

IN THE MATTER between **P.B. AND N.L.**, Applicant, and **J.J AND E.S. C/O TRITON PROPERTY MANAGEMENT**, 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:

P.B. AND N.L.

Applicant/Tenants

-and-

J.J. AND E.S. C/O TRITON PROPERTY MANAGEMENT

Respondents/Landlords

REASONS FOR DECISION

<u>Date of the Hearing:</u>	March 22, 2018
<u>Place of the Hearing:</u>	Yellowknife, NT
<u>Appearances at Hearing:</u>	P.B., applicant N.L., applicant L.D., representing the respondents
<u>Date of Decision:</u>	April 28, 2018

REASONS FOR DECISION

The tenancy agreement between the parties commenced on July 15, 2016 and was made for a term of three years. The monthly rent for the premises is \$2400. The premises consist of a single detached house with primary heat provided by an oil fired, forced air furnace and additional heating provided by a pellet stove located in the basement. The tenants are responsible to pay for the cost of fuel, oil and pellets, during the term of the agreement.

The applicants allege that the pellet stove no longer operates. The landlord has attempted to have the pellet stove repaired on several occasions without lasting success, resulting in the loss of use of the pellet stove for most of the 2017/18 heating season. The applicants submit that the failure to repair or replace the pellet stove represents a breach of the landlord's obligation to maintain the premises and resulted in higher heating costs. The applicants sought an order requiring the respondent to replace the pellet stove and to compensate them for the additional heating cost related to the loss of use of the pellet stove. The applicants sought compensation equivalent to two months rent or \$4800.

The applicants testified that although the pellet stove was not necessary to adequately heat the house, it was particularly useful because it reduced dampness in the basement during the spring and reduced overall heating costs.

The applicant testified that he had spent \$1900 for fuel oil and \$1000-1200 for woodpellets during the winter of 2016/17. In comparison, they had already spent \$3300 on fuel oil and had received another delivery of 500 litres during the winter of 2017/18.

The applicants provided a statement for fuel oil dated February 28, 2017 showing the following past usage:

December 13, 2016	578.7 litres
February 13, 2017	671.9 litres
Total	1250.6 litres

The statement shows only the price for the February, 2017 delivery which was \$0.95/litre. It does not indicate the cost/litre or the total cost for the December 13 delivery.

The applicants also provided a statement for fuel oil dated February 28, 2018 and a delivery slip for a March 14, 2018 fill up showing the following past usage:

October 20, 2017	493.2 litres
December 6, 2017	676.1 litres
January 11, 2018	567.3 litres
February 12, 2018	744.3 litres
March 14, 2018	532.5 litres
Total	3013.4 litres

The statement shows only the price for the February, 2018 delivery which was \$1.165/litre. It does not indicate the cost/litre or the total cost for any other deliveries.

The applicant testified that they had spent \$1000 -1200 on pellets during the winter of 2016/17. There were no pellet costs during the winter of 2017/18 as the pellet stove was inoperative. No receipts for pellets were provided nor was the total volume of pellets purchased provided.

The applicant submitted that his use of the pellet stove during the winter of 2016/17 saved him money as it was less expensive to produce heat from pellets than with fuel oil. The applicant also argued that some compensation was reasonable due to the excessive time the landlord had taken to address the problem. The applicant did not provide or suggest any methodology to determine or estimate their alleged losses.

The respondent did not dispute that the pellet stove had been inoperative. He stated that the owner had responded to the problem, doing everything possible to repair the stove, but with no success. In November, 2017 the property manager had emailed the applicants acknowledging that the pellet stove would probably have to be replaced and offered to reduce the rent by \$100 over the winter to compensate for the difference in heating costs. The applicants did not accept the offer and filed the *Application to a Rental Officer* on November 21, 2017.

The respondent noted that the tenancy agreement between the parties did not include the pellet stove as a service or facility included in the rent. This does not, in my opinion, relieve the landlord from maintaining or repairing the stove. The stove, like the furnace, was provided in working order at the commencement of the tenancy. The landlord is obligated to maintain it in good working order during the term.

