File #15764

IN THE MATTER between **HG and RG**, Applicants, and **IS, SS, and JS**, 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:

HG and RG

Applicants/Tenants

-and-

IS, SS, and JS

Respondents/Landlords

REASONS FOR DECISION

Date of the Hearing:	**November 29, 2017**
Place of the Hearing:	**Yellowknife, Northwest Territories**
Appearances at Hearing:	**HG, applicant/tenant** **RG, applicant/tenant** **WW, witness for the applicants/tenants** **TB, witness for the applicants/tenants** **IS, respondent/landlord** **JS, respondent/landlord** **SO, representing the respondents/landlords** **MG, witness for the respondents/landlords** **SE, witness for the respondents/landlords**
Date of Decision:	**January 10, 2018**

REASONS FOR DECISION

An application to a rental officer made by HG, RG, WW, and TB as the applicants/tenants against IS, SS, and JS as the respondents/landlords was filed by the Rental Office September 5, 2017. The application was made regarding a residential tenancy agreement for a rental premises located in Fort Simpson, Northwest Territories. The filed application was served on the respondents by email deemed received October 15, 2017, pursuant to subsection 4(4) of the *Residential Tenancies Regulations* (the Regulations).

The applicants/tenants alleged the respondents/landlords had failed to provide a clean rental premises at commencement of the tenancy, had failed to effect water service repairs within a reasonable period of time, had failed to adequately respond to the presence of bats in the rental premises, and had withheld the security deposit against disputed claims for repairs and cleaning. An order was sought for compensation and return of the security deposit.

A hearing was scheduled for November 29, 2017, by three-way teleconference. HG, RG, WW, and TB appeared as applicants/tenants. IS and JS appeared as respondents/landlords with SO appearing on the respondents/landlords' behalf and the landlords' property managers MG and SE appearing as witnesses.

Preliminary matters

The application to a rental officer was made by WW as agent for the applicants, who were identified as HG, RG, WW, and TB. The written tenancy agreement identified the tenants as HG and RG. WW and TB were identified as authorized occupants under HG and RG's tenancy. The appropriate parties to the application to a rental officer are HG and RG as the tenants under the tenancy agreement. As such, going forward, the style of cause will be amended to identify the applicants/tenants as HG and RG only.

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Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them commencing August 28, 2016, for a fixed-term to August 28, 2017. The tenants vacated the rental premises some time prior to June 24, 2017, but retained possession of and responsibility for the rental premises, with the authorized occupants continuing to reside there. The tenants continued to pay the rent. On June 24, 2017, the tenants emailed their notice to the landlords to terminate the tenancy agreement. The tenants acknowledged their responsibility for the tenancy to August 28, 2017. The tenants found new tenants who the landlords agreed were suitable; the landlord and the new tenants entered into a tenancy agreement commencing August 1, 2017, effectively ending the applicants/tenants fixed-term tenancy July 31, 2017. I am satisfied a valid tenancy agreement was in place between the parties in accordance with the *Residential Tenancies Act* (the Act).

Hot water tank issues

In December 2016 the hot water tank froze and had to be replaced. The landlords were notified at the first instance and responded immediately. A temporary water tank was provided while waiting for a permanent replacement, and issues with the temporary hot water tank were addressed as they arose. The issues were resolved in full by the end of January. No complaints of inconvenience or undue hardship were reported to the landlords at the time, and no claims were made by the tenants until the filing of this application.

Subsection 68(1) of the Act requires an application to be made within six months after the situation referred to arose. The situation with respect to the water tank and hot water delivery system occurred in December and was resolved by the end of January. The tenants had ample opportunity to raise their concerns and request compensation from the landlord. The tenants' request for compensation to be considered in relation to the water issues is denied due to the application having been made outside the legislated six-month time limitation.

Bats

When the tenants and occupants first viewed and moved into the rental premises in August 2016 evidence of the presence of bats inside the premises was observed, including bat guano and bat carcasses. The tenants notified the landlords on August 10th and the landlords sent

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their property manager MG to do an assessment, ultimately attributing the presence of the bat carcasses to an approximately 15-day period when the premises was vacant. The property manager attended the premises on August 20th and found one bat carcass in the living room. After moving into the rental premises, the tenants and occupants found additional bat carcasses entangled in the drapes.

