

IN THE MATTER between **R.M.**, Applicant, and **L.P.**, 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:

R.M.

Applicant/Tenant

-and-

L.P.

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: May 9, 2018

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: R.M., applicant
Z.T., representing the respondent
C.T., representing the respondent

Date of Decision: May 18, 2018

REASONS FOR DECISION

The applicant alleged that the respondent had served him an "eviction notice" on November 30, 2017 seeking possession of the premises on December 31, 2017. The applicant did not provide a copy of the notice but a memo sent to the respondent referring to the notice was provided. In that memo, dated December 1, the applicant stated that he had received information from the Rental Office and that he did not intend to move out and would not be paying the December rent until the respondent returned \$240 which he described as a late rent payment penalty. In the memo he stated that he was open to negotiating the termination of the tenancy agreement if there was "...something in it for me".

In an email, dated December 4, 2017 the applicant outlined his "terms for vacating the premises by December 31", as:

That he find a suitable and affordable place to live;
that he does not have to pay the December, 2017 rent;
that he receives the \$245 for the "illegal late rent charge" immediately (previously referred to as \$240);
that he receives half the security deposit back immediately;
that he receive \$1000 compensation and
that he take possession of the TV in the premises.

In an email dated December 7, 2017 the applicant wrote to the respondent,

You agreed to give me
1...\$250 for overpayment of late rent charge
2...\$1000 as compensation for early eviction
3...\$950 for reimbursement of damage deposit
and flat screen TV
Agreed?

The respondent wrote back on the same day,

Hi John,
That is correct

The applicant testified that the \$250 had been paid and he had received a cheque for \$1950 from the landlord. He vacated the premises on December 31, 2017. He took the TV.

The cheque failed to clear the bank. The security deposit and accrued interest was retained by the respondent. The application was filed on January 19, 2018. The applicant sought an order requiring the respondent to return the retained security deposit and interest and pay compensation of \$1000.

In order for the landlord to terminate this tenancy agreement there would have to be mutual agreement between the parties, an order or a legal notice given by the tenant. Of course, the parties could agree on conditions whereby the parties would mutually agree to terminate the agreement but there is no provision in the Act to enforce those conditions if breached. Therefore, since the authority of a rental officer comes from the Act, I have no jurisdiction to deal with the issue of any compensation that the parties may have agreed to in order to terminate this tenancy agreement by mutual agreement. The applicant's request for compensation of \$1000 is therefore denied.

Similarly, the issue of the TV as a condition of a mutual agreement to terminate the tenancy is outside my jurisdiction. However, it could be considered as part of an application pursuant to section 42(3). I do not have such an application before me now.

Sections 15 and 17.1 of the Act require inspections and inspection reports to be completed at the commencement of a tenancy and at the end of the tenancy. The applicant provided copies of both reports in evidence. The check-out report was dated December 31, 2017 and signed by the respondent. The report was not signed by the applicant. The applicant alleged that the check-out report was "made up". He testified that he was at the premises until 11:30 PM on December 31 and the landlord never appeared. He stated that the form was not signed by him because the inspection was not done. The respondent disputed the allegation.

A landlord who fails to create inspection reports or provide copies of the reports to the tenant forfeits their right to retain any part of the deposit for repairs.

18.(5) A landlord may not retain any amount of a security deposit or pet security deposit for repairs of damage to the rental premises if the landlord or his or her agent

*(a) fails to complete an entry inspection report and an exit inspection report;
or*

(b) fails, without a reasonable excuse accepted by a rental officer, to give a copy of each report to the tenant.

Notwithstanding the accuracy of the inspection reports, they were completed and provided to the applicant. I find the respondent was in compliance with the obligation to provide inspection reports to the applicant.

Section 18 requires a landlord to issue a statement of the security deposit if any of the deposit is retained. The applicant alleged that no statement was issued. The respondent disputed the allegation and provided a copy of a security deposit statement in evidence showing itemised deductions and a balance owing to the respondent of \$1968.83. The statement indicates it was emailed to the applicant on January 10, 2018.

The deductions include the December, 2017 rent (\$950) and penalties for late rent (\$65) as well as numerous other charges for cleaning, repairs and replacement for damaged or missing articles. Notwithstanding the other charges, there is no dispute between the parties that the December, 2017 rent was not paid and has remained unpaid. There is no evidence that the landlord agreed to waive the December rent. The respondent was in possession of the premises for the entire month. The unpaid December rent is subject to penalties for late rent in accordance with the Act.

The rent arrears and penalty for the late payment alone justify the retention of the security deposit by the respondent. Consequently the application is denied. I need not consider any other elements of the security deposit statement.

Hal Logsdon
Rental Officer