

IN THE MATTER between **JW**, Applicant, and **MB**, 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 **Hal Logsdon**, Rental Officer,

BETWEEN:

**JW**

Applicant/Landlord

-and-

**MB**

Respondent/Tenant

**REASONS FOR DECISION**

<b><u>Date of the Hearing:</u></b>	<b>January 10, 2018</b>
<b><u>Place of the Hearing:</u></b>	<b>Yellowknife, NT</b>
<b><u>Appearances at Hearing:</u></b>	<b>JW, representing the applicant</b>
<b><u>Date of Decision:</u></b>	<b>February 5, 2018</b>

### **REASONS FOR DECISION**

The respondent was served with a filed application and a Notice of Attendance by registered mail which were confirmed delivered. The respondent failed to appear at the hearing or contact the rental office to appear by telephone. Consequently, the hearing was held in his absence.

The tenancy agreement between the parties was terminated on June 30, 2017 when the respondent vacated the premises. The applicant applied the security deposit (\$2250) and accrued interest (\$1.69) to the rent arrears (\$2800), late rent penalties (\$116), repair costs (\$7980.68) and water bills paid on behalf of the respondent (\$1168.65) resulting in a balance owing the applicant of \$9813.64. The applicant sought an order requiring the respondent to pay that amount.

#### **Tenancy Agreement**

The monthly periodic tenancy agreement between the parties was made in writing and indicated that the agreement commenced on January 5, 2015. The commencement date was, in fact, January 5, 2016, evidenced by the rent ledger and the landlord's testimony. The monthly rent for the premises was \$2900. The tenancy agreement set out a required security deposit of \$2100 and acknowledged that amount had been paid. The tenancy agreement is not in the form set out in the regulations and does not include any provision for a pet deposit. However, the ledger provided in evidence by the applicant, indicates the receipt of a pet deposit of \$150 in addition to the security deposit. The respondent was obligated to pay for electricity, fuel and water during the term of the agreement.

#### **Rent**

The applicant provided a ledger in evidence showing all financial transactions between the parties. The ledger indicates that \$49,300 of rent came due during the term of the agreement and \$46,500 was paid. Late payment penalties of \$116 were also assessed, bringing the balance of rent and late payment penalties to \$2916. The late payment charges of \$116 were not calculated in accordance with the regulations but are lower than those permitted and therefore acceptable. I find the ledger in order as it pertains to rent and find the respondent in breach of his obligation to pay the lawful rent. I find the rent arrears and penalties to be \$2916.

Damages and Repair Costs

The applicant alleged that there were numerous damages to the premises which were caused by the tenant during the term of the tenancy. The applicant provided a move-in report, signed by both parties on January 3, 2017. The applicant explained that he had neglected to complete a written move-in report at the commencement of the tenancy. He stated that he and the tenant had completed the report a year later, referring to photographs and their recollections. A move-out inspection report was also provided in evidence by the applicant although it was unsigned by the tenant. The applicant testified that he and the tenant were involved in an altercation on the day of the scheduled inspection and the inspection was conducted the following day without the tenant present.

Both inspection reports contain a column entitled "Condition of the walls, floor, ceiling" and another column, "Whats (sic) not perfect in the Room". The applicant stated that observations noted in the "Whats not perfect in the Room" column did not necessarily represent the condition of the premises at the commencement of the tenancy. He explained that column represented observations and tasks undertaken during the tenancy. Presumably the "Whats not perfect in the room" more accurately represents the condition of the premises at various times during the tenancy.

I find the inspection reports to be of limited value given the above circumstances. The applicant provided a number of photographs of the premises claimed to represent the alleged damages. The applicant also provided numerous invoices and other documents supporting the cost of the claimed repairs.

Clogged kitchen sink

The applicant testified that the kitchen sink was clogged due to the tenant putting too much kitchen waste into the garbage disposal. In order to unplug the drainage lines, the applicant stated that a steamer had to be used and some pipes disconnected. The applicant sought compensation for the steaming costs in the amount of \$173.25, the amount indicated on his ledger. However, the invoice for the steaming work provided by the applicant indicated costs of \$157.50. The applicant stated that the figure shown on his ledger must be in error.

The applicant also sought interest of \$29.74 related to the steaming invoice although there is no evidence that he was charged interest by the vendor. The applicant also provided an invoice for plumbing related to the drain but stated that he was not claiming this expense. The

expense does not appear on the landlord's ledger.