No live bats were observed until July 2017 during the weeks leading up to the occupants vacating the rental premises. The occupants first notified the landlords on July 16th that bats had been entering the rental premises for about a week prior. No concern was expressed for their own comfort given they were in the process of moving out, but they did express concern for the new tenants moving in with young children. The landlord responded by immediately ordering a sonar machine to drive the bats away from the premises, this being the most successful resolution in the past.

On July 17th the occupants complained to the tenants that the presence of the bats prevented them from using their kitchen due to hygiene and sanitation concerns. The occupants described the number of bats as an infestation prompting them to move out completely as soon as possible. This complaint was not forwarded to the landlords until July 21st. The occupants remained in the premises until July 23rd, but claim they were unable to make full use of the premises for approximately two weeks prior and as such they claimed compensation of half a month's rent.

The landlord made inquiries of Wildlife Control Edmonton and the Alberta Community Bat Program for advice. They confirmed that bats can coexist in a home with some fairly easy mitigation to keep them separate from human living spaces (i.e. bats in the attic as opposed to in the living room). Their recommendation to install a bat box was also taken by the landlords.

On July 18th, the landlord had a conversation with the new tenants, fully informing them of the bat issue and what steps were being taken to resolve it. On July 21st, the landlord provided the sonar system and bat-proofing materials to the new tenants to take with them on their drive to Fort Simpson.

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Despite the landlord failing to acknowledge the bat problem as an annually occurring issue at the commencement of the tenancy, the tenants were aware upon moving in that bats had a way of entering the premises and the landlords did tell the tenants that bat season usually ends in August. Clearly the landlords were aware that bats would enter the premises, having lived there prior to renting the property out and experiencing the problem every summer. The landlords knew using the sonar device was an effective deterrent given they experienced success with it in the summer of 2015. What seems odd to me is why the landlords would not continue using the sonar device in the summer of 2016 and provide it to the tenants as part of the rental premises. I am satisfied that the landlords responded immediately and appropriately upon being notified of the recurring bat problem, but I am not satisfied that the landlords complied with their obligation to maintain the rental premises in a good state of repair. The continued infiltration by the bats created an environment which interfered with the occupants enjoyment and possession of the rental premises.

I can appreciate the tenants' and occupants' concerns for hygiene and sanitation during the period the bats were active within living areas of the rental premises, not to mention the disruption in the enjoyment and possession of the rental premises they would have experienced. Had the bats been confined to separate, secluded areas – such as the attic or crawl space – it would be less of a concern and not warrant consideration of compensation. Regardless of whether or not the occupants were actively moving or intended to move out of the premises earlier than the end of the month, they were entitled to peaceful enjoyment and possession of the premises. The occupants did still have possession of the premises and could have continued using it, even for cooking meals; sanitation concerns could have been mitigated by cleaning the stove, sink, and counter tops each time before using them. It is for those reasons that I am granting the applicants/respondents compensation in the form of a 10 percent abatement of rent for the month of July amounting to $180.

Termination of the tenancy agreement

As previously mentioned, due to the landlord securing a new tenant for August 1, 2017, in the family recommended by the occupants, the tenants remained responsible for the tenancy until July 31, 2017. The tenants and occupants requested compensation for rent paid for July 23rd to July 31st, claiming they were told by the landlords to vacate the rental premises early.

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The landlords clarified that they believed the occupants did not retain the right to remain in the rental premises after the tenants vacated and their demand was for the occupants to vacate the rental premises. Regardless of whether or not the occupants were entitled to remain in the rental premises, it is the tenants and occupants together who requested the exit inspection for July 23rd. Despite possession of the premises having been returned to the landlord July 23rd, the tenants were in a fixed-term tenancy agreement and remained responsible for the term of the tenancy until July 31st, as agreed and given that the landlords secured a new tenant for August 1st. The tenants' request for compensation for rent for July 23rd to 31st is denied.

