File #15693

IN THE MATTER between **SPH**, Applicant, and **CCHL**, 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:

SPH

Applicant/Tenant

-and-

CCHL

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing:	**August 17, 2017**
Place of the Hearing:	**Yellowknife, Northwest Territories**
Appearances at Hearing:	**SPH, applicant** **JHC, witness for the applicant** **MZ, representing the respondent** **GZ, representing the respondent**
Date of Decision:	**October 22, 2017**

REASONS FOR DECISION

An application to a rental officer made by SPH as the applicant/tenant against CCHL as the respondent/landlord was filed by the Rental Office June 26, 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 Xpresspost signed for July 13, 2017.

The applicant/tenant alleged the respondent/landlord had failed to provide and maintain the rental premises in a good state of repair throughout the tenancy, had failed to provide adequate heating and hot water, and had repeatedly harassed and threatened the tenant with eviction. An order was sought requiring the landlord to cease uttering threats against any other tenants in the future, for compensation for failure to provide heat, compensation for costs to remove her vehicle from the assigned parking space, requiring the landlord to cease giving negative references to prospective landlords, and for compensation for the condition of the premises and perceived harassment in the form of an abatement of rent equivalent to rental arrears.

A hearing was scheduled for August 17, 2017, in Yellowknife. SPH appeared as applicant/tenant with JHC appearing as her witness. MZ and GZ appeared representing the respondent/landlord.

Tenancy agreement

The parties agreed that a verbal residential tenancy agreement had been entered into between the parties commencing October 31, 2007. The tenant gave proper written notice on June 30, 2017, to terminate the tenancy agreement. The tenant vacated the rental premises, ending the tenancy August 1, 2017. I am satisfied a valid tenancy agreement was in place in accordance with the *Residential Tenancies Act* (the Act).

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Rental arrears

The parties agreed the respondent had accumulated rental arrears totalling $1,350. Of that, $850 is the amount outstanding from the rent for September 2012, $350 is the amount outstanding from the rent for December 2016, and $150 is the amount outstanding for March 2017. Rent was established at $1,500 per month, until May 1, 2017, when the rent was increased to $1,650.

A security deposit of $500 was attributed to the tenant when the tenancy commenced. Interest on the security deposit amounts to $40.12. After applying the security deposit of $540.12 against the accumulated rental arrears, I find the respondent has outstanding rental arrears in the total amount of $809.88.

Parking

The parties agreed that the tenant had parked her vehicle in her assigned parking stall, and that the vehicle in question was unregistered. The landlord testified that he had repeatedly asked the tenant to remove the vehicle from the parking lot, not only because it was unregistered, but also because it was not being cared for and its static presence was interfering with adequate clearing of the snow and debris from the parking lot.

The tenant disputed that the vehicle was causing any more or less of an inconvenience for the landlord or any other tenants given her belief that there were several other tenants in the complex who also had unregistered vehicles parked in the lot who did not appear to be required to remove their vehicles. The tenant did make arrangements to have her vehicle removed in January 2017, however, she ended up having to pay extra to the tow truck driver to attend twice because neighbouring vehicles were improperly parked next to her vehicle, interfering with the tow truck driver being able to access the tenant's vehicle.

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The tenant testified that after having her vehicle removed from her assigned parking stall other tenants interfered with her accessibility of the stall by: shovelling sidewalk snow into her stall, neighbouring tenants parking at an awkward angle overlapping with her stall, and neighbours permitting visitors to park in her stall. In each instance, the tenant notified the landlord with no response or rectification. The tenant requested compensation in the amount of $225, which represents the costs she incurred for the unsuccessful call-out for towing and the subsequent successful towing of her unregistered vehicle.

Subsection 12(3) of the Act specifies that a landlord shall not establish, modify or enforce rules concerning the tenant's use, occupancy or maintenance of the rental premises or residential complex, unless the rules are reasonable in all circumstances, in writing and made known to the tenant.

