

IN THE MATTER between **DA**, Applicant, and **AC and KH**, 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:

**DA**

Applicant/Landlord

-and-

**AC and KH**

Respondents/Tenants

**REASONS FOR DECISION**

**Date of the Hearing:** June 28, 2018

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

**Appearances at Hearing:** DA, applicant  
KH, respondent  
AC, respondent

**Date of Decision:** August 5, 2018

### **REASONS FOR DECISION**

An application to a rental officer made by DA as the applicant/landlord against AC and KH as the respondents/tenants was filed by the Rental Office January 19, 2018. The application was made regarding a residential tenancy agreement for a rental premises located in Norman Wells, Northwest Territories. The filed application was served on the respondent by registered mail signed for May 9, 2018.

The applicant alleged the respondents had abandoned the rental premises, had accumulated rental arrears, had failed to pay utilities, had caused damages to the rental premises, and had left the rental premises in an unclean condition.

A hearing originally scheduled for May 17, 2018, was postponed at the request of the respondent. The hearing was rescheduled for June 28, 2018, by three-way teleconference. DA appeared as applicant. AC and KH appeared as respondents.

#### *Tenancy agreement*

The parties agreed and evidence was presented establishing a residential tenancy agreement between the parties for a fixed-term period from October 1, 2016, to October 1, 2018. The respondents vacated the rental premises, effectively ending the tenancy July 14, 2017. I am satisfied a valid tenancy agreement was in place in accordance with the *Residential Tenancies Act* (the Act).

#### *Rental arrears*

By email dated June 1, 2017, the respondents told the applicant that they might be giving notice to vacate for the end of June, but it was not yet confirmed. The Act requires the tenant in a fixed-term tenancy agreement to give the landlord at least 30 days' written notice to terminate the tenancy on the last day of the fixed-term. Not only was the June 1<sup>st</sup> email improper notice to terminate their fixed-term tenancy, it was not notice to terminate at all. I interpret the June 1<sup>st</sup> email only as a heads' up that the respondents might be leaving.

At any rate, the respondents did not in fact return possession of the premises to the applicant's in-town agent until July 14, 2018. In the interim, the respondents had failed to pay their utilities, which resulted in the power to the rental premises being cut off. The applicant was unable to have the power reconnected until mid-August, which prevented her from being able to advertise the rental premises for rent. The applicant ultimately moved into the rental premises herself when she returned to the community on August 24, 2017.

A tenant in a fixed-term tenancy agreement remains responsible for the rent after abandoning the tenancy either until the last day of the fixed-term or until the landlord re-rents the rental premises, whichever comes first. In this case, the landlord was unable to occupy the rental premises until August 24, 2017, at which time she also had to clean the rental premises to bring it to an ordinary state of cleanliness. The applicant claimed the unpaid rent for June and the full rents for July and August.

The respondents did not dispute the applicant's claim for rental arrears, acknowledging that debt and accepting responsibility for it. They indicated they had not received an accounting of their security deposit, and expect it to be held against the rental arrears.

The applicant claimed that the rent had been reduced from \$2,100 to \$1,950 when the respondents agreed to the two-year fixed-term tenancy agreement. Because the respondents abandoned the rental premises, breaking the fixed-term tenancy agreement, the applicant claimed rental arrears at \$2,100 per month for all months from October 2016 to August 2017. However, the written tenancy agreement makes no mention of the rent discount the applicant is claiming. The written tenancy agreement clearly identifies the rent at \$1,950 per month. As such, the applicant's claim for the additional \$150 per month is denied.

I am satisfied the respondents failed to pay the full amount of the rent for June 2017, and have not paid any rent for July or August 2017. I am satisfied that the respondents abandoned the rental premises without adequate notice of their intentions. I am satisfied the applicant was unable to re-rent the rental premises until she herself took occupancy, due to the condition of the rental premises. I find the respondents have accumulated rental arrears in the amount of \$4,850. The security deposit and interest totalling \$1,000.40 will be applied against the rental arrears.

