File #15996

IN THE MATTER between **BD and DD**, Applicants, and **DK and CR**, 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:

BD and DD

Applicants/Landlords

-and-

DK and CR

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing:	**May 31, 2018**
Place of the Hearing:	**Yellowknife, Northwest Territories**
Appearances at Hearing:	**LD, representing the applicant** **RS, representing the applicant** **DK, respondent** **CR, respondent** **SW, witness for the respondents**
Date of Decision:	**June 25, 2018**

REASONS FOR DECISION

An application to a rental officer made by TPM on behalf of BD and DD as the applicants/landlords against DK and CR as the respondents/tenants was filed by the Rental Office February 15, 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 respondents March 15, 2018.

The applicants alleged the respondents had accumulated overholding rental arrears, had caused damages to the rental premises, and had left the rental premises in an unclean condition. An order was sought for payment of overholding rental arrears and payment of costs for repairs and cleaning.

A hearing was scheduled for May 31, 2018, in Yellowknife. LD and RS appeared representing the applicants. DK and CR appeared as respondents, with SW appearing as a witness for the respondents.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them commencing October 12, 2016. The respondents vacated the rental premises, effectively ending the tenancy September 30, 2017. Vacant possession of the rental premises was not returned to the applicants until October 5, 2017, when an exit inspection was conducted in the respondents' absence. All keys to the rental premises were not returned to the applicant until October 13, 2017. I am satisfied a valid tenancy agreement was in place in accordance with the *Residential Tenancies Act* (the Act).

At hearing, the respondents cited subsection 11(1) of the Act when identifying that they had not received a copy of the written tenancy agreement until being served with the filed application to a rental officer. Subsection 11(1) of the Act does require the landlord to ensure

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that a copy of the signed agreement be given to the tenant within 60 days after it has been signed by the tenant. The failure of the landlord to comply with this obligation does not negate or invalidate the tenancy agreement. Additionally, there is no specific remedy available to a tenant for a breach under subsection 11(1) of the Act after the tenancy has ended.

Entry inspection report

At hearing, the respondents cited subsection 15(5) of the Act, which requires the landlord to ensure a copy of the entry inspection report is given to the tenant within five days after the day of the entry inspection. The respondents claimed that they did not receive a copy of the entry inspection report until they were served with the filed application to a rental officer. The failure of the landlord to comply with this obligation does not necessarily negate or invalidate the value of the report. The only consequence resulting from a landlord failing to give a copy of the entry inspection report to the tenant is that the landlord is no longer authorized to retain the security deposit at the end of the tenancy against costs of repairs or cleaning. It was confirmed at hearing that the security deposit mentioned in the written tenancy agreement was neither actually asked for by the applicant's agents nor paid by the respondents at any time during the tenancy.

From what I heard from the parties, there is no dispute as to the accuracy of the entry inspection report's documentation of the condition of the rental premises at the commencement of the tenancy. It was agreed by the parties that the premises was not provided in an ordinarily clean condition. In fact, it sounds like it was in a pretty deplorable condition. It is clear from the evidence and testimony that the applicant's agent agreed to compensate the respondents for cleaning the rental premises, not including the stove which was put into storage "as is" due to the respondents using their own stove in its place. It was also confirmed at hearing that the applicants had purchased materials in preparation to install new laminate hardwood flooring, which the respondents offered to install themselves. The respondents were compensated by the applicants for the labour to install the laminate hardwood flooring.

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Exit inspection report

At hearing, the respondents cited subsections 17.1(3) and (5) of the Act.

Subsection 17.1(3) of the Act requires the landlord to prepare and sign an exit inspection report, and if the tenant participated in the inspection provide them with an opportunity to include comments in and sign the report, without delay after completion of the exit inspection.

Subsection 17.1(5) of the Act requires the landlord to ensure that a copy of the exit inspection report is given to the tenant within five days after the day of the inspection.

The respondents claim they were not given an opportunity to review and comment on the exit inspection report because they did not receive a copy of it until they were served with the filed application to a rental officer.

Although the respondents did not cite subsection 17.1(1) of the Act, they claimed that they were not provided reasonable opportunities to participate in an exit inspection. Subsection 17.1(1) of the Act requires the landlord to conduct an inspection of the condition and contents of the rental premises vacated by a tenant at the end of a tenancy and offer the tenant reasonable opportunities to participate in the inspection.