There appears to be no dispute that the parking stall was provided as part of the tenancy, and there is no dispute that the vehicle was unregistered and not being used. There is no written tenancy agreement specifying the requirements for a vehicle to be allowed to park in the tenant's assigned parking stall. Section 49(1) of the *Motor Vehicles Act* says that no person shall park and no owner shall allow a motor vehicle to stand on a highway, other than a privately owned area that is designed and primarily used for the parking of vehicles, unless a licence plate described in section 6 is attached to the motor vehicle. I heard no arguments from either party about whether or not the landlord could restrict unregistered vehicles from being parked in the residential complex parking stalls. It appears to me that there were no grounds for the landlord to require the tenant to remove her vehicle – registered or not – from the tenant's assigned parking stall.

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I am not satisfied that the landlord's request to remove the tenant's vehicle from her assigned parking stall was appropriate. I am not satisfied the landlord's rationale with respect to the parked vehicle interfering with clearing the lot of debris and snow is reasonable. I am not satisfied the landlord adequately responded to the tenant's complaints regarding neighbouring tenants interfering with this tenant's possession and enjoyment of the parking stall assigned to her. I find compensation for loss suffered by the tenant due to the landlord's actions and inactions respecting the tenant's assigned parking stall reasonable in the amount of $225.

Pet

The tenant testified that in December 2009 one of her dogs had escaped out the front door of the rental premises, nipping at another dog that was being walked on a leash. The owner of the leashed dog complained to the landlord, and the landlord warned the tenant to get rid of their dog within three days or they would be evicted from the rental premises. Not understanding at the time the process required for a landlord to evict a tenant, the tenant took the landlord's threat seriously and on December 24th, despite the devastating effect on the tenant and her family, she surrendered the family pet to the Great Slave Animal Hospital. The tenant's witness verified the incident as described by the tenant.

The landlord recalled receiving a complaint from the neighbouring tenant whose dog was nipped. The complaint that the landlord received indicated that the neighbouring tenant was also nipped at by the tenant's dog. The landlord claims to have called by-law enforcement and denies threatening the tenant with eviction. He does not recall giving the tenant three days to do something about their dog, only recalling that he did speak with them about the complaint that he received.

Section 20(1) of the City of Yellowknife Municipal Dog By-law Number 4755 states that the owner of a dog is guilty of an offence if the dog is at large outside of a designated off-leash area and comes with voluntary penalties of $100 for the first offence, $200 for the second offence, and $300 for the third offence.

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Section 20(8) of the Dog By-law states that the owner of a dog is guilty of an offence if the dog bites any person without provocation and comes with a voluntary penalty of $250 for the first offence, $500 for the second offence, and a mandatory court appearance for the third offence.

Upon summary conviction for either above referenced Dog By-law offences, possible penalties include: for the first offence, a fine of not more than $2,500, imprisonment not exceeding three months, or both; for the second or subsequent offence, a fine of not more than $10,000, imprisonment not exceeding six months, or both; an order restraining the owner from having or continuing to have custody of dogs for a specified period; an order for the destruction of any dog the court considers should be destroyed for humane reasons or for the safety of the public.

No evidence was presented establishing whether or not by-law enforcement was actually called or responded, and there is no evidence that any charges were laid against the tenant under the Dog By-law. I have no jurisdiction to make any findings under the Dog By-law.

I find it difficult to believe that any family of a pet with no apparent history of offences or disturbances would immediately consent to give up their dog unless they felt threatened with other consequences if they did not. There being no evidence to suggest the tenant was charged with an offence under the Dog By-law, and there being corroborating testimony in support of the tenant's version of events, it appears more likely than not that the landlord threatened to evict the tenant if she did not give up the family dog. There is no dispute that the dog was at large and that the dog may have nipped at another dog while at large, but the actions taken by the tenant were only taken as a result of the landlord's threat to evict the tenant.

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A disturbance caused by a pet is deemed to be a disturbance caused by the tenant pursuant to section 1(4) of the Act. However, this complaint is not about the disturbance that the pet or tenant caused. This complaint is made by the tenant against the landlord alleging that the landlord's actions constituted disturbance of the tenant's possession or enjoyment of the rental premises or residential complex under subsection 34(1) and harassment. While I am satisfied that the consequences of the landlord's notification to the tenant of the complaint received by him was distressing, I am not satisfied that the notification in and of itself created a disturbance. The question remains of whether or not the landlord's threat of eviction constituted harassment.