### *Utilities*

On June 1, 2017, the electricity to the rental premises was cut off by Northwest Territories Power Corporation (NTPC) due to the respondents having failed to pay their electricity account bills. They paid the balance of electricity arrears on June 2, 2017, but were told that because the location of the electricity meter to the rental premises was non-compliant with the NTPC Terms and Conditions of Service it would have to be moved, and it would cost upwards of \$2,500 to bring a lineman into the community to restore electricity. The electricity meter was located inside the rental premises. Paragraph 11.2 of the NTPC Terms and Conditions of Service specifies that “meter receptacles shall be installed on the exterior of single family detached... dwellings.”<sup>1</sup>

The respondents had been told by the applicant when they moved in that the meter was in the house and that they would have to ensure the NTPC was given access when needed to read the meter, but they were not told that the meter being located inside the rental premises was in contravention of the terms and conditions of service. Noone was home to let the NTPC employee into the rental premises when they attended to cut the electricity off. Consequently, the NTPC employee used the only option they had available to them to complete their assigned task, and cut the electricity from the pole outside.

The applicant had been told during her ownership of the premises that the location of the electricity meter should not be inside, but that as long as there were no issues with access she was led to believe there would be no problem with leaving it as is. When the electricity was cut off in June 2017, she was told it would not be reconnected until she had the electricity meter moved to the exterior of the rental premises in accordance with the terms and conditions of service. The applicant made arrangements for Whiponic Wellputer Ltd. to move the electricity meter as required, and ensure the every thing was in compliance with the NTPC Terms and Conditions of Service. The service cost \$5,170.72.

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<sup>1</sup><https://www.ntpc.com/customer-service/residential-service>

The applicant argued that if the respondents had paid their electricity bills as required then the electricity would not have been cut off and the electricity meter would not have had to be moved. The applicant sought compensation for the costs of moving the electricity meter from the respondents, as well as the NTPC re-connection fee of \$291.90.

I agree with the applicant only so far as the re-connection fee is concerned. If the respondents had paid their electricity bills the electricity would not have been disconnected and the applicant would not have had to pay the re-connection fee. I find the respondents liable to the applicant for the re-connection fee of \$291.90.

I do not agree with the applicant with respect to the liability for the costs of relocating the electricity meter. Section 30(1)(b) of the Act holds the landlord responsible for ensuring that the rental premises, residential complex, and all services and facilities are maintained in accordance with all health, safety, maintenance, and occupancy standards required by law. The NTPC Terms and Conditions of Service set out the requirement that electricity meter receptacles must be located outside the premises. The applicant was aware that the location of the electricity meter at her premises was non-compliant with the required standards and chose to leave it that way despite the risk of losing service because of it. While the respondents' failure to pay their electricity bills accelerated when the meter would have to be moved, the applicant would have been required to move the meter at some point. I am not satisfied the respondents are responsible for the costs to move the electricity meter. The applicant's claim for those costs are denied.

### *Cleaning*

The applicant claimed costs associated with cleaning the rental premises. She testified that the premises had not been accessed since July 14, 2017, when the cursory exit inspection was done with her in-town agent and the respondent's sister, until the applicant returned to the community August 24, 2017. On August 24, 2017, the applicant was dismayed to find the rental premises had not been cleaned, and she took photographs at that time. The photographs were entered into evidence.

The photographs confirm the applicant's observations: the walls, floors, countertops, closets, doors, windows, bathrooms, fridge, stove, washer, and dryer had not been cleaned. There was a thick collection of dust on the baseboards, window ledges, radiator covers, and bathroom appliances. The fridge had been emptied of everything except what appeared to be a bottle of Worcestershire Sauce and a box of baking soda, but had not been cleaned at all – the photos show mold growing in the fridge and freezer.

The respondents claimed they had cleaned out the rental premises during the month of June and were fully out of the premises by June 29, 2017. They attempted to raise doubt as to whether the uncleanliness was left by them or if it had been created between July 14<sup>th</sup> and August 24<sup>th</sup>. I find the suggestion that the extent of uncleanliness depicted in the photographs could have accumulated during the six-week period that it sat empty extremely unlikely. I believe the respondents removed their belongings when they "cleaned out" the rental premises; I do not believe they returned the rental premises to an ordinary state of cleanliness when they vacated.