Based on the evidence and testimony provided, it seems to me that the respondents were given reasonable opportunity to participate in the exit inspection and did not do so. An exit inspection was originally scheduled for 4:00 p.m. on September 30th. The respondents were not ready at that time and requested a postponement. The parties agreed to postpone the exit inspection to October 2nd. The respondents were again not ready on October 2nd. The applicant's agent agreed to wait for the respondents to let her know when they were ready for the exit inspection. The respondents contacted the applicant's agent October 5th and the applicant's agent agreed to attend the rental premises that morning. The respondents told the applicant's agent that one of them would try to be there, but to go ahead without them. Neither of the respondents attended that day. The applicant's agent conducted the exit inspection, took photographs, and prepared the exit inspection report. The applicant's agent notified the respondents by text message the same day that there was still some cleaning to do.

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The parties communicated next on October 10th, at which point it was identified that the respondents had not yet returned the keys to the rental premises. The respondents agreed that one of them would meet with one of the applicant's representatives on October 13th to return the keys and "go through" the rental premises. The applicant's representative anticipated a second exit inspection with the respondent. The respondent who attended on October 13th did return the keys, but did not remain for a second exit inspection. I am not satisfied that the applicants failed to comply with subsection 17.1(3) of the Act.

The exit inspection report which was prepared on October 5th should have been provided to the respondents by October 10th. The fact that it was not again does not negate it's value in establishing the condition of the rental premises at the end of the tenancy. The only possible consequence for failing to comply with subsection 17.1(5) of the Act is that the landlord is no longer authorized to retain the security deposit against costs of repairs and cleaning. Having previously established that no security deposit was paid, the consequences for this breach are immaterial.

Damages

Flooring

The entry inspection report identifies the flooring in the living room and entry way as "new". The parties agreed at hearing this accurately reflected the living room flooring after the respondents installed the new laminate hardwood flooring.

The exit inspection report identifies "chunks" in the living room and entry way flooring. Photographs taken during the exit inspection do show four separate planks with seven small-ish gouges (chunks) taken out of them. I do not believe these gouges were created by normal usage. The gouges appear to be more likely created by dropping and/or dragging heavy, sharp-edged objects across them. On a balance of probabilities, I am satisfied the gouges in those planks were caused by the negligent or wilful actions of the respondents.

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Keeping in mind that the respondents did still retain the keys to the rental premises between October 5th and 13th, and therefore had access to the premises, it appears based on the testimony and photographic evidence entered by the applicants' representatives that the respondents replaced three of the damaged planks with some that had been left at the rental premises by the applicants early in the tenancy. In doing so, the edges of two additional planks were damaged. The planks used to replace the three damaged planks were not of the same colour and thickness as the original planks, creating a noticeable unevenness and inconsistency in the flooring.

The respondents denied replacing any planks after the initial installation at the commencement of the tenancy, claiming that they installed the planks that were provided by the applicants and that if any of the planks did not match then the flooring was like that since they were installed. However, the respondents also testified that some time after installing the new flooring the applicants' representatives took all but one of the remaining boxes of planks, and that if the three planks were replaced they would have been replaced with planks from the one remaining box of planks at the rental premises. Since those planks were provided by the applicants, they argued, the respondents could not be held accountable for installing the wrong or mismatched planks.

Both the applicants' representatives and the respondents submitted photographs of the living room taken after the respondents installed the new flooring. The applicants' representatives' two photographs provide a relatively clear view of about two-thirds of the floor from just behind the kitchen island looking towards the entry area and of about two-thirds from the kitchen entry next to the island towards the living room picture window. The respondents' one photograph provides a relatively clear view of about one-third of the floor from inside the living room looking towards the corner near the picture window. I accept that the applicants' photographs were taken near the commencement of the tenancy immediately after the flooring was installed, given that the presence of adhesive, tools, cleaning tools, a floor mat,

and what appears to be a cardboard box for the planks also appear in the photographs. The respondents' photograph includes a jack in one wall that does not appear in the applicants' photographs, suggesting the respondents' photograph was likely taken at the end of the tenancy. Also of note is that the respondents' photograph does not appear to show the area where the three planks were replaced, as can be determined by viewing the photographs of those damages.

While I believe it is possible that the applicants may have purchased a mismatched box of planks which may have been the one box left behind at the rental premises, I find it unlikely that the applicants' representatives would have wilfully installed the mismatched planks to replace damaged planks. And even if the applicant's representatives had done such a thing, I find it unlikely that they would have done such an unprofessional job as to cause damage to other planks in the process. On a balance of probabilities I find it more likely than not that the respondents replaced three damaged planks with three mismatched planks, and in the process damaged two more planks.

