File #15995

IN THE MATTER between **NZ, AA, and TA**, Applicant, and **LK**, 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:

NZ, AA, and TA

Applicants/Landlords

-and-

LK

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: **March 22, 2018**

Place of the Hearing: **Yellowknife, Northwest Territories**

Appearances at Hearing: **NZ, applicant**
LY, witness for the applicant
RZ, witness for the applicant

LK, respondent
LD, witness for the respondent

Date of Decision: **March 26, 2018**

REASONS FOR DECISION

An application to a rental officer made by NZ, AA, and TA as the applicants/landlords against LK as the respondent/tenant was filed by the Rental Office February 9, 2018. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was personally served on the respondent February 14, 2018, and an addendum to the application was personally served on the respondent March 14, 2018.

The applicant alleged the respondent had repeatedly failed to pay rent when due, had increased costs of electricity in excess of the household average, and had repeatedly disturbed the landlord's enjoyment and possession of the rental premises and residential complex. An order was sought for termination of the tenancy agreement and eviction.

A hearing was scheduled for March 22, 2018, in Yellowknife. NZ appeared as applicant, with LY and RZ appearing as witnesses. LK appeared as respondent, with LD appearing as witness.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them commencing December 15, 2017. I am satisfied a valid tenancy agreement is in place in accordance with the *Residential Tenancies Act* (the Act).

Rental arrears

The parties agreed that the $900 rent for March 2018 had not as yet been paid by the respondent. The applicant is of the opinion that the rent is late. The respondent has admitted that he refused to pay the March rent as a consequence of other disputed matters, suggesting he agrees the March rent is late.

.../3

However, paragraph 11 of the written tenancy agreement says: “The Tenant will pay the Rent on or before the last of each and every month of the term of this Lease to the Landlord...”. In most tenancy agreements the rent is usually required to be paid in advance of the month it is being paid for. In this tenancy agreement as written, the rent is due on or before the last day of the month it is being paid for. Meaning, as long as the rent for March is paid on or before March 31st then the rent will have been paid on time. This being the case, despite the parties agreeing that the March rent has not been paid, the March rent is not in fact late yet and therefore the respondent does not currently have rental arrears.

Given that the parties agree that the rent has not yet been paid and that the respondent has admitted he did not intend to pay the rent for March, I am prepared to issue an order that if the March rent is not paid in full by March 31, 2018, that the respondent must pay the rent of $900.

Electricity

The applicant made reference in the application and in her testimony to the respondent using more electricity than was average. Paragraph 23 of the written tenancy agreement indicates that electricity is included in the rent. No evidence was presented demonstrating the alleged increased usage of electricity occurring during the respondent’s tenancy. I am not satisfied that there has been an increased usage of electricity.

Cable

Paragraph 23 of the written tenancy agreement indicates that cable is included in the rent. The applicant provides a basic cable package. Each rental premises in the four-unit house is wired to access the cable package. The applicant did not provide the cable box, which is a necessary component to being able to view the cable package being provided. The written tenancy agreement does not elaborate beyond including “cable” in the rent. The applicant was of the opinion that the landlord was not obligated to provide the cable box, that the agreement was just to include the cable package subscription. In the applicant’s opinion the provision of the coax cable to the individual rental premises satisfied the landlord’s obligation.

.../4

The respondent entered into this tenancy agreement expecting to be able to connect his television and immediately be able to watch the shows provided in the cable package. This is not an unreasonable expectation given the tenancy agreement indicated cable was provided. How can one access their cable package without the cable box required to interpret the signal coming through the coax cable? The respondent repeatedly demanded a cable box from the applicant, and after a heated debate the applicant gave the respondent her own cable box.