Subsection 91(c) of the Act states that every person who harasses a tenant for the purpose of forcing the tenant to vacate or abandon a rental premises, and every director or officer of a corporation who knowingly concurs in the prohibited act is guilty of an offence and liable on summary conviction to a fine. A charge under this section cannot be made by application to a rental officer; it must be laid pursuant to the *Summary Conviction Procedures Act* to be brought before Territorial Court. As such, I do not have jurisdiction to make a determination on whether or not the landlord is guilty of the offence of harassment as alleged by the tenant.

Disturbances

The tenant testified that from 2009 to 2016 she was repeatedly disturbed by her neighbour's behaviour, claiming they were repeatedly intoxicated, yelling, fighting, and partying. The tenant claimed she had finally complained to the landlord only to be told it wasn't the landlord's problem and to call the police. The neighbours finally moved out in 2016, after which no further disturbances were noted.

The landlord denied receiving any complaints regarding disturbances from the tenant, and denied ever saying disturbances were not his problem. The landlord testified that when he does receive complaints of disturbances he replies by speaking with the offending tenant in an effort to resolve the issue.

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While it seems more likely than not that the tenant did complain to the landlord once regarding the alleged disturbances coming from her neighbours, I am inclined to believe the landlord when he says he does reply to such complaints by approaching the offending tenants. In this instance, the offending tenants have already vacated the residential complex several months ago. The applicant/tenant had ample opportunity to make a complaint to the Rental Officer when the disturbances were occurring if she felt the landlord was failing to adequately respond to complaints of disturbances.

Maintenance

The tenant made multiple claims against the landlord regarding the condition of the premises and maintenance issues that arose throughout the tenancy. The parties agreed that entry and exit inspection reports were not completed for this tenancy. Section 30 of the Act applies to each of the following issues and states:

30. (1) A landlord shall

(a) 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; and

(b) ensure that the rental premises, the residential complex and all services and facilities provided by the landlord comply with all health, safety and maintenance and occupancy standards required by law.

(2) Any substantial reduction in the provision of services and facilities is deemed to be a breach of subsection (1).

(3) Subsection (1) applies even where a tenant had knowledge of any state of non-repair before the tenant entered into the tenancy agreement.

Back yard fence

The tenant testified that in the spring of 2008 gale force winds blew down a section of the back yard fence of the rental premises. The tenant notified the landlord of the damage and the landlord did remove the section that fell, but he did not replace it or otherwise repair the fence. As a result of the landlord failing to repair the fence, the tenant instead secured the gate closed and used the gap in the fence as the new access point.

The landlord testified that the fence was not provided by the landlord, that it had been installed by the previous tenant and therefore he believed it was not the landlord's responsibility to care for the fence.

By permitting the fence installed by the previous tenant to remain when entering into the new tenancy with the current tenant, the landlord did in fact accept ownership and responsibility for the fence, and provided the fence to the current tenant as a part of the rental premises. By failing to adequately repair the fence, the landlord failed to comply with his obligation under subsection 30(1)(a) of the Act to maintain the rental premises in a good state of repair. As a result, the level of privacy afforded the tenant was reduced. I find the tenant is entitled to compensation in the form of a 2.5 percent abatement of rent for nine years without adequate fencing. The total abatement granted amounts to $4,050, calculated as follows:

$1,500 rent x 12 months x 9 years x 0.025 = **$4,050**

Hot water tank - 2010

The parties agreed that in the summer of 2010 the hot water tank failed and flooded the storage space and kitchen. The tank was replaced later the same day.

The tenant testified that when the workers entered the premises to replace the tank they damaged a section of drywall and left the resulting mess behind for the tenant to clean up. The parties agreed that the landlord was not notified of the mess.

I am not satisfied the landlord failed to comply with his obligation to repair the hot water tank. Given that the landlord was not made aware of the mess left behind by the workers, it is not reasonable to expect the landlord to be held responsible for the clean up.

Kitchen light fixture

The parties agreed that in August 2011 water pipes burst in the kitchen ceiling. The landlord had to remove the kitchen ceiling fluorescent lighting fixture and cut a hole into the ceiling to repair the pipes. The hole in the ceiling was not repaired until some time in 2015. The light fixture was not replaced until early January 2016.

The tenant testified that whenever she asked the landlord to fix the hole and replace the light fixture the landlord would refuse and tell her if she didn't like it she could move.

