

IN THE MATTER between **HK**, Applicant, and **BH**, 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:

HK

Applicant/Landlord

-and-

BH

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: April 18, 2017

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: PS, representing the applicant
BH, respondent

Date of Decision: June 22, 2017

REASONS FOR DECISION

An application to a rental officer made by TPM on behalf of HK as the applicant/landlord against BH as the respondent/tenant was filed by the Rental Office January 25, 2017. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was served on the respondent by email deemed received February 2, 2017, pursuant to section 4(4) of the *Residential Tenancies Regulations* (the Regulations).

The applicant's original application was made anticipating the respondent would fail to vacate the rental premises by the end of January 2017 and requested an order for eviction, that the premises be cleaned prior to vacating, and that utilities (water and propane) be paid prior to vacating. The application was made prematurely, however, since filing of the application the respondent did vacate the rental premises and the applicant clarified he was seeking payment of rental arrears, costs of utilities, and costs of cleaning and repairs.

A hearing was scheduled for April 18, 2017, in Yellowknife, Northwest Territories. PS appeared representing the applicant. RS appeared by telephone as a witness for the applicant. BH appeared as respondent.

Tenancy agreement

The parties agreed that a verbal residential tenancy agreement had been entered into commencing May 1, 2016. I am satisfied a valid tenancy agreement was in place between the parties.

The parties disagreed about whether or not the rental premises was provided as a benefit of employment. The respondent was employed by the applicant, and her employment did end December 15, 2016. The applicant's written submission of April 17, 2017, describes the rental premises as being provided to employees at a subsidized rate – the monthly rent for the premises is \$2,000 but while a tenant is employed with the company their rent is \$1,500. This

implies to me that there is no expectation that the tenancy agreement with an employee/tenant automatically ends when the employment ends. Certainly in this instance there is no evidence suggesting the respondent was expected to vacate the rental premises upon termination of her employment as set out under section 56 of the *Residential Tenancies Act* (the Act). I am not satisfied that the tenancy agreement was entered into strictly as a benefit of employment.

Rental arrears

The applicant claimed rental arrears in the amount of \$500 for January 2017 and \$2,000 for February 2017. The parties agreed that the rent was established at the commencement of the tenancy at \$1,500 per month. The applicant argued that the \$1,500 rent was a subsidized amount due to the respondent's employment with the applicant's company which would cease upon the termination of the respondent's employment. The respondent disputed that she was receiving any subsidy, claiming that the only discussion regarding the rent was how much it would be per month. There being no agreement in writing establishing whether or not a subsidized rent was agreed to and under what terms it would remain in place, I am not satisfied the applicant is entitled to an additional \$500 per month for January and February. I am satisfied the rent was \$1,500 per month, and I am satisfied that the rent for January was paid. The respondent did not dispute that she had failed to pay the rent for February, accepting that debt. I find the respondent has accumulated rental arrears in the amount of \$1,500.

Utilities

The parties did not agree on whether or not utilities were included in the monthly rent. The applicant claimed that only the power was included in the rent; heating fuel (propane) and water were the tenant's responsibility. The respondent claimed that all the utilities were included in the rent. The respondent referenced paying for propane delivery January 18, 2017, testifying that the applicant had stopped paying the propane bill, but did not provide proof of payment. The applicant provided proof of having paid for propane delivery in February and March 2017, referencing the requirement to do so as a result of the respondent failing to have the propane tank filled.

The propane delivery receipts provided by the applicant reflect deliveries to the rental premises on February 6, 2017, and March 1, 2017; the former invoice indicates approximately 100 litres more propane was required to fill the tank than in the latter. This suggests to me that the propane tank was not in fact filled on January 18, 2017, as the respondent claimed. The applicant did not have the propane tank filled in February until he was made aware that the furnace was not operating, during which investigation he discovered the propane tank was empty. I believe it more likely than not that the propane was not included in the rent and had been the respondent's responsibility throughout the tenancy. I find the respondent liable to the applicant for the costs of refilling the propane tank in the total amount of \$323.75.

Cleaning

The applicant claimed costs for cleaning the following items:

clearing snow from the entry way	\$40.00
cleaning window ledges, floors, baseboards, the oven, and parts of the bathrooms	\$180.00
GST	\$11.00
Total	<u>\$231.00</u>

The respondent questioned her responsibility for clearing the snow from the entry way, claiming she did the best she could. Photographs provided by the applicant support the applicant's claim in that the snow did not appear to have been shovelled so much as flattened by use; a wide path was compacted and piles of undisturbed snow remained along the perimeter of the entry area.

The respondent questioned her responsibility for the cleaning, claiming that a preliminary inspection with one of the applicant's agents made no indication that additional cleaning was required. The respondent provided photographs taken by her. The applicant's agent testified that, yes, a preliminary inspection was conducted with the respondent during which he did not notice any damages, but that he did not conduct the final inspection and informed the respondent at the time that the applicant's representative would be conducting the final inspection.

The final inspection of the premises was conducted in the respondent's absence due to her being unable to attend. An exit inspection report was completed and photographs were taken. With respect to cleaning, the exit inspection report documents that:

- the kitchen cabinets and doors required minor cleaning;
- the oven could not be opened as the self-cleaning feature was turned on;
- the floor edges around the dishwasher were dirty;
- the window ledges in the living room and bedrooms were dusty/dirty;
- the walls and baseboards in the dining room, bathrooms, and bedrooms had not been cleaned;
- the closets in the dining room and second bedroom were dusty;
- the walls and baseboards in the master bathroom were dirty;
- the floors in both bathrooms were not cleaned;
- the exterior of the toilets in both bathrooms had not been cleaned; and
- the washer and dryer were dirty and dusty.

The applicant provided photographs which focussed on identifying the condition of the oven (after the self-cleaning completed its cycle), the floor edges around the dishwasher, the window ledges, and the baseboards. All support the exit inspection report and the applicant's claim for costs to clean the premises.

Section 45(2) of the Act specifies the tenant's responsibility to maintain the rental premises in an ordinary state of cleanliness. An ordinary state of cleanliness is generally recognized as the regular cleaning normally required to maintain the interior and exterior areas of a residential premises, including but not limited to sweeping, mopping, vacuuming, dusting, wiping walls, and cleaning in, on, and around appliances and fixtures. I am satisfied that the respondent failed to fully clean the rental premises as required. I find the respondent liable to the applicant for cleaning costs in the total amount of \$231.

Damages

The applicant claimed costs for patching and painting scratches and screw holes in the living room, master bathroom, and master bedroom. The respondent disputed her responsibility for effecting those repairs, acknowledging only the screw holes in the living room and master bedroom after removing the curtain rods she had installed.

An entry inspection report had not been completed, nor were photographs of the condition of the premises at the beginning of the tenancy provided. That being the case, I have no evidence from which to establish whether or not the claimed damages other than the curtain rod holes were pre-existing and therefore I must assume that they were. The applicant's claim for costs of repairs to all except the curtain rod screw holes is denied. With respect to the patching and painting required to repair the curtain rod screw holes – which are evident in the provided photographs – I am prepared to grant the applicant costs for 2.5 hours of work at the applicant's representative's standard hourly rate of \$65, plus GST. I find the respondent liable to the applicant for costs of repairs in the amount of \$170.63.

Orders

An order will issue:

- requiring the respondent to pay rental arrears in the amount of \$1,500;
- requiring the respondent to pay costs of utilities in the amount of \$323.75;
- requiring the respondent to pay costs for cleaning in the amount of \$231.00; and
- requiring the respondent to pay costs for repairs in the amount of \$170.63.

Adelle Guigon
Rental Officer