Repairs and cleaning

An entry inspection of the premises was conducted with the tenants on August 29, 2016. An exit inspection of the premises was conducted with the tenants on July 23, 2017. The landlords claimed costs of repairs and cleaning as follows:

Materials to repair pet damaged stairs	$183.79
Materials to repair kitchen sink plumbing	$200.47
Materials to replace exterior light bulbs and fuel for the lawn mower	$81.88
Three light bulbs	$15.00
Three rugs	$198.75
Six curtain panels	$239.94
Paint and supplies	$45.00
Microwave, including shipping costs	$212.24
18 hours of labour to effect repairs	$900.00
10 hours of cleaning	$450.00
Total	$2,527.07

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Stairs

The damages to the stairs consisted of scratches in the wood steps caused by the tenants and occupants pet dogs. The tenants and occupants accepted responsibility for those damages. The parties agreed at hearing to the costs of materials at $183.79 plus three hours of labour at $50 per hour, for a total cost to repair the stairs at $333.79.

Kitchen sink

On July 28, 2017, an entry inspection with the new tenant was conducted. At that time the pipe fitting under the kitchen sink drain was found to be leaking. The outgoing tenants and occupants did not notice the leak and therefore did not report it to the landlords. The landlords claimed that the damage to the fitting was caused by over-tightening, and they believe it was caused by the applicants when the kitchen faucets were replaced in September 2016. The occupants argued that replacement of the kitchen faucets does not involve the sink drainage pipes, so it does not stand to reason that they caused any over-tightening to a part that they did not handle. I am in agreement with the tenants and occupants in this matter. While the drain pipe may very well have been over-tightened, I am not satisfied on a balance of probabilities that it was over-tightened by the tenants and occupants. The landlords' claim for costs associated with repairing the kitchen sink drain pipe are denied.

Exterior light bulbs and lawn mower fuel

The landlords withdrew their request for costs to replace the exterior light bulbs and to put fuel in the lawn mower.

Interior light bulbs

The tenants and occupants accepted responsibility for replacing three interior light bulbs at a cost of $15.

Rugs

The parties agreed that rugs were provided with the rental premises when the tenants and occupants moved in. The landlords testified that the rugs were cleaned before they left the premises and that they themselves did not have any pets in the premises since 2015. The

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tenants and occupants testified that the rugs were old and smelly when they moved in. They rolled them up and stored them in the gazebo until early July 2017 when two rugs were retrieved for use. The occupants admitted that their cat did get sick on one of the rugs, and it is that one rug the tenants and occupants accepted responsibility for. There was no indication of to what extent the rugs were cleaned by the tenants and occupants at the end of the tenancy. The landlords are claiming replacement costs for three rugs – two runners and one large area rug – they had to throw away due to the amount of pet hair and urine in them. The amount claimed was based on a conservative estimate of $66.25 per rug for a total of $198.75.

Subsection 45(2) of the Act sets out the tenant's responsibility to maintain the rental premises and all services and facilities provided by the landlord of which the tenant has exclusive use in a state of ordinary cleanliness. Despite the rugs being stored by the tenants for most of the tenancy, the tenants were still obligated to ensure they were properly taken care of. It appears the rugs were stored in the gazebo but were not protected from dust, dander, etcetera. The presence of pets in the premises aggravates the condition of the rugs and necessitates not just vacuuming them but also steam cleaning them. I am satisfied the tenants are liable for costs to replace all three rugs claimed by the landlords, but those costs must account for depreciation. The average useful life of area rugs is 10 years. No information was provided on the actual age of the rugs except that they belonged to and were used by the landlords when they resided there. Given the lack of information regarding the extent of rug cleaning completed by the tenants and the age of the rugs balanced against the losses suffered by the landlords, I find the tenants liable to the landlords for the costs claimed to replace one of the three rugs in the amount of $66.25.

Drapes

The tenants and occupants acknowledged that they had accidentally thrown out the drapes for two of the windows. They had removed the drapes not long after taking occupancy of the rental premises after finding bat carcasses entangled in them, and stored them in a bag which was later mistaken for garbage. The tenants installed four replacement drapes and left them there at the end of the tenancy. The landlord testified that the original drapes were two sets of three-panel systems which were not even two years old. They claimed replacement costs of $39.99 per panel for a total of $239.94.

