

IN THE MATTER between **NTHC**, Applicant, and **DL and HL**, Respondents.

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:

**NTHC**

Applicant/Landlord

-and-

**DL and HL**

Respondents/Tenants

**REASONS FOR DECISION**

<b><u>Date of the Hearing:</u></b>	<b>August 9, 2017</b>
<b><u>Place of the Hearing:</u></b>	<b>Yellowknife, Northwest Territories</b>
<b><u>Appearances at Hearing:</u></b>	<b>AB, representing the applicant DL, respondent HL, respondent KN, witness for the respondents</b>
<b><u>Date of Decision:</u></b>	<b>September 7, 2017</b>

### **REASONS FOR DECISION**

An application to a rental officer made by YHA on behalf of the NTHC as the applicant/landlord against DL and HL as the respondents/tenants was filed by the Rental Office June 9, 2017. The application was made regarding a subsidized public housing residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was served on the respondents by email deemed received June 18, 2017, pursuant to section 4(4) of the *Residential Tenancies Regulations* (the Regulations).

The applicant alleged the respondents had sublet the rental premises to unauthorized occupants, had accumulated rental arrears, had caused damages to the rental premises, and had left the rental premises in an unclean condition. An order was sought for payment of unsubsidized rental arrears and payment of costs for repairs and cleaning.

A hearing was scheduled for August 9, 2017, in Yellowknife. AB appeared representing the applicant. DL and HL appeared by telephone as respondents. KN appeared as a witness for the respondents.

#### *Tenancy agreement*

The parties agreed and evidence was presented establishing a residential tenancy agreement between them for subsidized public housing commencing May 20, 2015. The tenancy ended when the applicant regained possession of the premises April 20, 2017, after the respondents abandoned the tenancy. I am satisfied a valid tenancy agreement was in place in accordance with the *Residential Tenancies Act* (the Act).

#### *Unauthorized occupants*

The applicant's representative testified to having received information from an unidentified source that the respondents had been renting out the rental premises off-and-on between January 2016 and April 2017. The source declined to be identified and did not testify at hearing.

The respondents disputed the allegation, denying that they ever rented their rental premises out. The respondents admitted to having their 14-year-old brother staying with them for a brief period until July 2016 so that he could finish his semester at school. The applicant was not notified of this additional temporary occupant.

The respondents' witness was the Healthy Family Program Coordinator assigned to the respondents from August 2016 to January 2017. She testified that she conducted eight home visits and at least four or five random, unannounced, drop-ins, and she did not observe any occupants residing at the rental premises other than the respondents and their son. There was one person visiting the respondents during one of the home visits.

GP was the Healthy Family Program Coordinator assigned to the respondents from January 2016 to July 2016. She provided a written submission detailing her observations during home visits. Of the multiple home visits conducted during the period, visitors were present for five of them: the respondents' sister, cousin, brother, and mother. No observation was made of any additional occupants residing at the rental premises other than the respondents and their son. She confirmed that in July 2016 the respondents shared with her that their 14-year-old brother had stayed with them to finish the school semester.

The respondents testified that they had left the premises in February 2017 to attend their sister's graduation and visit in British Columbia. While there they found themselves without the financial means to return to Yellowknife and decided to stay in British Columbia. The respondents did not notify the landlord either of their intended temporary absence or of their decision not to return. The respondents did not give anyone permission to stay at their place while they were away. The respondents were informed by their father in mid-March that someone had broken into their premises. They learned at that time through Facebook inquiries that homeless people had been staying in their premises. The respondents did not report the break in to the RCMP. The applicant was not informed of the break in until they served the filed application on the respondents in June.

Section 45(1) of the Act requires tenants to comply with additional obligations included in a written tenancy agreement.

Section 5 of the written tenancy agreement prohibits additional occupants in the premises without the prior written consent of the landlord. The only additional occupant authorized under the tenancy agreement besides the respondents is their son.