To my mind the tenancy agreement includes the provision of cable services. Simply wiring the coax cable to the rental premises does not provide the cable services. Cable is no longer analog, it is digital, which means we can no longer just connect a television to the coax cable and expect to see the cable television shows. The data signal coming through the coax cable must be interpreted through the cable box before it can be displayed on the television. If the landlord is going to limit the provision of cable to the cable package subscription and the coax cable alone then that must specifically be identified in the tenancy agreement; the tenant must know going in what the limitations are. Without identifying those limitations, it is entirely reasonable to expect the full service: the cable package subscription, the coax cable to the rental premises, and the cable box to interpret the signal.

I am satisfied that the tenancy agreement included the provision of the full cable service. I am satisfied that the required cable box was not provided at the commencement of the tenancy. I am satisfied and believe that a cable box was provided some time in mid-January. I am satisfied that the respondent did not benefit from access to the cable package subscription for the first month of his tenancy. The cable package subscription costs $49.95 per month. I find the applicant liable to the respondent for the cost of one-month’s cable package subscription in the amount of $49.95.

.../5

Internet

The written tenancy agreement does not provide for Internet service. As a courtesy, the applicant permitted the tenants in all the rental premises in the house to access the Internet through her personal wifi account. It is clearly set out in the welcome letter to each tenant that the Internet is not included in the tenancy agreement, that the Internet package was limited to 300GB per month, that each tenant was requested to limit their personal Internet usage to 100GB per month, and that if the usage exceeds the cap the applicant will withdraw access to her personal wifi account.

Prior to the respondent moving in, the applicant had no issues with any of her tenants' usage of the Internet. The usage never exceeded 50 percent of the maximum before approximately the third week of the month. After the respondent was provided with the wifi password the Internet usage for January reached 50 percent of the maximum after the first week. The applicant notified all of her tenants, including the respondent, that usage had to slow right down or she would have to withdraw access to her wifi account. She advised them access would be cut off once usage had reached 75 percent. Five days later the usage reached 75 percent. All tenants were notified that access to the wifi account was withdrawn.

The respondent demanded the Internet access back, which the applicant denied. The applicant provided options to the respondent on how he could obtain his own access to the Internet. The respondent continued to demand the Internet access back, promising to be more cautious. The applicant denied the requests.

I am satisfied that the provision of Internet access did not form part of the tenancy agreement. The respondent should not have had any expectation that he was entitled to Internet access as part of his tenancy agreement as it was clearly identified in the welcome letter and subsequent notifications. I am not satisfied that the respondent is entitled to any form of compensation or that any breach occurred with respect to Internet access.

.../6

Fan

The applicant testified that the house which comprises four residential units – one in which she resides and the other three which are rented out – was built in 1979 to the building codes of the day. Because sounds within the house travel easily, the applicant is very clear in her advertising and throughout the application and selection process for prospective tenants that a willingness to live quietly is necessary for the peaceful enjoyment of all tenants, including the applicant. This requirement is reiterated in the welcome letter provided to all tenants. The welcome letter in fact elaborates on the expectation to live quietly by requesting near silence between 11:00 p.m. and 7:00 a.m. on weekdays, and includes a request to avoid using the fans during the quiet hours.

The respondent was approached repeatedly about leaving the bathroom fan on for lengthy periods of time during the quiet hours. The respondent refused to cooperate with the applicant's request to cease using the fan during the quiet hours on the basis that the fan is a required component of the premises, it should be used whenever the bathroom is used to ensure air circulation and prevent the buildup of moisture, and he is entitled to use the fan whenever and as often as he wishes. He maintains that any disturbance caused to the applicant from his usage of the fan is as a consequence of the maintenance of the fan and the related duct work, and is not his responsibility.

The applicant replaced the fan in the respondent's rental premises with a newer, quieter fan, however, that did not resolve the noise problem. Extensive and expensive renovations to the duct work would be needed, which the applicant is not prepared to undertake. The applicant testified that the house does not have to comply with current building codes because of the age of the house; it is grandfathered under the building codes that were in place at the time the house was built.