The applicants claimed three hours of labour to change out the mismatched and damaged planks and costs of one box of planks for a total amount of $241.76, which I am satisfied is reasonable and will allow.

Toilet seat

The applicants claimed costs to replace one missing toilet seat. The respondents disputed their liability for the missing toilet seat, claiming that they had a replacement seat which they forgot to provide to the applicants' representatives and that the original toilet seat had needed to be replaced due to normal wear and tear. The respondents elaborated, explaining that at some point after they moved in the screws holding the toilet seat to the toilet bowl had been stripped and no longer secured the seat in place. Instead of asking the applicants to provide them with a replacement toilet seat, the respondents opted to simply replace the seat

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themselves, which they did with an inexpensive padded seat. While they were preparing to vacate the rental premises they noted that the toilet seat padding had cracked, again through normal wear and tear, so they disposed of the cracked seat and purchased another replacement toilet seat. They did not have an opportunity to install the replacement toilet seat before vacating, and kept forgetting to bring it with them when they did meet the applicant's representatives.

Because the applicants' new tenants were scheduled to take occupancy by October 15th, the applicants' representatives had to ensure the premises was ready for them and so they purchased and installed a new toilet seat. The respondents maintained that because the original seat was damaged by what they perceived as normal wear and tear that they are ultimately not responsible for the costs claimed to replace the missing toilet seat.

Subsection 42(2) of the Act does specify that ordinary wear and tear does not constitute damage, which means that tenants cannot be held liable for costs of repairing damages which are caused by ordinary – or normal – wear and tear. If the screws on the original toilet seat were in fact stripped and no longer securing the seat to the toilet bowl, then the respondents would be correct that they would not be responsible for costs associated with repairing or replacing the toilet seat. However: there was no indication that the damaged toilet seat was reported to the applicants' representatives; the damaged toilet seat itself (or photographs of the damaged toilet seat) was not entered into evidence to substantiate the claim that the screws were stripped; and there was no indication at hearing as to the age of the original toilet seat. The only thing I and the applicants' representatives can be certain of is that there was a toilet seat on the toilet when the tenancy started and that the toilet seat was missing at the end of the tenancy. I am satisfied the respondents are responsible for the missing toilet seat.

Light bulbs

The applicants claimed minor costs to replace burnt out light bulbs. The respondents claimed that they did not need or use all the lights in the house, that many of the lights were never used during the tenancy, and that many of the light bulbs were burned out before they moved in. They believed that the light bulbs fell under the landlord's responsibility to maintain the rental premises in a good state of repair pursuant to subsection 30(1)(a) of the Act.

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Most light bulbs have a relatively specific life expectancy. They are items used on a daily basis, and are generally accepted as the tenants responsibility to replace when they burn out in the course of maintaining the ordinary cleanliness of the rental premises. Subsection 45(2) of the Act specifies that it is the tenant who must maintain the rental premises and all services and facilities provided by the landlord of which the tenant has exclusive use in a state of ordinary cleanliness.

The entry inspection report does not document that any light bulbs were burned out when the respondents moved into the rental premises. Whether or not the respondents chose to use any or all of the lights in the rental premises, they remain responsible for replacing any that burn out during their tenancy. The exit inspection report specifically identifies burned out light bulbs in the kitchen, living room, and main bathroom. I am satisfied the respondents are responsible for the burned out light bulbs.

Closet handle

The exit inspection report identified that the closet handle was broken. However, the applicants' representatives clarified at hearing that the handle was in fact just loose and needed tightening, and that the respondents were only charged for the time it took to tighten the handle. However, to my mind the loosening of a closet door handle is something that usually occurs over time with use and as such is a consequence of normal wear and tear. If the handle was not actually broken, then the respondents cannot be held responsible for causing damage that did not actually occur. I am not satisfied the respondents are liable for costs associated with re-tightening the closet handle.

The applicants's representatives claimed one hour of work to replace the toilet seat, replace the burned out light bulbs, and tighten the closet door handle, including time to pick up the necessary materials from the store. I am prepared to allow 45 minutes for replacing the toilet seat and replacing the burned out light bulbs, at a cost for labour of $51.19, plus the costs of materials in the amount of $36.74.