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There is no dispute between the parties that the drapes which were left at the end of the tenancy are not the drapes that were provided at the beginning of the tenancy. The tenants did partially fulfill their obligation to replace the original drapes after inadvertently throwing them out by installing four new panels where originally there were six. I am satisfied the landlords are entitled to compensation for the two missing panels and I find the tenant liable to the landlords for that cost in the amount of $79.98.

Paint and supplies

The paint and supplies were purchased to repair damages to an upstairs window frame. The tenants and occupants accepted responsibility for these damages. The parties agreed reasonable compensation for the repairs would be the $45 claimed for materials plus one hour of labour at $50, for a total of $95.

Microwave

The parties agreed that a microwave was provided at commencement of the tenancy as part of the rental premises. The landlords claimed the microwave was working at the time. The tenants and occupants testified that they don't know if it was working because they never used it. The tenants and occupants had their own microwave, so they stored the provided microwave in the cold storage room during the tenancy. When the landlords' new tenants moved in they discovered the provided microwave in the cold storage room and learned it was not working. The new tenants informed the landlords, who ordered a replacement microwave which was shipped up to them. No information was provided establishing the age of the microwave. While I believe the landlords believe the microwave was working when the tenants moved in, I am not satisfied that the tenants acted wilfully or negligently to damage the microwave. It seems unlikely that the acts of moving the microwave from the kitchen to the cold storage room and storing it in the cold storage room would cause the microwave to stop working. Other plausible explanations exist for why the microwave stopped working, including the age of the microwave and whether or not there was an electrical power outage or brown out during the period the premises was vacant prior to the tenants' taking occupancy in August 2016. The landlords' claim for costs to replace the microwave are denied.

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Yard maintenance

Section 39 of the written tenancy agreement sets out the tenants' responsibility to water, fertilize, weed, cut, and otherwise maintain the garden or grass areas in a reasonable condition, including any trees or shrubs therein. There is no mention of the condition of the yard at commencement of the tenancy in the entry inspection report except to say that the grass and garden were cut.

The tenants submitted three photographs of a small portion of the back yard by the cold storage room taken August 30, 2016. No other photographs of the yard taken before the tenancy commenced were submitted into evidence by either party. The August 30th photos show an area overgrown with grass and weeds.

The tenants also submitted two photographs taken July 8, 2017, and July 17, 2017, depicting one of the occupants using a weed cutter to 'mow' the grass and weeds from the small area by the cold storage room and an apparently larger area away from the house. The photograph of the larger area, which appears to be a back yard area, also shows shrubs within the tree line of the yard, the shortest shoot being at least four feet tall and suggesting that the shrubs were permitted to grow since well before the tenants and occupants moved in. The exit inspection report and video acknowledge the grass and garden were cut as of July 28, 2017, and no reference was made suggesting that these areas had not been satisfactorily maintained.

The landlords claimed that the tenants had failed to maintain the garden and grass areas as required under section 39 of the tenancy agreement and sought compensation for removing animal excrement from the yard and doing the work necessary to bring it up to standard. The tenants disputed that any animal excrement remained in the yard when they vacated, and suggested that if there was any it ended up there after July 23rd.

The landlords submitted three photographs taken in July 2017: one of the front of the house where the flower garden is, one of what appears to be of an area to the right of the house (facing the house), and one of what appears to be the back of the house fronted by old-growth shrubs. There was no indication of when in July these photographs were taken, nor is there

clear indication of where exactly the 'yard' to this rural property extends to. The landlords also provided five photographs of the yard taken in August 2017 after the new tenants completed their own yard work. No photographs were taken or provided depicting the condition of the entire yard area when the occupants vacated the rental premises and before the new tenants took possession.