I am satisfied the amount claimed by the landlord as compensation for cleaning the rental premises is reasonable. I find the respondents liable to the applicant for costs of cleaning in the amount of \$600.

### *Repairs*

The applicant claimed costs to patch and paint holes in the living room, stairwell, and bedroom walls, to replace the locks on the exterior doors, to replace the refrigerator, and to repair the garage door. An emailed quote from a local contractor was provided to substantiate the costs claimed.

### Patching and painting

The provided invoice quoted \$3,000 to patch and paint "cracks and hole for the living room area, going up the stairs and one bedroom." The provided photographs identify six walls with holes requiring patching, which would have necessitated painting to cover the repairs. There

are no identifiable “cracks”. The respondents did not dispute their responsibility for the holes, but did indicate that two already patched areas on one of the walls was like that when they moved in.

While I am satisfied that the respondents are responsible for the holes in the six identified walls, I am not convinced the quote provided is strictly for those six walls. Based on the description of the work, I suspect the quote covers some additional work for which the respondents are not responsible, as well as likely painting undamaged walls in the living room and stairwell. I find the respondents liable to the applicant for the costs of patching and painting six damaged walls, and I am prepared to grant costs in the amount of \$1,800 for those repairs.

#### Locks

The applicant claimed costs to replace the two exterior door locks in the amount of \$500. The respondents claimed they had permission to exchange those locks when they moved in because the keys didn’t work. The applicant does not dispute this claim, but testified that the locks were actually broken when she returned to the premises. The respondents made no other submissions regarding the locks. I am satisfied on a balance of probabilities that the exterior door locks were damaged and that the respondents are responsible for them. I find the respondents liable to the applicant for the costs to replace the door locks in the amount of \$500.

#### Refrigerator

The applicant claimed \$1,250 to replace the refrigerator. However, the applicant provided photographs of the refrigerator before and after cleaning it, and it is evident the applicant was successful in thoroughly cleaning the appliance. I am not satisfied that the refrigerator was damaged so as to require replacement. The applicant’s claim for costs to replace the refrigerator are denied.

### Garage door

The applicant claimed \$1,000 to repair the garage door. A photograph submitted by the applicant shows the bottom panel of the garage door is bent inwards, off the track. The respondents claim that the garage door didn't work properly when they tried to use it, and that they haven't used it since the first time they tried. The garage door has apparently been in the depicted condition since then. No indication was made from either party as to whether or not the damage was reported to the applicant when it occurred. At any rate, I did not hear any suggestion that the depicted damage was pre-existing. I am satisfied that the depicted damage was caused by the respondents' actions and as such I find the respondents liable to the applicant for the costs of repairing the garage door in the amount of \$1,000.

### *Abandoned personal property*

The applicant claimed costs associated with the removal and storage of the respondents' abandoned personal property which was left in the yard. The applicant received permission from the Rental Officer on May 14, 2018, to dispose of the abandoned personal property, and there are provisions under sections 64 and 65 for the disposal of abandoned personal property. The applicant confirmed that she has not in fact disposed of the property yet because she does not have the money to pay the local contractor to do so properly; she indicated the respondents are welcome to get the property any time they wish before she finally does dispose of it. Given the mentioned provisions of the Act respecting abandoned personal property and the fact that the respondent has not in fact incurred any costs associated with the removal and disposal of the abandoned personal property, the applicant's request for compensation is denied.

### *Lost wages and moving costs*

The applicant claimed costs associated with lost wages and moving back to the community as a direct consequence of the respondents abandoning the rental premises. This claim is denied. The applicant was not obligated to move back to the community to mitigate her losses; she



was obligated to re-rent the premises as soon as practically possible and at a reasonable rent to mitigate her losses. Costs associated with attending to the management of the rental premises are a cost of doing business as a landlord.

*Orders*

An order will issue:

- requiring the respondents to pay rental arrears in the amount of \$3,849.60;
- requiring the respondents to compensate the applicant for losses suffered as a direct result of failing to pay utilities in the amount of \$291.90;
- requiring the respondents to pay costs for cleaning the rental premises in the amount of \$600; and
- requiring the respondents to pay costs for repairs in the amount of \$3,300.

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Adelle Guigon  
Rental Officer