

IN THE MATTER between **G.M. AND T.M.**, Applicants, and **L.H. AND C.C.**, 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 **Hal Logsdon**, Rental Officer,

BETWEEN:

G.M. AND T.M.

Applicants/Landlords

-and-

L.H. AND C.C.

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	September 26, 2018
<u>Place of the Hearing:</u>	Yellowknife, NT
<u>Appearances at Hearing:</u>	J.W., representing the applicants L.H., respondent C.C., respondent
<u>Date of Decision:</u>	October 4, 2018

REASONS FOR DECISION

The parties entered into a written two year term tenancy agreement commencing on October 28, 2016. The monthly rent for the premises was \$1900. A security deposit of \$1750 was required and paid in full on October 1, 2016. An inspection was completed on October 27, 2016 and a written report was signed by both parties.

The applicant filed an application on July 27, 2018 alleging non-payment of rent, disturbance and damages to the premises and seeking payment of the alleged rent arrears, repair costs, termination of the tenancy agreement and eviction.

The applicant's representative stated that he attended the premises in July, 2018 to make some repairs to the exterior of the premises and found significant tenant damages. The applicant's representative stated that he returned to the rental premises on August 13, 2018 and found the respondents in the process of moving out. The respondents confirmed that they left the premises on August 14. A check out inspection was completed dated August 14, 2018 and signed by both parties. The applicant has retained the security deposit and interest but has not issued a statement of the deposit and deductions.

The applicant provided a statement of the rent account in evidence which indicated a balance of rent owing in the amount of \$5970. The applicant also provided an itemised list of repair costs totalling \$1810, several photographs of the premises and receipts for repair materials.

The respondents stated that they believed there were errors and/or omissions in the rent statement but failed to provide any specific information about what they considered to be in error. The respondents stated that the method of getting the rent payments to the landlord was difficult for them. The respondents also stated that the premises, which consist of a ground floor apartment in a complex of two units was technically a one bedroom unit with a rent more appropriate for a two bedroom unit.

The respondents stated that there had been problems with the heat in the unit and that they had intended to file an application but did not do so. They also alleged that some of their belongings, specifically an engine block was disposed of without their permission. The applicant stated that any valuable goods had been stored in a shed and that the respondents assisted him to load the engine block in a rented trailer so it could be taken to the dump.

Rent Arrears and Compensation for Lost Rent

The *Residential Tenancies Act* does not specify any particular method whereby the rent must be paid. The tenancy agreement between the parties, which was made in writing in the approved form, specifies only that the monthly rent of \$1900 be paid on the 26th day of every month plus an additional \$50 for each vehicle parked on the premises. No parking charges are included on the landlord's rent statement.

The *Residential Tenancies Act* does not set out the quantum of rent that may be charged for any particular type or size of unit. The Act only regulates the way in which rent increases may be levied. There is no rent control in the Northwest Territories.

This application was filed on July 27, 2018 and a notice of the hearing was personally served on the respondents on August 14, 2018. The application included a statement of the rent account. Included with the notice was an information sheet advising parties to ensure that all evidence is brought to the hearing. In my opinion the respondents had more than adequate time to review the rent statement and assemble evidence to support the existence of any errors or omissions.

As noted previously, the written tenancy agreement between the parties stipulates that the monthly rent be paid on the 26th day of every month. The applicant has included the August, 2018 rent of \$1900 on the statement when, in fact, the August rent had not become due when the respondents vacated the premises ending the tenancy agreement. In other respects, I find the rent statement in order. I find rent arrears in the amount of \$4070.

Balance as per rent statement	\$5970
Less August/18 rent charge	<u>1900</u>
Rent arrears	\$4070

Since the term of this tenancy was to end on October 28, 2018 the abandonment by the tenants on August 14 leaves them potentially liable for loss of future rent. Sections 62 and 5 of the Act set out these provisions.

62.(1) Where a tenant abandons a rental premises, the tenancy agreement is terminated on the date the rental premises were abandoned but the tenant remains liable, subject to section 5, to compensate the landlord for loss of future rent that would have been payable under the tenancy agreement.

5.(1) Where a landlord or tenant is liable to the other for damages as a result of a breach of a tenancy agreement or this Act, the landlord or tenant entitled to claim damages shall mitigate his or her damages.

The applicant testified that the premises were re-rented on September 1, 2018 and sought compensation for the full amount of the August rent of \$1900.

Although no evidence was submitted by either party with regard to the mitigation of loss, in my opinion the compensation requested is reasonable. Half of the loss is, in fact due, to the landlord's unusual designation of the monthly rent due date as the 26th. The tenants enjoyed possession for half of August. The ability of any landlord to re-rent in the middle of the month is limited as most tenancy agreements are terminated at the end of the month and most prospective tenants seek possession at the beginning of a month. I find the respondents liable for the full amount of the August, 2018 rent in the amount of \$1900.

Repair Costs

Comparing the inspection reports, photographs and invoices, I find all of the repair costs claimed by the applicant to be reasonable and documented by the inspection reports and photographs except the following:

Smoke Alarms	The only indicated problem with the smoke alarms was the replacement of the batteries. This is a maintenance item and is the responsibility of the landlord. The requested compensation of \$10 is denied
General Cleaning	The only areas noted on the inspection report marked as unclean were the stove and fridge and the walls in one bedroom. As the bedroom walls were also marked as requiring re-painting, only spot cleaning would have been necessary. In my opinion, these tasks could have been performed for a cost of \$50. The applicant's request for compensation is therefore reduced from \$200 to \$50.
Garage/Sidewalk	There are no notations on the inspection reports for either of these items. The requested compensation of \$311 is denied.

Wall Repairs The unspecified wall repairs are not noted on the inspection reports. Painting is noted but no evidence that painting was required due to the tenant's negligence was provided. The applicant's request for compensation of \$177 is denied.

I find the respondents in breach of their obligation to repair damages to the rental premises and find reasonable costs of repair to be \$1162, calculated as follows:

Total repair costs sought	\$1810
Less items denied	<u>648</u>
Compensation ordered	\$1162

Security Deposit and Interest

I find the interest on the security deposit to be \$1.64. Applying the security deposit and accrued interest first to the rent arrears, I find rent arrears due to the applicant of \$2318.36, compensation for lost rent due to the applicant of \$1900 and repair costs due to the applicant of \$1162.00, calculated as follows:

Security deposit	(\$1750.00)
Interest	(1.64)
Less rent arrears	<u>4070.00</u>
Subtotal - Rent	\$2318.36
Plus compensation for lost rent	1900.00
Plus repair costs	<u>1162.00</u>
Total due to applicant	\$5380.36

Hal Logsdon
Rental Officer