Section 16 of the written tenancy agreement prohibits the tenants from subletting the premises in whole or in part. Section 22(8) of the Act exempts subsidized public housing from permitting subletting of the rental premises.

There being insufficient and non-substantive evidence to support the applicant's allegation that the respondents had been renting their premises out (subletting), I am not satisfied that they were and, therefore, I do not find that the respondents have failed to comply with their obligations under section 16 of the written tenancy agreement.

With respect to the brief period that the respondents' young brother was residing with them, I am satisfied the respondents failed to obtain the applicant's prior written consent for the additional occupant. I find the respondents have failed to comply with their obligation under section 5 of the written tenancy agreement.

With respect to the period from February to April 2017, I am not satisfied that the respondents permitted anyone to reside in the rental premises during their absence and, therefore, they have not failed to comply with their obligation under section 5 of the written tenancy agreement.

Section 18(b) of the written tenancy agreement prohibits the tenants from leaving the premises unoccupied for longer than 24 hours without prior written notice to the landlord.

The respondents admitted they did not notify the applicant of their departure from the rental premises. I find the respondents failed to comply with their obligation under section 18(b) of the written tenancy agreement.

### *Rental arrears*

As a consequence of the respondents allegedly renting out the rental premises and permitting unauthorized occupants, the applicant revoked the rent subsidies assessed for the period of January 2016 to April 2017 resulting in accumulated unsubsidized rental arrears of \$23,859.

Section 7 of the written tenancy agreement specifies that unless the tenants breach any condition of the written tenancy agreement they will be eligible for a rent subsidy.

Having determined that the respondents did not sublet their rental premises as alleged, there are no grounds for revoking the rent subsidies for the entire period claimed of January 2016 to April 2017.

Despite finding the respondents did breach their obligation to obtain the prior written consent of the applicant for any additional occupants for the period that their younger brother stayed with them, I am not satisfied this breach justifies revocation of the rent subsidy. Given the age of the younger brother, reporting his temporary residence with the respondents would not have altered the amount of the assessed subsidy. Additionally, the occupancy standards for a two-bedroom premises were not breached by the younger brother's presence. To my mind, this breach is a relatively minor one.

Section 52(1)(b) of the Act requires the tenants to give the landlord at least 30 days' written notice of their intention to terminate the tenancy agreement. Section 1(3)(b) of the Act identifies that a tenant has abandoned the rental premises where the tenancy has not been terminated in accordance with the Act and the tenant does not ordinarily live in the rental premises, has not expressed an intention to resume living in the rental premises, and the rent the tenant has paid is no longer sufficient to meet the tenant's obligation to pay rent.

I am satisfied that the respondents did not terminate the tenancy agreement in accordance with the Act. The respondents did not notify the applicant that they were no longer residing in the rental premises until early April 2017. No rent payments were made in February, March, or April. I find the respondents abandoned the rental premises effective April 20, 2017, when the applicant reclaimed possession.

The breaches occurring during the February to April 2017 period are far more serious and I am satisfied they justify revocation of the rent subsidies for that period. Not only did the respondents fail to notify the applicant that they were leaving the premises unoccupied for more than 24 hours, they also failed to notify the applicant that they would not be returning to the premises. No one was left to keep an eye on the premises and the applicant was not aware that the premises needed to be checked on. The risk to the condition of the rental premises and residential complex was heightened during this period, as was the risk to the safety and security of the other occupants of the residential complex.

I find that by failing to comply with their obligations under section 18(b) of the written tenancy agreement that the respondents are not entitled to rent subsidies for the months of February, March, and April 2017. The maximum monthly rent for the rental premises is \$1,625, which will be prorated for April 1<sup>st</sup> to 20<sup>th</sup>. I find the respondents liable to the applicant for unsubsidized rental arrears in the amount of \$4,318.49.