.../7

When the respondent continued to disrespect the applicant's request not to use the fan during the quiet hours, the applicant removed the fan entirely from the rental premises. The respondent was unhappy with this action from the applicant and complained that he now cannot dry off completely after having a shower unless he exits the bathroom. He refuses to be held accountable for any moisture damage or cleaning the bathroom walls as a result of the fan having been removed.

Section 30 of the Act requires the landlord 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. The tenant cannot be held liable for any damages occurring as a direct result of the landlord's breach of section 30. The removal of the fan does not necessarily constitute a state of disrepair. Nor was any evidence provided to satisfy me that the removal of the fan constituted a breach of any health, safety, or maintenance standards required by law. However, by removing the fan the applicant has chosen to accept responsibility for any damages to the rental premises that can be directly attributed to the lack of a functioning fan.

Laundry

Paragraph 1 of the written tenancy agreement indicates weekly access to the laundry room is included. The welcome letter elaborates that each tenant and the landlord are assigned a specific night of the week to do their laundry, that the respondent's night is Wednesdays, and that the laundry room will be unlocked for the respondent's use between 6:00 p.m. and 11:00 p.m. Those hours were later changed by written notice to the respondent on February 26, 2018, to be open from 6:00 p.m. to 10:00 p.m.

After repeatedly demanding access to the laundry room outside of the designated hours, the applicant denied access entirely to the respondent effective February 7, 2018. The applicant reversed her decision after speaking with the Rental Office and learning that withholding a service agreed to be provided as part of the tenancy agreement constituted a breach of the landlord's obligation. The respondent was notified that access to the laundry room would be available again commencing February 28, 2018.

.../8

During the intervening three weeks without access to the laundry room, the respondent was forced to do his laundry at the laundromat. The respondent claimed $30 per week for costs to do two loads of laundry plus $10 per week for gas to drive to the laundromat. The respondent claimed the washing machines cost $3.50 per load and the dryer costs $3.75 per load. I confirmed these amounts with the laundromat. The respondent's claim of $30 per week is unreasonable, given the math indicates the total cost per week to wash and dry two loads of laundry amounts to $14.50. The respondent did not provide evidence to substantiate the reasonableness of his claim of $10 per week for gas, nor am I satisfied the claim is reasonable.

I am satisfied that the withholding of access to the laundry room constitutes a breach of the landlord's obligation to provide it in accordance with the written tenancy agreement. I find the respondent is entitled to compensation for losses suffered as a direct result of that breach representing costs for laundering in the total amount of $43.50.

Keys and lock change

On February 4, 2018, the respondent lost the keys to the rental premises. He did not find them again. The applicant was forced to replace the locks as a result, to ensure the security of the rental premises. The applicant provided a copy of the invoice from her contractor to replace the locks, which amounted to a cost of $351.75.

The respondent agreed that he had lost his keys which resulted in the requirement to replace the locks. He disputed that the amount claimed to replace the locks was reasonable, but did not provide any evidence to back his claim.

I am satisfied the respondent is responsible for the replacement of the locks to the rental premises. I find the respondent liable to the applicant for costs to replace the locks in the amount of $351.75.

.../9

Disturbances

Throughout the course of this tenancy the interaction between the applicant and respondent has escalated from reasonable to disruptive. Each time a request for service – whether entitled to it or not – was denied to the respondent, the respondent became increasingly more demanding, aggressive, demeaning, and threatening to the applicant. The respondent admitted at hearing that he became frustrated and made a conscious decision to be rude and disrespectful to the applicant. He believed he had a right to the things he was asking for or doing, and when he didn't receive those things or faced resistance in receiving those things or was challenged on his right to do those things he reacted.

The applicant testified that the respondent started becoming hostile after an incident in mid-January involving clogged drains and the resulting odour after treating the drains with a drain cleaner. The respondent's behaviour escalated as the previously mentioned issues occurred, as well as when other demands were made and expectations unmet. The respondent was verbally aggressive, threatening, accusatory, and demanding. The respondent became enraged and yelled at the applicant. The respondent would pound incessantly on the applicant's door, demanding verbal interaction even after the applicant requested that communications only be made in writing or by email.