The landlord admitted to failing to effect the necessary repairs in a reasonable period of time. He rationalized that there were other lights surrounding the kitchen which the tenant still had use of.

To my mind, other lights surrounding the kitchen were not intended to and would not have provided adequate kitchen lighting within which the tenant could reasonably be expected to safely use the kitchen for its intended purpose. The landlord was fully aware of the deficiency and clearly failed to maintain the kitchen in a good state of repair. Because the landlord failed to provide the lighting, the tenant did not receive the full benefit of the premises which she was paying rent for. As a result, I am satisfied the tenant is entitled to a 5 percent abatement of rent for the approximately 53-month period she went without kitchen lighting. The total compensation granted the tenant amounts to $3,975, calculated as follows:

$1,500 rent x 53 months x 0.05 = **$3,975**

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Upstairs toilet

The parties agreed that in the spring of 2013 there were issues with the upstairs toilet repeatedly flooding. The tenant reported the flooding to the landlord. The landlord did check on the toilet but the plumber could not find the problem, so they attributed the flooding to the tenant's family plugging the toilet. After multiple flooding incidents, the landlord's plumber looked further into the issue, cutting into the drywall behind the toilet and discovering the plumbing problem. The toilet was fixed, but the drywall was not repaired for two years after.

The landlord acknowledged the issue with the toilet as described, and admitted to 'dropping the ball' with respect to repairing the hole behind the toilet. He testified that every time he attended the rental premises for any reason the tenant was confrontational with him. The landlord could not recall how much time had passed between the first flooding incident and the repair of the toilet.

While I would certainly agree that the landlord failed to effect repairs to the wall behind the toilet within a reasonable period of time, the existence of the hole in and of itself did not cause any undue hardship to the tenant, nor were any demonstrable monetary losses experienced by the tenant as a direct result of the hole in the wall behind the toilet.

Stove

The tenant testified that in the fall of 2012 two of the burners on the stove stopped working, the oven would not maintain its temperature, and the timer on the stove would buzz constantly. The only way to stop the stove timer from buzzing was to turn the circuit breaker off, otherwise they had to put up with the buzzing while using the stove. The tenant claims she repeatedly complained to the landlord to fix the stove, but he did not replace the stove until the spring of 2014.

The landlord denied that he received any complaints about the stove until the spring of 2014. At that time, he attended the premises and installed new fuses. When that did not fix the problem he replaced the stove with a new one.

There is no dispute between the parties that the stove failed to work properly and required replacement. The dispute is regarding when the landlord was notified of the problem. The tenant claims she repeatedly told the landlord since 2012. The landlord claims he did not receive any complaints until early 2014. Given the pattern of behaviours I'm seeing occurred in consideration of the other issues discussed within this application, I believe it more likely than not that the tenant did repeatedly complain to the landlord about the condition of the stove since the fall of 2012 and the landlord did not do anything about it until the spring of 2014.

The landlord failed to comply with his obligation to maintain the services and facilities in a good state of repair, and failed to effect the necessary repairs or replacements within a reasonable period of time. In making that finding, I am satisfied that the tenant did not receive the full benefit of a vital appliance provided by the landlord as a part of the rental premises for approximately 18 months. I find the tenant entitled to a 5 percent abatement of rent for the 18 months during which the stove was not fully functional. The total compensation granted the tenant amounts to $1,350, calculated as follows:

$1,500 rent x 18 months x 0.05 = **$1,350**

Fridge

The tenant testified that in the spring of 2014 the fridge provided with the premises ceased functioning properly, resulting in condensation in the crispers and freezing of produce. Repeated complaints to the landlord went unanswered for a lengthy period of time, until the landlord finally replaced the fridge. Unfortunately, the landlord replaced the fridge with another old, used fridge. The replacement fridge was rusting both within and without the freezer, the temperature could not be adjusted, and produce still froze in the crisper.

The landlord did not recall the fridges or what condition they were in. He did recall attending previously to 'blow out the line'.

