

IN THE MATTER between **NTHC**, Applicant, and **RD and LFE**, 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:

NTHC

Applicant/Landlord

-and-

RD and LFE

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	June 20, 2018
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	AS, representing the applicant JC, witness for the applicant FL, witness for the applicant LFE, respondent RD, respondent
<u>Date of Decision:</u>	July 24, 2018

REASONS FOR DECISION

An application to a rental officer made by HRHA on behalf of the NTHC as the applicant/landlord against RD and LFE as the respondents/tenants was filed by the Rental Office March 21, 2018. The application was made regarding a residential tenancy agreement for a rental premises located in Hay River, Northwest Territories. The filed application was personally served on the respondents April 11, 2018.

The applicant alleged the respondents had caused damages to the rental premises and had failed to pay the associated costs for repairs. An order was sought for payment of the costs of repairs.

A hearing was scheduled for June 20, 2018, by three-way teleconference. AS appeared representing the applicant, with the applicant's maintenance personnel FL and JC as witnesses. LFE and RD appeared as respondents.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them for subsidized public housing commencing August 15, 2016. I am satisfied a valid tenancy agreement is in place in accordance with the *Residential Tenancies Act* (the Act).

Damages

The rental premises is a two-bedroom apartment in a multi-unit building. The building is heated using a boiler system feeding heat through radiators to the individual apartments. As is the usual practice, the radiators are installed along the outside walls.

On January 11, 2018, the radiator fin tube in one of the bedrooms in the rental premises cracked due to freezing, spilling radiator fluid throughout the bedroom, damaging the carpet, underlay, and sub-floor. Neighbours and maintenance personnel attended the rental premises to assist with turning the boiler off, cleaning the initial mess, and setting up temporary electric heaters. The radiator lines to the rental premises were turned off so that the boiler could be turned back on to heat the remainder of the residential complex.

On January 12, 2018, maintenance personnel returned to the rental premises to pull the baseboards, remove the damaged carpet and underlay, and apply cleaning product to the sub-floor.

On January 17, 2018, a plumber returned to the rental premises to replace the fin tubing and ensure the heating system was functioning properly. He noted at the time that the damage he observed could only have been caused if the window directly above the line had been left open in freezing temperatures for a period of time. A photograph of the outside of the bedroom window taken shortly after the fin tubing froze showed substantial frost build up indicative of the window being left partially open during sub-zero temperatures.

The applicant's representative claimed that if the respondents had not opened the window or left the bedroom window open during sub-zero temperatures then the radiator line would not have frozen. The applicant claimed that the damages were caused by the negligence of the respondents, and sought an order for compensation for the costs of repairing the fin tubing. No costs were claimed for damages to the flooring.

Despite admitting that they had on occasion opened the bedroom window during sub-zero temperatures, the respondents disputed their responsibility for the frozen heating line claiming they were not made aware when they moved in that the heating lines could be frozen if the window was opened in sub-zero temperatures. They argued that they were not given instructions by the landlord not to open their windows during sub-zero temperatures.

The respondents indicated that they would open the window on occasion for periods of approximately five minutes at a time to allow for fresh air circulation given that the air circulation in the rental premises was poor. At no time did the respondents complain to the applicant about the poor air circulation. The applicant could not reasonably be expected to address an issue they were not aware of.

The respondents also claimed that the window was not open when the radiator line burst. However, a frozen radiator line does not usually burst or show evidence of splitting until the line thaws.

To my mind it is common sense not to open the windows of a premises during sub-zero temperatures due to the risk of freezing pipes being evident. While it may have been useful and informative for the applicant to include such direction in a notice or in house rules or by signage on the windows, there is no obligation on the applicant to do so.

The respondents chose to open the bedroom window in sub-zero temperatures, and by making that choice they accepted the risks associated with doing so. Together, the respondents admitted to having decades of experience in their own premises, which suggests to me they should be aware of the risks involved in the actions they take and of their obligation to notify the landlord of any issues which may contribute to such actions. Whether or not the respondents ever experienced freeze-ups when leaving windows open at their previous residences does not negate the existence of the risk, nor does it absolve the respondents from the consequences of their actions when a freeze-up does happen. The risk remains, whether experienced or not.

The tenancy agreement and the Act are clear in identifying that the tenant is responsible for any damages caused by their wilful or negligent actions. The respondents' actions in opening the bedroom window in sub-zero temperatures was wilful, they chose to do it. The respondents' choice to do so despite the risk to the pipes – be they for water or heat – was negligent in that they failed to consider what their actions might do to the rental premises.

I am satisfied on a balance of probabilities that the respondents' actions in repeatedly leaving the bedroom window open in sub-zero temperatures resulted in the radiator fin tubing in that bedroom freezing and splitting. I find the respondents liable to the applicant for costs of repairing the radiator fin tubing in the amount of \$796.56.

Order

An order will issue requiring the respondents to pay costs of repairs in the amount of \$796.56.

Adelle Guigon
Rental Officer