Cleaning

The applicants claimed cleaning costs for three hours of work to: clean the stove, sweep and mop the floors, clean the dishwasher, clean one of the toilets, clean the interior of cabinets and drawers, and wipe down three walls, one mirror, and one bathroom sink. The exit inspection report and photographs substantiate the applicants' representative's claims that all of the listed items had not been kept ordinarily clean.

The respondents disputed their responsibility for the cleaning, claiming that they returned the premises in a better state of cleanliness than they received it. They also disputed their responsibility for cleaning the stove specifically because – as was documented in the entry inspection report – the stove was in deplorable condition after the previous tenants vacated, the respondents had their own stove that they could use, and the parties agreed to store the rental premises stove in the basement instead.

The argument regarding the stove is well taken, and I am inclined to agree with the respondents that they should not be held responsible to clean a stove that they did not use and did not cause to be dirty. The previous tenants who did cause the stove to be dirty should have been held responsible for cleaning that stove.

With respect to the remaining uncleanliness, I do not agree with the respondents. In this case, the respondents were compensated at the beginning of the tenancy for having to clean the premises themselves when they moved in. As previously mentioned in these reasons for decision, the tenant is responsible for maintaining the ordinary cleanliness of the rental premises during the tenancy, including returning the rental premises to the landlord at the end of the tenancy in a state of ordinary cleanliness. The documents confirm: that there was hair, dust, and debris left in the corners of the floor and in the window sills; that one of the bathrooms had not been adequately cleaned; that the interior of the cabinets and drawers had

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not been cleaned; that the mirrored closet doors had not been wiped of prints and smudges; that three walls had not been wiped of grease or markings; and that the dishwasher had not been cleaned around the inside ledge of the door. I would like to note for the benefit of the respondents that the three walls referenced here are not the walls that were peeling paint or still required painting. No claim was made by the applicants regarding the walls with paint-related issues.

I am satisfied the respondents are responsible for failing to maintain the ordinary cleanliness of the rental premises. The applicants' representatives had claimed 6.5 hours to clean all of the above listed areas including the stove, however, I am not convinced 6.5 hours is reasonable for the limited cleaning that was required. Not including the stove, I estimate the most intensive section of cleaning would have been of the cabinets and drawers, followed by the bathroom. To my mind the cleaning for which I find the respondents responsible should reasonably have taken two housekeepers no longer than three hours to complete. As such, I am prepared to allow cleaning costs for three hours at $45 per hour for a total of $135 plus GST.

Overholding rental arrears

The parties agreed that the claim of rent for October 1st to 5th was reasonable in the circumstances. Given that the respondents did not in fact give notice of their intention to terminate the tenancy agreement in accordance with the Act (having given said notice within the message box of the e-transfer of their September rent, and then subsequently by text message on September 4th), and that they did not finalize the return of possession of the rental premises to the applicants' representatives until October 13th, I am satisfied that the respondents could be held responsible for overholding rent up to October 13th. I accept the applicants' claim of overholding rental arrears to October 5th in the amount of $322.56 as reasonable.

Other issues raised at hearing

At hearing the respondents provided documents regarding issues with the rental premises which were not included or referenced in the application to a rental officer. The respondents cited subsection 68(2) of the Act, which states:

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> At a hearing of an application to terminate a tenancy or to evict a tenant, a rental officer may permit a tenant to raise any issue that could be the subject of an application under this Act, and the rental officer may, if he or she considers it appropriate in the circumstances, make an order on that issue.

This application to a rental officer was not made for termination of a tenancy agreement or for eviction of a tenant. It was made for payment of costs associated with overholding rental arrears, repairs, and cleaning *after a tenancy had already ended*. As such, the respondents' attempt to raise issues that were not part of the application was denied as inappropriate.

I would direct the respondents' attention to subsection 68(1) of the Act, which states:

> An application by a landlord or a tenant to a rental officer must be made within six months after the breach of an obligation under this Act or the tenancy agreement or the situation referred to in the application arose.

To clarify, this means that remedies for problems that arose at the beginning or during the tenancy must be applied for within six months of *when the problems arose*. Remedies for problems arising from or around the termination of the tenancy must be applied for within six months of the end of the tenancy.

Orders

An order will issue:

- requiring the respondents to pay overholding rental arrears in the amount of $322.56; and
- requiring the respondents to pay costs of repairs and cleaning in the amount of $471.44.

Adelle Guigon
Rental Officer