

IN THE MATTER between **RH**, Applicant, and **SNL and GT**, 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:

RH

Applicant/Tenant

-and-

SNL and GT

Respondents/Landlords

REASONS FOR DECISION

Date of the Hearing: December 6, 2017

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: RH, applicant/tenant
SNL, respondent/landlord

Date of Decision: December 6, 2017

REASONS FOR DECISION

An application to a rental officer made by RH as the applicant/tenant against SNL and GT as the respondents/tenants was filed by the Rental Office September 13, 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 respondents by registered mail signed for October 2, 2017.

The applicant is disputing the reasons the respondents retained a portion of the security deposit at the end of the tenancy. An order was sought for the return of the portion of the security deposit.

A hearing was scheduled for December 6, 2017, in Yellowknife. RH appeared as applicant. SNL appeared as respondent and on behalf of GT.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them commencing June 17, 2017. The tenancy agreement was terminated August 31, 2017. I am satisfied a valid tenancy agreement was in place in accordance with the *Residential Tenancies Act* (the Act).

Internet costs

The written tenancy agreement includes the following paragraph:

“The rent is a month-to-month lease and requiring a month notice. The rent is \$800 per month and includes all utilities. Utilities includes heat, power, water, internet and cable TV. Limited usage 200GB/per month for the all users in the house. If you are heavy internet user, you will be required to pay an additional \$30 per month for an additional of up to 300GB per month.”

The landlord testified that the internet usage for the month of July 2017 exceeded the 200GB package provided as part of the tenancy agreement by an amount resulting in additional charges to the landlord's internet account of approximately \$800. The landlord was not aware that the household internet usage had exceeded 200GB until she received the bill in August. She attempted to negotiate with Northwestel without success.

The landlord testified that the tenant did not tell her that he was a heavy internet user, as required under the written tenancy agreement. Had she known that he was she would have increased the internet package limit to accommodate his usage. The landlord noted that the internet usage for August reduced significantly after the tenant was approached about the July internet overage.

The landlord acknowledged that there were five people living in the house, comprised of the two landlords, her mother, and two tenants. She claimed that her mother does not usually use the internet, and the two landlords are not heavy users. However, because the landlord could not actually be sure of the internet usage distribution, she only charged the applicant/tenant one-third of the \$800 over-usage charge equalling \$266.66. The two landlords were counted together as one-third.

The tenant argued that the internet was included as part of the rent, and there is no substantive evidence to support that he is solely responsible for the internet usage increase. Historical usage statements were not entered into evidence to establish historical household internet usage patterns. The tenant did admit to watching a lot of Netflix, Youtube, and other streaming services, but challenged the landlord to correlate that kind of usage with the amount of internet overage claimed in July for which they want to hold him accountable.

To my mind, although not well worded, the written tenancy agreement does stipulate that the tenant will be held accountable for any additional internet usage over 200GB per month. My problem with this provision is that it does not appear to recognize or account for any possible extra usage of the other occupants of the residential complex who share the internet package.

The tenant admitted he is a heavy watcher of streaming services, which do in my experience use internet bandwidth to stream through. Given there is a requirement in the tenancy agreement for the tenant to notify the landlord if they are a heavy internet user and the tenant in this case did not do that, it seems reasonable to me that the tenant should bear some of the costs resulting from the internet over-usage in July.

Despite the landlords being a couple, I do not believe it is reasonable to count them as one for the purposes of dividing the costs between users. Certainly the couple is more likely to watch on-line shows together, but it is not likely that they're going to be surfing the internet together at the same time on the same computer. Given that there were four out of five persons reasonably expected to use the internet in the household, and that there is no historical data submitted into evidence to correlate the applicant/tenant's occupancy with the increased usage for the month of July, it seems reasonable to me to divide the extra \$800 internet usage charge between those four persons rather than three person.

The security deposit with interest amounted to \$400.04. One-quarter of the internet over-usage for July amounts to \$200, for which I find the tenant liable. The respondents/landlords have returned \$133.77 of the security deposit to the applicant/tenant. Subtracting \$200 and \$133.77 from the \$400.04 security deposit results in the respondents/landlords owing the applicant/tenant \$66.27 from the security deposit.

Order

An order will issue requiring the respondents/landlords to return the remaining portion of the security deposit to the applicant/tenant in the amount of \$66.27.

Adelle Guigon
Rental Officer