Clearing clogged drains are normally the responsibility of the tenant. In this matter I find the kitchen drain clog to be the result of the tenant's negligence and find the steaming costs of \$157.50 to be reasonable. The interest charged by the applicant is denied. The landlord suffered no loss and therefore has no reasonable claim for reimbursement.

#### Repair of cupboard doors

The applicant sought relief of \$105 for the repair of cupboard doors. The ledger indicates that the repairs represented 3 hours of labour and the landlord's general notice to tenants indicates that charges of \$35/hour will be charged for repairs undertaken by the landlord. There were no photographs of the doors. The move-in report indicates "tenant broken door" and the move out report indicates "door broken of(sic) cupboard" and "door repaired by landlord".

As outlined previously, the applicant submitted that some notations on the move-in report did not necessarily indicate the condition of the premises at the commencement of the tenancy. He claimed that the cupboard doors were in good condition at the commencement of the tenancy and the contradictory notation on the report indicated that damage was discovered during the term and added to the move-in report. This practice completely compromises the value of the inspection reports and without additional evidence that the doors were in good condition at the commencement of the tenancy, I can not rely on them. The request for the cupboard door repair costs is denied.

#### Yard repair

The premises consist of a single family home with front, rear and side yards. The applicant alleged that the respondent had permitted his dog to use all of the yards despite the provision of a dog run. The applicant alleged that the yards had been damaged by dog urine and the dog's digging activity. The applicant stated that it was necessary to fill in numerous holes, roto-till the yard, spread fresh soil and reseed the lawns. The total costs claimed by the applicant were \$958.26 and were evidenced by four entries on the ledger and numerous invoices.

The move-in report notes , "dog poop remove, cut trees, clip lawn, fences OK". The move-out report notes "dog digs not filled and grass planted". Since the tenancy commenced in January, it is unclear how either party could have evaluated the condition of the yards as they were undoubtedly covered with snow.

There are several photo graphs which show the yards. All are in poor condition and appear to represent the premises at the end of the tenancy.

It would appear that the previous tenants also had a dog who used the yards, as dog excrement was noted on the move-in report. While the photos provided may justify some or all of the work undertaken, there is no evidence to suggest that a complete reconstruction of the yards was due solely to the respondent's negligence. As well, lawns in the north need seasonal maintenance to maintain their vigour. Over the course of two winters, the lawns undoubtedly suffered some degree of winter kill or other damage. This type of maintenance is the responsibility of the landlord.

Without some benchmark as to the condition of the lawn, at least in the spring/summer of 2016. I can not determine that the work undertaken by the landlord was the direct result of the tenant's negligence, that of the previous tenant or general lack of maintenance by the landlord. I will however allow the dump fees of \$10 as there were numerous items which had to be taken to the landfill.

#### Replace front window

The applicant alleged that the front window had been damaged by the respondent, presumably by a BB gun. The applicant sought compensation for repair costs of \$804.05 and provided an invoice for that amount in evidence. The move-in report notes a bullet hole in the window although the applicant again submitted that the damage and the notation were added after the commencement of the tenancy. A photograph of the damage was also provided in evidence. The applicant stated that he believed the projectile was fired from outside.

The invoice submitted is for the purchase of two windows. Only one window was alleged to be damaged. In my opinion, there is insufficient evidence to conclude that the window was broken during the term and if it was, how one can conclude that the damage was the tenant's fault, if the projective was indeed fired from outside. The request for compensation is denied.

#### Replacement of toilet

The applicant alleged that the toilet became clogged due to a plastic pill bottle being flushed. The applicant engaged a plumber who attempted to remove the object but was unsuccessful. The toilet fixture had to be broken to reveal the source of the clog and the toilet was replaced. The applicant sought compensation of \$1839.61. This amount is the sum of lines 63 and 68 of

the tenant ledger. The applicant provided photographs of the toilet in evidence as well as three invoices outlining the cost of the fixture and installation labour. I am satisfied that the replacement toilet is of similar quality than the damaged fixture and find the respondent liable for the repairs. However I find the applicant's claimed costs to be inaccurate. One of the invoices (#4838 from Roberts Plumbing and Heating) contains items which are not related to the supply and installation of the toilet. Removing the irrelevant costs I find the balance attributable to the toilet to be \$605.20. Another invoice (Emco #73617514) was entered as \$1032.68 when in fact the amount was \$1105.44. Invoice #4988 from Roberts Plumbing and Heating was not considered at all but contains costs of \$141.75 related to the installation of the toilet. I find the total cost of the supply and installation of the toilet to be \$1853.39.