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I believe it more likely than not that the tenant did repeatedly complain to the landlord about the condition of the fridge, and the landlord was fully aware of the condition of the used fridge he provided as a replacement. The fridge was provided by the landlord as a part of the rental premises and as such the landlord has an obligation to maintain the fridge in a good state of repair. While the landlord did replace the original fridge, he replaced it with a fridge that was in no better condition than the original, effectively negating any value or benefit to the replacement. The landlord failed to comply with his obligation to maintain the fridge in good state of repair. I find the tenant entitled to a 5 percent abatement of rent for the 40 months during which the fridge was not fully functional. The rent for 37 of those months was $1,500 per month; the rent was increased to $1,650 per month commencing May 1, 2017. The total compensation granted the tenant amounts to $3,022.50, calculated as follows:

(($1,500 x 37) x 0.05) + (($1,650 x 3) x 0.05) = $2,775 + $247.50 = **$3,022.50**

Hot water tank - 2014

The parties agreed that in the summer of 2014 the hot water tank again failed dramatically. This time a significant amount of water flooded throughout the downstairs. The landlord responded immediately and shut off the water supply to the hot water tank; the tenant still had cold water service. A replacement tank was not available in the community and had to be ordered in. It was replaced five days later.

In the meantime, the landlord used a shop vac to clean up the standing water and then had a local carpet cleaning company come in to steam clean the carpets.

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The tenant claimed that because there was no hot water tank, for five days they had to heat water on the stove which resulted in extra electricity use and was an inconvenience. The landlord confirmed that the electricity is included in the rent. Therefore, there was no demonstrable monetary loss suffered by the tenant as a result of the temporary absence of a hot water tank.

The tenant claimed that when the hot water tank blew there was silt mixed in the water that flooded out. The landlord disputed that there would have been silt mixed in the water, claiming the water going into the hot water tank was clean so it would be clean water coming out. Frankly, I find the landlord's statement naive. Silt is known to collect in hot water tanks over time, and it is not unreasonable for silt to be mixed in with the water coming out of a hot water tank.

The tenant's basis for pointing out the presence of the silt in the water was in an effort to rationalize her belief that the carpet should have been replaced entirely instead of just steam cleaned. The parties agreed that the carpet was old, but there was no evidence to support that the carpets were damaged as a result of the flood, regardless of whether or not there was any silt present. The steam cleaning would have cleaned the carpet of any water and silt from the flood.

Subsection 30(6) of the Act requires the landlord to remedy any substantial breach within 10 days of being notified of it. I am satisfied the landlord complied with his obligation to replace the hot water tank. I am satisfied the landlord effected the necessary repairs and cleaning within the legislated time period. I am not satisfied that the tenant suffered any demonstrable monetary losses or any significant reduction in the provision of services and facilities to justify compensation.

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Dryer vent

The tenant testified that in the spring of 2014 the exterior dryer vent cover broke. Small birds took advantage of this and began nesting in the vent. She notified the landlord of the problem, but the landlord did not repair the vent cover. Several months later the aluminum dryer vent pipe split, permitting the nesting birds access to the laundry room. The tenant ended up purchasing a new vent pipe and replaced it herself, but she did not have a ladder or the means to replace the exterior vent cover.

The landlord admitted knowledge of the broken vent cover and that he had cleaned out the vents before. He admitted that the vent cover would constantly break and he would not leave it if it was broken, except that the vent cover was not replaceable. I find this explanation entirely inadequate. If the vent cover previously being used was not replaceable then it must be replaced with a different type of vent cover. Dryer vent covers serve vital purposes, including reducing home heating/cooling costs, preventing rain/snow from entering the premises, and keeping small animals from entering the premises. In this case, the broken vent cover permitted birds to nest in the vent, which subsequently gained access to the premises through the broken vent pipe.

I find the landlord failed to comply with his obligation to maintain the dryer vent cover and pipes in a good state of repair. Given the parties described the time period during which the vent cover was admittedly broken as 'several months' and no indication was given as to whether or not the vent cover was ever repaired or replaced, I will limit the compensation granted to the tenant to a 2.5 percent abatement of rent for three months for a total amount of $112.50, calculated as follows:

$1,500 rent x 3 months x 0.025 = **$112.50**

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Heating

The tenant testified that every December between 2008 and 2016 the heat to the rental premises would fail to adequately heat the premises, resulting in a drop of interior temperature to as low as 14° C. Apparently a central heating system was installed in 2008 to serve all the units in the residential complex. A heat exchanger was installed in the tenant's rental premises, but did not work at first. The landlord replaced the thermostat twice without results before any adequate heat was produced the first year. The tenant claimed she would go for days without adequate heat before the landlord would fix the problem by 'bleeding' the line. The tenant's witness testified that she did not get adequate heat in her bedroom, and the tenant testified that the downstairs radiators would be cold to the touch, indicating it was not producing heat. In December 2016, the tenant testified that she went six days without adequate heat. The landlord bled the line, and then the heat stopped again two days later. The tenant had to run space heaters in the living room to keep warm.