#### *Repairs and cleaning*

When the respondents confirmed with the applicant on April 4, 2017, that they would not be returning to the rental premises they also authorized the applicant to remove the personal property which remained in the premises. Arrangements were made by the applicant to reclaim possession of the premises on April 20, 2017, when the exit inspection was completed.

The exit inspection documented the uncleanliness of the premises, one damaged light globe, three walls with holes and/or gouges, two damaged closet bi-fold doors, one missing window latch, one damaged kitchen cabinet door, two damaged kitchen cupboard drawers, missing or damaged blind slats and one damaged set of blinds, two damaged interior doors, two burned out light bulbs, two damaged window screens, and one missing door stopper. Some photographs were also provided which documented the amount of property abandoned in the premises.

Of the above damages, the respondents argued against their responsibility for the holes and gouges in the walls claiming that they were not caused before they left in February. They also claimed to have cleaned the premises before leaving in February. The respondents' witness testified that she did not observe the damaged reflected in the photographs during her home visits, including the last one in January. She also testified that the uncleanliness reflected in the photographs is actually an improvement to the condition of the premises as she observed on her home visits. The respondents argued that the damage to the walls and the garbage, debris, and uncleanliness must have occurred when the unauthorized persons were in the premises between February and April.

Section 42(1) of the Act holds the tenants responsible for damages caused to the rental premises by the wilful or negligent conduct of the tenants or persons who are permitted on the premises by the tenants.

Section 18(c) of the written tenancy agreement states the tenants' acknowledgement that the landlord does not assume responsibility for checking on the premises during any period when the premises are unoccupied and that the tenants are responsible for any damages to the premises which occur during that period.

Given that the tenants did not permit any persons to be in the rental premises between February and April, and that the tenants were not in the rental premises between February and April, and that there is independent testimony that no damages to the walls were observed prior to February, it appears likely that the damages to the walls were caused by persons who entered the premises without authorization. The same may be true for the uncleanliness of the premises. However, having found that the respondents were negligent in their responsibility to notify the applicant that they were leaving the premises unoccupied pursuant to section 18(b) of the written tenancy agreement, and given that the respondents accepted responsibility for any damages that occurred during the unoccupied period pursuant to section 18(c) of the written tenancy agreement, I am satisfied the respondents are responsible for the costs of repairing the damages to the walls and for cleaning the premises.

The applicant's statement of tenant damages included costs for repairing the range and steam cleaning the carpets. The exit inspection report did not document any damages to the range nor any stains or dirt in the carpets to justify steam cleaning. The photographs do not show the condition of the carpet to any degree to ascertain the necessity for steam cleaning. The applicant's claim for costs to repair the range and steam clean the carpets is denied.

The remaining costs for repairs and cleaning which are allowed are as follows:

Cleaning throughout	\$650.00
Removal of property, garbage, debris	\$1,634.29
Replace one light globe	\$40.00
Patch and paint three walls	\$540.00
Replace two bi-fold closet doors	\$260.00
Replace one window latch	\$65.00
Replace one kitchen cabinet door	\$130.00
Replace and repair two kitchen cupboard drawers	\$165.00
Relace blinds and slats	\$196.00
Replace two interior doors	\$400.00
Replace two light bulbs	\$16.00
Replace two window screens	\$80.00
Replace one door stopper	\$8.00
Sub-total	\$4,184.29
10% Admin Fee	\$418.43
5% GST	\$230.14
<b>Total</b>	<b>\$4,832.86</b>



I find the respondents liable to the applicant for costs of repairs and cleaning in the amount of \$4,832.86. The applicant appropriately retained the security deposit of \$1,626.15 against the costs of repairs and cleaning, and this will be accounted for in an order to pay.

*Orders*

An order will issue requiring the respondents to pay unsubsidized rental arrears in the amount of \$4,318.49, and requiring the respondents to pay costs of repairs and cleaning in the amount of \$3,206.71.

---

Adelle Guigon  
Rental Officer