The RCMP was called to attend for two incidents. On March 2, 2018, the respondent had again locked himself out of the rental premises and immediately proceeded to pound on the applicant's door to demand access. By this time the applicant was already afraid for her safety and had requested the respondent to only communicate with her in writing or by email. The respondent refused to comply with that request. The applicant refused to open the door to the respondent, signalled through the window for him to wait, and called the RCMP to request they accompany her to open the respondent's door for him. The respondent continued to pound on the door and yell through the door at the applicant, and then called his mother for assistance. His mother arrived before the RCMP did, and she immediately began yelling, cursing, and berating the applicant for not letting her son into his rental premises. The RCMP arrived, obtained the key from the applicant, and escorted the respondent to his rental premises. The RCMP suggested the applicant apply for a peace bond.

.../10

The applicant had two guests in her home when this incident occurred. They both appeared as witnesses to the hearing. Their respective testimony's were clear, concise, and credible. Their testimony corroborated the applicant's version of events as they witnessed it.

The respondent called his mother as a witness. She did not dispute her behaviour on the night in question, admitting to being angry at the way she perceived her son's treatment by the applicant. The remainder of her testimony was based on hearsay from what her son told her and was otherwise self-serving, lacking credibility.

The second incident to which the RCMP were called occurred on March 7, 2018. When the respondent was granted access to the laundry room again it was clearly indicated in the notice that any laundry left in the machines after 10:00 p.m. would be placed in a laundry basket in front of the respondent's door. When the applicant went to lock the laundry room on March 7th at 10:00 p.m. she found the respondent's laundry still in the washing machine. She removed the laundry and placed it in a basket in front of the respondent's door. Approximately 15 minutes later the respondent came pounding on the applicant's door, apparently upset that his laundry was not dry. The applicant immediately called the RCMP. The RCMP attended, spoke to the respondent, and advised him not to contact the applicant any more.

Based on the evidence and testimony I heard, I am satisfied that the respondent has repeatedly and unreasonably disturbed the applicant's possession and enjoyment of the rental premises. Whether or not the respondent was entitled to the things he was demanding and whether or not the applicant breached any conditions of the tenancy agreement does not excuse the respondent's inappropriate, aggressive, and volatile behaviour. His behaviour has created an untenable living environment for the applicant. As a result, I find that termination of the tenancy agreement and eviction are justified.

.../11

Termination of the tenancy agreement and eviction

In consideration of the extreme nature of the above described disturbances, termination of the tenancy agreement will be ordered for March 31, 2018. However, given the very short termination date, the eviction order will not be effective until April 15, 2018, to ensure the respondent has adequate time to find alternate accommodations. An order will also issue for the respondent to compensate the applicant for use and occupation of the rental premises for each day he remains in the rental premises after March 31, 2018.

Orders

An order will issue:

- requiring the respondent to pay rental arrears in the amount of $900.00 if the rent for March 2018 has not been paid by March 31, 2018;
- requiring the applicant to compensate the respondent for failing to provide cable television services in the amount of $49.95;
- requiring the applicant to compensate the respondent for failing to provide access to the laundry room in the amount of $43.50;
- requiring the respondent to pay to the applicant costs for replacing the locks to the rental premises in the amount of $351.75;
- requiring the respondent to comply with his obligation not to disturb the applicant's possession or enjoyment of the rental premises, and not to breach that obligation again;
- terminating the tenancy agreement March 31, 2018;
- evicting the respondent from the rental premises April 15, 2018; and
- requiring the respondent to pay compensation for use and occupation of the rental premises at a rate of $29.59 for each day he remains in the rental premises after March 31, 2018.

Adelle Guigon
Rental Officer