

IN THE MATTER between **NTCSC**, Applicant, and **EZ**, 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 **Adelle Guigon**, Rental Officer,

BETWEEN:

**NTCSC**

Applicant/Landlord

-and-

**EZ**

Respondent/Tenant

**REASONS FOR DECISION**

<b><u>Date of the Hearing:</u></b>	<b>June 27, 2018</b>
<b><u>Place of the Hearing:</u></b>	<b>Yellowknife, Northwest Territories</b>
<b><u>Appearances at Hearing:</u></b>	<b>GL, representing the applicant EZ, respondent LS, assisting the respondent</b>
<b><u>Date of Decision:</u></b>	<b>August 5, 2018</b>

### **REASONS FOR DECISION**

An application to a rental officer made by NTCSC as the applicant/landlord against EZ as the respondent/tenant was filed by the Rental Office April 6, 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 respondent April 19, 2018.

The applicant alleged the respondent had damaged the overhead garage door to the residential complex's underground parking area. An order was sought for payment of costs for repairs or termination of the tenancy agreement.

A hearing was scheduled for June 27, 2018, in Yellowknife. GL appeared representing the applicant. EZ appeared as respondent, with LS appearing to assist the respondent.

#### *Tenancy agreement*

The parties agreed and evidence was presented establishing a residential tenancy agreement between the parties for subsidized public housing commencing April 1, 2016. I am satisfied a valid tenancy agreement is in place in accordance with the *Residential Tenancies Act* (the Act).

#### *Damages*

On or about August 8, 2017, the motor operating the overhead garage door to the underground parking garage at the residential complex ceased functioning. Replacement parts for the motor had to be shipped from outside the community. The applicant posted notices to all tenants and users of the underground parking garage at the entry and exit doors, at the garage door itself, and at the elevators, informing the users of the required repairs. The notice elaborated that under the circumstances the garage door would be secured closed from 11:00 p.m. to 8:00 a.m. until the motor was repaired, and that any tenants requiring use of their vehicles between those times would be required to remove their vehicles from the garage before the garage door was secured for the night and park on the street. The garage door was opened manually each morning at 8:00 a.m. and left open for the day until 11:00 p.m.

The applicant confirmed at hearing that the manual opening and closing of the garage door required use of a particular technique to ensure it operated properly and safely. The night security guard was not authorized to, nor trained to, manually open the garage door. Only the applicant's maintenance personnel manually opened and closed the garage door each day.

The respondent admitted he was aware the garage door was not working, but claimed he believed it had been fixed and was functioning again on August 11, 2018. He believed it had been fixed because the garage door was closed when he tried to leave the garage. Not usually leaving the garage during the early morning hours, the respondent claims he thought the garage door was being left open all day and night until the repairs were complete. So when he saw the garage door closed he assumed it was repaired.

On August 11, 2018, at approximately 4:40 a.m., the respondent – who is a cab driver – attempted to leave the underground garage to attend a service call. When the door would not open automatically for him, he called security. Security came down to the garage and told the respondent that the garage door had not yet been repaired, that he could not open it, and that the respondent would not be able to remove his vehicle at that time. The respondent proceeded to manually open the garage door himself. Security video evidence submitted by the applicant shows the garage door rapidly and violently springing up the tracks, and the top and bottom panels swinging loose from the tracks, nearly hitting the security guard. The respondent then got back into his vehicle and left the underground parking garage.

The security guard contacted the maintenance personnel, who attended to repair the garage door. The garage door mechanism was disconnected from the garage door panels, each panel was disassembled from each other, the middle panel was removed from the track, the tracks were re-aligned, the panels were re-assembled, and then the door was re-installed. This repair work took the maintenance personnel four hours to effect. An invoice was generated for the repair work in the amount of \$1,000. The maintenance personnel's overtime rates were applied given that the work was required and performed from 4:30 a.m. to 8:30 a.m.

The respondent explained that he required egress from the underground parking at that hour because he had committed to transporting a client to the airport. When asked, he claimed that he did not think to call either his dispatch or a colleague to take the transfer for him, and that even if he had thought to do so he would not have been permitted to by his employer. I believe that the respondent did not think to call anyone to take the transfer for him, but I do not believe that he would not have been permitted to do so. However, the reasons the respondent required egress are not at issue; what is at issue is whether or not the respondent is responsible for damaging the garage door.

It is clear to me that the applicant did post notices regarding the temporary entry and exit restrictions imposed while waiting for the garage door motor to be repaired. It is also clear to me that the respondent was aware of the restrictions, but either did not fully read the posted notices or misunderstood them with respect to the hours the garage door would be secured, and made the incorrect assumption that the garage door had been repaired. Despite being told by the security guard that he had assumed incorrectly and that the garage door could not be opened at that time, the respondent chose to take matters into his own hands and opened the garage door anyway. The respondent's action resulted in the described damage to the garage door.

I am satisfied that the respondent wilfully opened a garage door he knew was not safely operational. I am satisfied that the respondent's action caused damages to the garage door, requiring the applicant's maintenance personnel to effect emergency repairs. I find the respondent liable to the applicant for the costs of repairing the garage door in the amount of \$1,000. A parking credit of \$84 recorded October 1, 2017, and a rent payment made March 1, 2018, which included an extra \$62, result in a total credit to the respondent's account in the amount of \$146, which will be applied against the costs of repairs.

*Application of payments*

I would like to make note of another issue which was raised in the course of hearing this matter. It appears that after the respondent was invoiced for the repair of the garage door, the invoice was registered against the respondent's rent account and all subsequent payments made by the respondent were applied against the repairs invoice. The respondent has diligently paid the full amount of his rent each month when due, and at no time did he instruct the applicant to apply the rent payments against the costs of repairs, especially given he was disputing his responsibility for those costs. The applicant arbitrarily and unilaterally applied the payments meant for rent against the costs of repairs. To my mind it is inappropriate for the landlord to apply payments against anything other than what the tenant says he is making the payment for. To be clear in this instance, the respondent has not been late paying his rent, and the respondent has not accumulated rental arrears.

*Order*

An order will issue requiring the respondent to pay costs of repairs in the amount of \$854.

---

Adelle Guigon  
Rental Officer