I am not satisfied that there is sufficient evidence to establish what the condition of the yard area was at the commencement of the tenancy other than the grass and garden having been cut. There is an admission from the tenants and occupants that they had not mowed the grass prior to July 2017. The photographic and video evidence submitted by both parties is limited in value with respect to the condition of the yard, but does appear to support the tenants' and occupants' assertion that they did cut the grass and weeds before vacating. There being no evidence of the extent of maintenance under which the yard was provided to the tenants at the commencement of the tenancy, I cannot determine whether or not the yard was returned in the same or similar condition. I must, therefore, rely on what the entry inspection report states, which is simply that the grass and garden were cut. There being no clear evidence to the contrary, I am satisfied the grass and garden were cut by the occupants at the end of the tenancy agreement. The landlords' claim for compensation for yard work is denied.

Interior cleaning

As previously mentioned, subsection 45(2) of the Act requires the tenant to maintain the rental premises in a state of ordinary cleanliness. Ordinary cleanliness is generally described as ensuring the day-to-day, regular cleaning is done, and any stains, dust, and debris accumulated during the tenancy is addressed. At the end of a tenancy, returning the interior of the rental premises to an ordinary state of cleanliness would include sweeping, mopping, vacuuming, dusting, cleaning in and around all appliances, cabinets, drawers, and closets, wiping walls, baseboards, window sills and tracks, etcetera. Steam cleaning of carpets may be required where there are stains or pets have been kept.

The exit inspection conducted on July 23rd was video taped by the tenants and occupants, portions of which were entered into evidence. The inspection was recorded on the tenants' copy of the entry inspection report, but was limited in details. The entryway #2, living room, den, dining room, and kitchen were identified as "clean". The supplied videos suggest a fairly

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cursory inspection was conducted, and the property manager SE testified that she did not in fact look into the closets, corners, and window tracks, or behind the appliances. The entry inspection for the new tenants was conducted July 28th and produced a more detailed report of the condition of the premises, including identifying:

- the ceilings in the entry were dusty,
- the large freezer had not been defrosted and cleaned,
- the kitchen cabinets and doors had not been cleaned,
- the exhaust hood and fan had not been cleaned,
- the sliding door in the living room had not been cleaned,
- the living room floor vents had not been cleaned out,
- the floor behind the pellet stove had never been cleaned,
- the cabinets and mirrors in the main bathroom had not been cleaned,
- the upstairs bathroom had not been cleaned,
- the light fixtures in the master bedroom were dusty,
- the flooring in the second bedroom needed cleaning,
- tape had been left on the windows in the second and third bedrooms,
- the ceiling, walls, trim, flooring, and closets in the third bedroom had not been cleaned, and
- the washer and dryer had not been cleaned.

The landlords submitted a photograph taken by the new tenants while they were cleaning the premises which corroborate that the sliding door tracks had not been cleaned.

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The tenants and occupants testified that they did clean the premises, although perhaps not to the standard required given the presence of pets. They acknowledge additional cleaning may have been required, but dispute it would have required 10 hours of work as claimed by the landlords.

Accepting that the above listed cleaning was the tenants responsibility, as was a more thorough cleaning of the floors given the presence of pets in the household, I am satisfied the tenants are liable to the landlords for cleaning costs. I am also satisfied that the 10 hours claimed to accomplish the necessary cleaning is reasonable, and therefore I am granting the landlords' claim of $450 to clean the rental premises.

I find the tenants liable to the landlords for repairs and cleaning as follows:

Materials and labour to repair pet damaged stairs	$333.79
Three light bulbs	$15.00
One rug	$66.25
Two curtain panels	$79.98
Paint supplies and labour	$95.00
10 hours of cleaning	$450.00
Total	$1,040.02

Security deposit

The tenants paid a security deposit of $1,800 at the beginning of the tenancy. The security deposit, not including interest earned, was retained by the landlords against claimed costs of repairs and cleaning. The interest calculated in accordance with the Act and Regulations amounts to $0.83. Applying the total security deposit of $1,800.83 against the allowed costs for repairs and cleaning of $1,040.02 results in a remaining security deposit amount of $760.81 payable to the tenants.

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Order

An order will issue requiring the landlords to pay to the tenants the total amount of $940.81 for compensation for disturbance of the tenants and occupants possession and enjoyment of the premises due to the presence of bats and for the return of a portion of the security deposit.

Adelle Guigon
Rental Officer