The landlord acknowledged that air would get in the heating lines causing the heating system to fail, but he would respond right away by bleeding the lines which would resolve the problem. He denies waiting six to eight days in December 2016 to fix the problem, indicating that had he waited that long the pipes would have frozen. The landlord did admit that he did not get a HVAC professional to service the heating system until after the last issue in December 2016. The landlord implied that 14° C being the coldest it got was adequate.

As previously indicated, the cost of electricity is included in the rent, so the tenant did not suffer any demonstrable monetary losses for having to use space heaters.

The parties did not contradict each other with respect to the regular heating system failures occurring in December of each year since 2008. Other than occurring in December, and other than for December 2016, time periods without heat were not identified. I believe it more likely than not that the landlord did respond immediately upon being notified of the heating system

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failure. I am not satisfied there was enough evidence to support whether or not the landlord reacted differently in December 2016 from any other year in response to the heating system failure. Although it appears that the heating system failed twice within a six to eight day period in December 2016, I believe the landlord remedied the problem upon becoming aware of it each time.

I am not satisfied that any form of compensation is justified in regard to the heating system issues, but I would like to clarify that there are nationally accepted standards for residential housing which set out the minimum temperature which heating systems must maintain in the winter at 16° to 18° C; 14° C is unacceptable. The landlord should be cognizant of this standard when assessing future heating system issues.

Deck

The tenant testified that the rental premises was provided with a ground-level deck in the back yard. In the summer of 2014, the tenant's daughter stepped on one of the boards which, unbeknownst to them, had rotted through. Her foot went through the board and she sprained her ankle. The tenant notified the landlord and asked him to replace the rotten board. The landlord refused to repair the deck, claiming that the deck was not put there by him and therefore was not his responsibility. The tenant placed a loose board over the hole in the deck in the interim. In the summer of 2016, the tenant returned home one day to find the larger section of the deck had been completely removed from the yard. The tenant had not been given any notice of the landlord's intention to remove the deck. In the execution of removing the deck, the tenant's outdoor furniture had been moved, and bicycles that had been chained to the fence had been forcibly moved to sit on top of the fence. One of the bicycle's brake lines had snapped in the process. The landlord had also removed the gate section of the back yard fence, leaving a gap in that fence in addition to the one created in 2008.

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The landlord confirmed there were three sections to the deck in the back yard. He identified two narrow sections against each wall of the unit as 'original'. He identified the third, larger, rectangular, central section as having been built and installed by the previous tenant. He made the same argument as for the back yard fence, that because the landlord did not install that larger section of deck that he believed it was not the landlord's responsibility to care for it. Just as for the fence, by permitting the deck installed by the previous tenant to remain when entering into the new tenancy with the current tenant, the landlord did in fact accept ownership and responsibility for the entire deck, and as such the entire deck was provided to the current tenant as a part of the rental premises.

The landlord offered no reasonable explanation either for the removal of the deck portion, the removal of the gate, the treatment of the bicycles, or the failure to notify the tenant of his intention to enter the rental premises property. Nor did the landlord offer a reasonable explanation for failing to simply repair the deck instead of disposing of it entirely.

By failing to notify the tenant of his intention to enter the rental premises property, the landlord failed to comply with his obligation under subsection 26(3) of the Act, which requires the landlord to give the tenant at least 24 hours advance written notice of their intention to enter and the reasons entry is required. Had the landlord given the tenant the required notice of intent to enter, the tenant would have had an opportunity to be present and/or move the bicycles out of the way. By causing damage to the tenant's bicycle brake line in the execution of removing the deck and gate, the tenant has suffered costs to replace the brake line.

