

IN THE MATTER between **I.D.**, Applicant, and **L.K.**, 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:

I.D.

Applicant/Tenant

-and-

L.K.

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: September 26, 2018

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: I.D., applicant
V.B., representing the applicant
L.K., respondent
E.K., representing the applicant

Date of Decision: September 30, 2018

REASONS FOR DECISION

The parties entered into a written monthly tenancy agreement commencing on August 1, 2017. The monthly rent for the premises was set out as \$2600 and the tenant was responsible for costs of water and electricity. A security deposit of \$2600 was required and paid in full on August 1, 2017.

The respondent served a notice of termination on the applicant on October 15, 2017 seeking vacant possession on November 30, 2017. The applicant endorsed the notice as "understood and agreed".

The respondent served a notice on the applicant dated November 21, 2017 acknowledging the applicant's request to extend the tenancy into December or January. The respondent advised that the rent would be increased to \$1500/week or \$215/day inclusive of utilities in accordance with "our standard BNB rate". The applicant paid the increased December, 2017 rent of \$6000.

The applicant vacated the premises on February 15, 2018.

The application was filed on July 12, 2018. The applicant alleged that the rent increase in December, 2017 was not in accordance with the *Residential Tenancies Act* and sought a rent refund of \$3400, the difference between \$2600 and \$6000.

The respondent stated that they did not intend to rent the premises at all, but to instead use it as a bed and breakfast. When the applicant, an acquaintance, lost the use of her condominium unit due to a fire, the respondent agreed to permit her to rent the premises with the understanding that she would move back to her condominium as soon as the repairs were completed. The applicant was required to provide a written tenancy agreement to her insurer in order to access her fire insurance for living expenses while the repairs were undertaken.

There were construction delays and the applicant, who had been expected to vacate the premises at the end of November, asked for an extension. The respondent agreed but raised the rent to \$6000/month via the November 21, 2017 notice. The respondent stated that they lowered the rent to the original \$2600 for January and February.

The respondent has retained the security deposit but has not issued a statement of the deposit.

The respondent submitted that the tenancy agreement was a special type of agreement, only formed to assist the applicant during the loss of her condominium and enable her to access her insurance. They stated that they had not intended to rent the premises at all but rather use it as a bed and breakfast unit.

Rent Increase Provisions

While there are provisions in the *Residential Tenancies Act* which would allow a landlord to terminate a tenancy agreement if the rental premises are to be converted to a use other than rental premises, the sole provisions for rent increases are contained in section 47 of the Act. Section 47 of the *Residential Tenancies Act* sets out the provisions for rent increases during a tenancy agreement. The pertinent sections are as follows:

- 47. (1) Notwithstanding a change in landlord, no landlord shall increase the rent in respect of a rental premises until 12 months have expired from**
- (a) the date the last increase in rent for the rental premises became effective; or**
 - (b) the date on which rent was first charged, where the rental premises have not been previously rented.**
- (2) The landlord shall give the tenant notice of the rent increase in writing at least three months before the date the rent increase is to be effective.**
- (3) An increase in rent by a landlord is not effective until three months have expired from the date of the notice of the rent increase.**

Notwithstanding the date of the last rent increase, the notice of November 21, 2017 could not have been effective until March 1, 2018. The applicant vacated the premises on February 15, 2018. I find the rent increase a breach of section 47. The legal monthly rent for the premises throughout the tenancy was \$2600.

Security Deposit and Interest

The applicant did not dispute the retention of the security deposit, stating that it was provided as payment of the November, 2017 rent. The respondent failed to provide any statement of the deposit, interest or deductions at the end of the tenancy in accordance with section 18.

- 18. (7) A landlord who intends to withhold all or a portion of a security deposit, a pet security deposit or both shall, within 10 days after the day a tenant vacates or abandons the rental premises,**
- (a) give written notice to the tenant of that intention; and**
 - (b) subject to subsection (9), return the balance of the deposit or deposits to the tenant.**

(8) A notice must include

- (a) an itemized statement of account for the deposit or deposits;***
- (b) a final itemized statement of account for any arrears of rent that the landlord is claiming; and***
- (c) subject to subsection (9), a final itemized statement of account for any repairs that the landlord is claiming.***

The applicant provided a page of handwritten calculations made by the respondent, suggesting that the fifteen days of the February, 2018 rent and the utilities (water and electricity) for January and February, 2018 had not been paid. The applicant disputed the amounts alleged owing, stating that the landlord had verbally forgiven the rent for February in consideration of cleaning work she had done and had failed to provide any documentation of the utility costs. The landlord has not made an application. I shall not consider the dispute concerning the February, 2018 rent and utilities. This should properly be the subject of an application by the landlord. I shall consider the interest on the security deposit which I find to be \$0.71.

Conclusion

I find the respondent in breach of the rent increase and security deposit provisions contained in sections 47 and 18. I find the amount of rent overpaid by the applicant to be \$3400 and the security deposit interest to be \$0.71. An order shall issue requiring the respondent to return rent and interest on the security deposit in the amount of \$3400.71.

December/17 rent paid	\$6000.00
less December rent	<u>2600.00</u>
Overpayment of rent	3400.00
Plus interest on deposit	<u>0.71</u>
Amount owing applicant	\$3400.71

Hal Logsdon
Rental Officer