. There is no provision in the Act permitting a tenant to withhold the rent for any reason.

The applicant's representative testified that the respondent did not give any notice of her intention to vacate the rental premises. The respondent did not dispute this claim. The parties agreed that the respondent had vacated the rental premises some time in mid-July 2016. The respondent disputed she was liable for the rent for August because she was not living there in August and she claimed that the landlord had new tenants living there in August. The applicant's representative denied that there were any tenants living in the rental premises in August. He confirmed that he was able to enter into a tenancy agreement with new tenants in August, but that tenancy did not begin until October 1, 2016.

Because the respondent failed to give notice of her intention to vacate the rental premises and the applicant was not able to secure new tenants within the month of August, I am satisfied the respondent is responsible for the rent for August. I find the respondent liable to the applicant for rental arrears in the total amount of \$4,400.

Utilities

The applicant made a claim for utilities which were not paid throughout and at the end of the tenancy. Section 29 of the written tenancy agreement states the tenant is responsible for paying utilities including electricity, water, heating oil/propane, and sewer.

Electricity

The applicant provided copies of electricity bills for all months the respondent occupied the rental premises, from August 7, 2015, to August 8, 2016. The applicant's representative testified that the landlord paid each of the bills and then provided copies of the bills to the respondent for her to pay them back. He testified that only one payment of \$225 was made against the electricity bills in January-February 2016. This payment was referenced in an electricity bill statement provided as part of the application.

The respondent disputed that she ever received copies of the electricity bills and she was never provided with receipts for the payments she did make. The respondent did not provide any detail – either verbal or documentary – as to how much she paid towards the electricity bills.

I am satisfied the respondent has failed to comply with her obligation to pay the electricity bills. I find the respondent liable for the electricity bills in the remaining amount of \$1,233.38.

Heating fuel

The applicant provided a copy of an invoice for delivery of 801.6 litres of heating fuel to the rental premises. The invoice was dated October 5, 2016, suggesting to me that the delivery itself occurred shortly before that date. August and September are generally very warm months during which it is unlikely any heating fuel would have been used. That being the case, I am satisfied 801.6 litres fairly represents the amount of fuel that had been used by the respondent prior to her vacating the rental premises.

The respondent disputed her responsibility to re-fill the heating fuel tank upon vacating because she claimed the heating fuel tank was not full when she moved in. To quote from her written submission directly, "We know it was not full because it ran out quickly. No receipts were provided." The applicant did not provide proof of having topped up the heating fuel tank when the respondent moved in, but neither did the respondent complain to the applicant when the heating fuel tank "ran out quickly." The respondent also did not elaborate on when the fuel tank actually ran out of fuel the first time – how quick was "quickly"?

On a balance of probabilities, I believe it is more likely than not that the heating fuel tank was topped up by the applicant when the respondent moved into the rental premises. I am satisfied that the respondent failed to comply with her obligation to ensure the heating fuel tank was re-filled upon vacating the rental premises. I find the respondent liable for costs to re-fill the heating fuel tank in the amount of \$733.95.

Water and sewer

The applicant provided a copy of a final notice from the Hamlet of Enterprise to the respondent indicating that as of May 31, 2016, the water and sewer account was in arrears in the amount of \$265.08. The notice also indicated that the water and sewage services to the rental premises were disconnected that day, June 8, 2016, due to the lack of payment. The applicant also provided a copy of a receipt issued by the Hamlet of Enterprise to the applicant acknowledging receipt of payment for the outstanding account on August 11, 2016. The applicant made a claim for the respondent to pay the applicant for the water and sewer account arrears. As the water and sewer services were disconnected between June 8 and August 11, there were no additional arrears accumulated or claimed.

The respondent did not dispute that she had accumulated arrears to the water and sewer account. The respondent testified that when she attended the hamlet office to pay the utility bill she learned the applicant had already paid it. The respondent argued that the applicant had no right to pay that bill on her behalf. Respectfully, I disagree with the respondent. To my mind the applicant had every right to protect the rental premises from damages which could have occurred had the water and sewer services remained disconnected, and at any rate he would have had to have the water and sewer services re-connected in anticipation of securing new tenants. Those water and sewer services would not have been re-connected until the outstanding arrears had been paid.

I am satisfied that the respondent failed to comply with her obligation to pay the water and sewer bills and that the applicant incurred the costs to remedy the breach. I find the respondent liable to the applicant for water and sewer arrears in the amount of \$265.08.

Cleaning

In the application to a rental officer, the applicant referred to cleaning that was required, but did not actually make a claim for costs associated with cleaning.

Damages

The applicant originally made a claim in the application to a rental officer for costs associated with replacing, repairing, and painting sections of drywall in the basement. This claim was withdrawn at hearing.

The applicant made a claim for costs to replace the kitchen window which was broken during the respondent's tenancy. The respondent did not dispute this claim, accepting responsibility for the costs to repair.

I am satisfied the respondent is responsible for the damaged kitchen window and I find the respondent liable to the applicant for costs of repairs in the amount of \$387.50.

Orders

An order will issue: requiring the respondent to pay rental arrears in the amount of \$4,400; requiring the respondent to pay utilities arrears in the amount of \$2,232.41; and requiring the respondent to pay costs of repairs in the amount of \$387.50.

Adelle Guigon
Rental Officer