

IN THE MATTER between **NTHC**, Applicant/Respondent, and **FL**, Respondent/Applicant.

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/Respondent/Landlord

-and-

FL

Respondent/Applicant/Tenant

REASONS FOR DECISION

Date of the Hearing: August 17, 2017

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: DK, representing the applicant/respondent/landlord
FL, respondent/applicant/tenant

Date of Decision: August 17, 2017

REASONS FOR DECISION

An application to a rental officer made by Sachs Harbour Housing Association on behalf of the NTHC as the applicant/landlord against FL as the respondent/tenant was filed by the Rental Office May 18, 2017. The application was made regarding a subsidized public housing residential tenancy agreement for a rental premises located in Sachs Harbour, Northwest Territories. The filed application was personally served on the respondent/tenant June 7, 2017.

The applicant/landlord alleged the respondent/tenant 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 the rental arrears and payment of costs for repairs and cleaning.

An application to a rental officer made by FL as the applicant/tenant against Sachs Harbour Housing Association on behalf of the NTHC as the respondent/landlord was filed by the Rental Office June 23, 2017. The application was made regarding the same subsidized public housing residential tenancy agreement for a rental premises located in Sachs Harbour, Northwest Territories, as application file number 15667. The filed application was personally served on the respondent/landlord July 7, 2017.

The applicant/tenant alleged the respondent/landlord had failed to comply with their obligation to provide and maintain the rental premises in a good state of repair, fit for habitation, and in compliance with all health, safety, occupancy, and maintenance standards required by law. An order was sought for absolution from the landlord's claims for costs of repairs and cleaning.

A common hearing was scheduled for August 17, 2017, by three-way teleconference to consider both applications at the same time. DK appeared representing the landlord. FL appeared as the tenant.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them for subsidized public housing commencing November 5, 2010. The tenant vacated the rental premises, ending the tenancy February 7, 2017. I am satisfied a valid tenancy agreement was in place in accordance with the *Residential Tenancies Act* (the Act).

Rental arrears

The lease balance statement entered into evidence represents the landlord's accounting of monthly assessed rents and payments received against the tenant's rent account. All rents have been subsidized and were last assessed at \$70 per month. The last two payments received against the rent account were recorded: January 20, 2017, in the amount of \$200, and August 18, 2016, in the amount of \$500. The tenant did not dispute the accuracy of the landlord's accounting with respect to the rental arrears.

I am satisfied the lease balance statement accurately reflects the current status of the tenant's rent account. I find the tenant has accumulated rental arrears in the amount of \$1,065.16.

Condition of the rental premises

The landlord submitted into evidence an entry inspection report completed November 5, 2010, and an exit inspection report completed February 7, 2017. Photographs taken of the rental premises during the exit inspection were also submitted into evidence. The landlord claimed costs for repairs and cleaning in the total amount of \$5,246.78 for the following items:

- garbage disposal
- cleaning walls of extensive cigarette smoke
- extensive interior cleaning throughout
- patch and paint holes in walls
- replace stove and range hood
- replace a section of drywall in the kitchen

- replace interior door
- replace stained floor tiles throughout
- replace toilet

The tenant did not dispute the deplorable state of the rental premises he left it in. However, he did argue that the landlord had failed to comply with their obligations under section 30(1) of the Act, which states that the landlord must provide and maintain the rental premises in a good state of repair, fit for habitation, and in compliance with all health, safety, occupancy, and maintenance standards required by law. The tenant further alleged he was at risk of suffering deleterious health effects as a result of the condition of the rental premises.

The tenant disputed that he should be held accountable for repairing the rental premises because he had been told by a friend that the rental premises was a “write off” and that was why he didn’t bother cleaning the premises when he left. He was under the impression that the rental premises was going to be auctioned off.

The landlord’s representative confirmed that the landlord was discussing whether or not to write off the premises but a decision has yet to be made in that regard, and she denied that any discussion was had about auctioning off the premises. The premises remains part of the landlord’s stock, albeit currently shut down.