The respondent stated that the pellet stove would be replaced before the next heating season.

The hearing was adjourned until April 4, 2018 with the consent of both parties to permit the parties to attempt to come to an agreement regarding compensation. The parties were instructed to advise me if they were unable to come to an agreement by that date and the Rental Officer would decide the matter.

The parties advised me on April 4, 2018 that the landlord had offered to pay compensation of \$600. The applicant would not agree to compensation less than \$1400. As the parties have agreed that the stove must be replaced, I need only deal with the issue of compensation.

Section 30 of the *Residential Tenancies Act* obligates a landlord to maintain rental premises in a good state of repair.

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.*

Subsection 4 sets out remedies for breach of this obligation.

30.(4) Where, on the application of a tenant, a rental officer determines that the landlord has breached an obligation imposed by this section, the rental officer may make an order

- (a) requiring the landlord to comply with the landlord's obligation;*
- (b) requiring the landlord to not breach the landlord's obligation again;*
- (c) authorizing any repair or other action to be taken by the tenant to remedy the effects of the landlord's breach and requiring the landlord to pay any reasonable expenses associated with the repair or action;*

- (d) requiring the landlord to compensate the tenant for loss that has been or will be suffered as a direct result of the breach; or*
- (e) terminating the tenancy on a date specified in the order and ordering the tenant to vacate the rental premises on that date.*

In my opinion, the respondent is clearly in breach of section 30. The premises included a pellet stove in working order and the landlord is obligated to maintain the appliance during the term of the tenancy.

In my opinion, compensation is a reasonable remedy to consider. Compensation for breach of an obligation pursuant to section 30 should put the party who has suffered loss in a position as if the breach had not occurred. It is not intended as a penalty to deter or punish the landlord for the breach. In this matter I must only consider returning the tenant to a financial position as if the pellet stove operated normally during the winter of 2017/18.

In Yellowknife, given current prices of the two fuels and comparative efficiencies of the appliances, it is known that heat generated by a pellet stove is less expensive than heat generated in a forced air, oil furnace. Given the availability of both heating appliances, the cost of annual heating will decrease as the proportion of heat generated by the pellet stove increases. The loss of the pellet stove during the 2017/18 heating season clearly resulted in higher heating cost than in the previous year, making some level of compensation reasonable. The question becomes how much compensation reasonably represents the loss the applicants experienced.

As with all applications, the onus is on the applicant to prove, on the balance of probabilities, the allegations made in the application. The applicants have provided very little information to substantiate the quantum of their loss and evidence to support some of the information is lacking. For example, the applicants have not provided costs of fuel oil for all of the deliveries, nor have they provided proof of the amount or cost of pellet fuel burned during the winter of 2016/17. One must also assume that these documents represent all of the relevant deliveries, particularly during the 2016/17 heating season. There is only the applicants' testimony as to the estimated cost of pellet fuel consumed during the 2017/18 season. There are no receipts documenting the cost or the amount of pellet fuel consumed. In my opinion, the applicants have failed to provide sufficient evidence to substantiate the quantum of relief they seek but have provided enough evidence that, with a number of reasonable assumptions, supports a lesser amount of relief.

I have approached this matter assuming that the quantity and average price of oil shown on the statements is complete and accurate, the cost of pellet fuel consumed in 2016/17 was \$1200 and the cost of pellet fuel was \$6.29/40 pound bag. Using these assumptions and the generally accepted figures for BTU/litre for oil and BTU/pound for wood pellets, the heat content was calculated for the total fuel used in both 2016/17 and 2017/18. I then substituted the same heat content for wood pellets used in 2016/17 for oil heat content and, using average BTU/dollar costs derived from 2017/18 pellet and oil prices, compared hypothetical total heating costs using pellets and oil for 2017/18 with actual heating costs derived from oil only heat. The difference is \$530. In my opinion, this is reasonable compensation based on reasonable assumptions.

An order shall issue requiring the respondent to replace the pellet stove prior to October 31, 2018 and to pay compensation to the applicants in the amount of \$530.

Hal Logsdon
Rental Officer