#### Replacement of locks

The applicant sought relief of \$577.50 for the replacement of several locks. There was no information on locks on the move-out report. An invoice for the amount was provided in evidence. One photograph was provided showing a door with no lock set but it was not clear where the door was located or its condition at the commencement of the tenancy. The compensation is denied.

#### Carpet replacement

The applicant sought compensation in the amount of \$1203.75 for the replacement of carpeting in the master bedroom. The move-out inspection and photographs provided in evidence indicate that the carpet was badly stained and ripped. The move-in report indicates that the carpet was undamaged. The applicant testified that the carpet was three years old. I find the respondent liable for the depreciated value of the damaged carpet replacement costs. Given a ten year useful life, I find the depreciated value of the damaged carpet to be \$905.62.

#### Carpet cleaning

The applicant alleged that the carpets were not clean at the termination of the tenancy. An invoice for \$603.75 was provided in evidence. The move-out report indicates the carpets were not clean and contained several stains. In my opinion, the requirement for professional cleaning of carpets is reasonable if a dog or cat has been kept on the premises. There is no evidence that professional cleaning was undertaken by the respondent. I find the respondent

liable for the cleaning costs and find the claimed costs of \$603.75 to be reasonable.

*French door glass repair*

The applicant alleged that the glass in the french doors was broken at the termination of the tenancy and was repaired at a cost of \$201.55. The move-in report indicates that the doors were new at the commencement of the tenancy. The repair invoice and a photograph of the damage were provided in evidence. I find the respondent liable for the repairs and find the repair costs to be reasonable.

*Replacement of bulbs and cleaning*

The applicant sought compensation of \$287.42 for general cleaning and the replacement of bulbs. Invoices were provided in evidence. Photographs and the move-out inspection reports indicate that some cleaning was necessary to bring the premises to a state of reasonable cleanliness. There is no indication on the move-out report that any bulbs were missing. I find the respondent liable for cleaning costs which I find to be \$240.

*Damage to kitchen cabinet*

The applicant testified that the respondent had removed the kitchen sink fixture and replaced it with a fixture which leaked, causing water to drip into the cabinet below. The fixture was brought to the hearing along with a photograph showing the interior of the cabinet below the kitchen sink. The applicant stated that because the interior of the cabinet was darkly stained he felt it necessary to replace the cabinet so that it did not look like mould. He stated that the cabinet was not structurally damaged by the water escape, only discoloured by the water leakage.

In order to replace the cabinet, the supply lines and drainage pipes had to be cut, a new cabinet installed and the plumbing reconnected. The applicant sought no compensation for the supply and installation of the cabinet, only the plumbing costs. An invoice was provided in evidence. The amount of the invoice pertaining to the kitchen sink plumbing was \$1064.92.

In my opinion, the damage to the cabinet is cosmetic. Had the leakage continued it would have, no doubt, led to structural deterioration of the cabinet and possibly the formation of mould. However, the interior of the cabinet is now dry and shows no sign of mould or rot. In my opinion, several coats of quality paint would adequately restore the cabinet to a reasonable condition. In my opinion, compensation of \$100 is adequate.

Replacement of camera

The applicant sought replacement costs for the replacement of his camera which he claimed was damaged during an altercation with the respondent at the end of the tenancy. The camera is not part of the rental premises or the tenancy agreement. I have no jurisdiction in this dispute. The request for compensation is denied.

Water bills

The respondent was responsible for the provision of water during the term of the tenancy agreement and the water account was established in the respondent's name. The applicant alleged that the respondent had failed to pay for the full amount of water and the balance on the account was transferred to the applicant's tax account and paid by the applicant. An updated statement of account was provided in evidence which indicated the amount transferred and paid by the applicant was \$1189.69. I find the respondent liable for that amount.

Summary

I find the respondent in breach of his obligation to pay rent, to repair damages to the rental premises and to pay for water during the term of the tenancy. An order shall issue requiring the respondent to pay the applicant the following amounts:

Rent Arrears	\$2800.00
Penalties for late rent	<u>116.00</u>
<b>Total Rent arrears</b>	<b>\$2916.00</b>

**Water costs paid on behalf of the respondent \$1189.69**

Repair costs

Flush kitchen drain	\$157.50
Dump fees	10.00
Replace toilet	1852.39
Replace carpet	905.62



Carpet cleaning	603.75
French door repair	201.55
Cleaning	240.00
Water damage sink	100.00
Subtotal	4070.81
Less S/D	(2250.00)
Less S/D int.	<u>1.69</u>
<b>Due applicant</b>	<b>\$1819.12</b>

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Hal Logsdon  
Rental Officer