The tenant claimed that the sewage tank had been leaking during his tenancy causing ice to build up around the exterior of the tank. He admitted he did not become aware of this until well after he moved out, when he returned in the spring to retrieve some belongings from under the house. At that time he took photos of the frozen water surrounding the tank, which were submitted into evidence.

The landlord’s representative testified that they had identified there was a water freeze-up problem under the house in the late fall of 2016 during a scheduled sewage pump out. By then the water had frozen to the exterior of the tank. It is common for water overflow (not sewage) to freeze to the tanks under the houses in the community. There had been no reports of

sewage smell suggesting the freeze-up was anything other than water overflow. At any rate, the landlord could not inspect the issue until the freeze-up thawed. All indications were that the sewer and water lines were still functioning properly during the tenancy, there being no reports from the tenant suggesting otherwise.

During the inspection of the tank in the spring of 2017, after the thaw, the tank itself was found to be undamaged. However, it was discovered at that time that a pipe from the kitchen sink was not properly connected to the sewage tank. The landlord's representative speculated that the kitchen sink pipe likely had not been properly connected during a renovation of the property in the 1990s. The grey water from the kitchen sink had not made it into the sewage tank, rather it had been soaking into the ground and getting washed away with the spring thaw and overflow. The amount of water found frozen to the tank in the late fall of 2016 was far more than could be accounted for by grey water from the kitchen sink, and the landlord maintains that the majority of the freeze-up was from overflow.

The tenant claimed that black mold had accumulated under the flooring and claimed his health was put at risk because of it. He admitted he was not aware of the black mold during his tenancy, discovering it at the time he returned in the spring of 2017 at the same time he discovered the freeze-up. He took a photo at that time, which was submitted into evidence. The landlord's representative testified that there was no evidence during their regular unit condition inspections throughout the tenancy nor during the exit inspection of the presence of the black mold or any damage to the flooring. She confirmed it was identified by her staff after the spring thaw when they inspected the tank. At that time, it was also discovered that a part under the toilet had broken which caused the toilet to leak under the flooring. Neither party could ascertain when the toilet part broke and when the leak under the flooring started.

To my mind the tenant's claims are without merit. The landlord responded to identified maintenance issues with respect to the freeze-up under the house appropriately, confirming that there was no apparent interference with the plumbing services to the house before deciding to wait until the spring thaw to investigate the source of the freeze-up. The tenant's evidence was collected months after he moved out. The tenant did not report any concerns to the landlord during his tenancy of either health or maintenance issues. There is no evidence to

support when the black mold began growing, either before or after the tenant's tenancy ended. And there is no evidence to suggest the tenant suffered any demonstrable monetary losses as a result of either the freeze-up or the presence of black mold. The tenant does not claim to be currently experiencing any health deficiencies, let alone any health deficiencies which could be attributed to the freeze-up or the presence of black mold. I am not satisfied that the landlord failed to comply with their obligations under subsection 30(1) of the Act, and as such the tenant's application is denied.

The landlord's claims for repairs and cleaning are made out in the inspection reports and substantiated with the photographs taken of the premises at the end of the tenancy. The tenant did not dispute that he had left the premises in the stated condition. Subsection 42(1) of the Act sets out the tenant's responsibility for damages caused to the rental premises other than ordinary wear and tear. The damages to the walls, stove, range hood, kitchen drywall, interior door, floor tiles, and surface of the toilet are attributable to the tenant's wilful or negligent conduct and far exceed any likelihood that they are related to ordinary wear and tear. Subsection 45(2) sets out the tenant's responsibility to maintain the ordinary cleanliness of the rental premises, which clearly the tenant did not do. Whatever the landlord chooses to do with the rental premises after the end of a tenant's tenancy does not absolve the tenant from these obligations. None of the claimed damages and cleaning are attributable to the discussed freeze-up or presence of black mold. I find the tenant liable to the applicant for costs of repairs and cleaning in the amount of \$5,246.78.

Orders

An order will issue requiring the tenant to pay rental arrears in the amount of \$1,065.16 and requiring the tenant to pay costs of repairs and cleaning in the amount of \$5,246.78.

Adelle Guigon
Rental Officer