By failing to repair the deck in the first instance, the landlord failed to comply with his obligation under subsection 30(1)(a) of the Act to maintain the rental premises in a good state of repair. By continuing to fail to repair the fence and aggravating the condition of the fence by removing the gate, the landlord failed to comply with his obligation under subsection 30(1)(a) of the Act.

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A review of on-line costs to replace the bicycle brake line found a fair estimate of $25. In addition to the $25 for replacing the brake line, the tenant is entitled to compensation for suffering with the damaged deck in the form of a 2.5 percent abatement of rent for 12 months. The determination of 11 months was made from the assumption that the deck would likely only be used before the snow fall and after the snow melt, which is usually from May to October. I interpret the tenant's assertion that the deck board rotted through in 'summer' 2014 and that the deck was removed in 'summer' 2014 to mean July in both instances. The granted abatement of rent will be calculated for August to October 2014, May to October 2015, and May to July 2017, totalling 12 months. The total amount of the abatement is $461.25, calculated as follows:

($1,500 x 9 months) x 0.025) + (($1,650 x 3 months) x 0.025) =

$337.50 + $123.75 = **$461.25 + $25.00 for the brake line = $486.25**

Carpet beetles

The tenant testified that four or five years ago carpet beetles were found in the premises. She notified the landlord at the time, but the premises was never fumigated. The tenant initially used Raid until learning the product was harmful to humans and pets. She did not notify the landlord that the carpet beetle infestation persisted.

The landlord confirmed he was made aware of the issue and he brought in a pest exterminator to take a look. The pest exterminator confirmed the presence of the carpet beetles, but indicated that prevention and treatment for carpet beetles could be managed by keeping the premises clean. The tenant was told this. The landlord claimed that he did not become aware until much later that a treatment powder for carpet beetles was available; had he known the carpet beetle problem had persisted he would have informed the tenant of this treatment option.

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Research[1,2] on carpet beetles indicates that they are scavengers feeding on a variety of animal products, and crawl about for considerable distances. They can be introduced into the home through a variety of means, including being carried in from other places. Elimination of the beetles can be effected by cleaning or destroying infested items, and a major part of prevention and control is to thoroughly and frequently vacuum and clean carpets, draperies, upholstered furniture, closets, and stored fabrics to prevent the accumulation of lint, hair, and other carpet beetle food materials.

In this case, the carpet beetles were not identified as being present at the commencement of the tenancy; by testimony provided, the carpet beetles were not found to be present until at least four years into the tenancy. The responsibility to maintain the ordinary cleanliness of the rental premises lies with the tenant. The infestation of the carpet beetles could have been controlled by the tenant in the course of maintaining the ordinary cleanliness of the rental premises, although admittedly it may have required more frequent efforts due to the presence of the carpet beetles. Certainly if the carpet beetle infestation persisted and was throughout the premises then professional treatment to exterminate the pests may have been required. However, the professional treatment would have been the tenant's responsibility to arrange, be it directly through the pest exterminator or through the landlord. The landlord was not notified that the carpet beetle infestation persisted, therefore, he cannot be expected to offer or arrange for professional treatment. It is interesting to note that the carpet beetle infestation was not noted when the carpets were steam cleaned in 2014 after the hot water tank blew.

While I believe that there was a carpet beetle infestation at some point four or five years ago, I am not convinced it persisted after the 2014 steam cleaning. At any rate, I am not satisfied that the landlord is responsible for the carpet beetle infestation.

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[1]http://pestcontrolcanada.com/carpet-beetles/

[2]https://www.orkincanada.ca/pests/beetles/carpet-beetles/

Orders

As previously mentioned, I do not have jurisdiction to consider the allegations of harassment for the purpose of forcing the tenant to vacate the rental premises.

Of the matters I do have jurisdiction over I have made findings identified above. In summary, I have found the tenant has accumulated rental arrears in the amount of $809.88, and I have found the landlord repeatedly in breach of his obligations under subsections 30(1), and of subsections 12(3) and 26(3), of the Act resulting in a requirement to compensate the tenant for losses suffered in the amount of $13,221.25. In issuing an order for payment, I will deduct the rental arrears from the amount of compensation the landlord must pay to the tenant.

An order will issue requiring the landlord to compensate the tenant for losses suffered in the amount of $12,411.37.

Adelle Guigon
Rental Officer