

IN THE MATTER between **NPRLP**, Applicant, and **PF**, 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:

NPRLP

Applicant/Landlord

-and-

PF

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	October 4, 2018
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	CDL, representing the Applicant NAY, representing the Applicant
<u>Date of Decision:</u>	October 4, 2018

REASONS FOR DECISION

An application to a rental officer made by NPRLP as the Applicant/Landlord against PF as the Respondent/Tenant was filed by the Rental Office May 29, 2018. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was served on the Respondent by email deemed received August 12, 2018, pursuant to subsection 4(4) of the *Residential Tenancies Regulations* (the Regulations).

The Applicant alleged the Respondent had repeatedly failed to pay rent and had accumulated rental arrears. An order was sought for payment of the rental arrears, termination of the tenancy agreement, and eviction.

At a hearing scheduled for August 2, 2018, it was determined that all reasonable efforts to serve the filed application package and notice of attendance on the Respondent were not taken by the Applicant. The hearing was adjourned *sine die* pending successful service of the application package on the Respondent.

The hearing was re-scheduled to October 4, 2018, in Yellowknife. CDL and NAY appeared representing the Applicant. PF was served notice of the hearing by email deemed received September 17, 2018. The Respondent did not appear at the hearing, nor did anyone appear on the Respondent's behalf. The hearing proceeded in the Respondent's absence pursuant to subsection 80(2) of the *Residential Tenancies Act* (the Act).

Tenancy agreement

The Applicant's representative testified and evidence was presented establishing a residential tenancy agreement between the parties commencing March 12, 2018. After speaking with the Respondent's father, the Applicant confirmed that the Respondent had abandoned the rental premises and they had re-claimed possession effective September 21, 2018. Consequently, the Applicant's representative withdrew their request for termination of the tenancy and eviction.

Rental arrears

The resident ledgers entered into evidence represent the Landlord's accounting of monthly rents, late payment penalties, and payments received against the Respondent's rent account. Rent was established at \$1,640 per month. The late payment penalties were calculated in accordance with the Act and Regulations. The last payment received against the rent account was recorded March 13, 2018.

The resident ledger included a charge recorded September 24, 2018, in the amount of \$1,640 described as being for "Improper Notice / Lease Break Fee". Such penalties are prohibited in the Act. The tenancy agreement between the parties was for a fixed-term to March 31, 2019. When a fixed-term tenancy agreement is abandoned or broken, or ended other than in accordance with the Act, then the tenant would remain responsible for the rent either until the end of the fixed term or until a new tenant takes occupancy of the rental premises, whichever comes first. The same applies to month-to-month tenancies, except that the tenant would only be responsible for the rent up to the last day of the following month or to the day that a new tenant takes occupancy of the rental premises, whichever comes first.

Section 5(2) of the Act requires the landlord to mitigate their losses where a tenancy has been abandoned or terminated other than in accordance with the Act by re-renting the rental premises for as soon as practicable after the date the tenant vacated or abandoned the rental premises and at a reasonable rent.

The liability of the tenant for lost future rent cannot be assessed until that rent is actually due. The rent for the following month is not lost if the landlord has successfully secured a new tenant by the first day of that month. If the landlord has not complied with their obligation to mitigate their losses by seeking a new tenant then the landlord may not be entitled to lost future rent from the abandoning tenant.

In this case, the rent for September 2018 had already become due and payable when the tenancy was deemed abandoned. I believe the rental premises had been rented out for October 1, 2018. While the Landlord is entitled to the full rent for September, they are not entitled to the rent for October and are prohibited from charging a penalty for breaking the fixed-term tenancy agreement. The resident ledger will be adjusted to deduct the "Improper Notice / Lease Break Fee" of \$1,640 from the balance.

I am satisfied the adjusted resident ledger accurately reflects the current status of the Respondent's rent account. I find the Respondent has accumulated rental arrears in the amount of \$10,048.

Repairs and cleaning

An exit inspection was conducted of the rental premises September 21, 2018, which found: minor damages to the walls in the living room and bathroom, one damaged switch cover in the hallway, and that the rental premises had not been cleaned. Additionally, the Respondent did not return the laundry card that was assigned to him. Photographs taken during the exit inspection were entered as exhibits which substantiated the claimed damages and uncleanliness. The Applicant claimed costs for the associated repairs and cleaning, and replacement of the laundry card, in the total amount of \$570.

I am satisfied the exit inspection and photographs accurately reflect the condition of the rental premises at the end of the tenancy. I find the Respondent responsible for the identified damages, uncleanliness of the rental premises, and for failing to return the laundry card. I find the Respondent liable to the Applicant for costs of repairs and cleaning in the amount of \$570.

Orders

An order will issue requiring the Respondent to pay rental arrears in the amount of \$10,048, and requiring the Respondent to pay costs of repairs and cleaning in the amount of \$570.

Adelle Guigon
Rental Officer