

IN THE MATTER between **LGL**, Applicant, and **PCD**, 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:

LGL

Applicant/Landlord

-and-

PCD

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>	ZT, representing the Applicant PCD, Respondent
<u>Date of Decision:</u>	October 20, 2018

REASONS FOR DECISION

An application to a rental officer made by LGL as the Applicant/Landlord against PCD as the Respondent/Tenant was filed by the Rental Office August 23, 2018. The Application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The Applicant served the filed application on the Respondent by email deemed received September 8, 2018, pursuant to subsection 4(4) of the *Residential Tenancies Regulations* (the Regulations).

The Applicant alleged the Respondent had abandoned the rental premises and sought an order for compensation for lost future rent and costs associated with re-renting the rental premises.

A hearing was scheduled for October 4, 2018, in Yellowknife. ZT appeared representing the Applicant. PCD appeared by telephone as Respondent.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them for a bedroom with shared facilities commencing December 9, 2017, for a fixed-term to May 31, 2018. The Respondent vacated the rental premises, effectively ending the tenancy February 28, 2018. I am satisfied a valid tenancy agreement was in place in accordance with the *Residential Tenancies Act* (the Act).

Previous order

Rental Officer Order Number 16148 issued August 22, 2018, required the Landlord to return to the Tenant the security deposit in the amount of \$650.06. The presiding Rental Officer found at that time that although the Tenant had not given proper notice in accordance with the Act, the tenancy did end when the Tenant vacated the rental premises on February 28, 2018. The Landlord had retained the security deposit against the rent for March. Given that the Act only permits the security deposit to be retained against rental arrears accumulated as of the date the Tenant vacates the rental premises and the Tenant did not in fact carry any rental arrears on that date, the Rental Officer found the Landlord had retained the security deposit in contravention of the Act.

Applicant's submissions

The Applicant made a claim in this application for:

- the rent for March 2018 in the amount of \$650,
- costs for advertising the rental premises as available for rent in the amount of \$92.40,
- costs for the application to a rental officer filing fee of \$100,
- 15 percent administration fees on the lost rent, advertising costs, and filing fee in the amount of \$126.36, and
- 5 percent GST on the administration fees in the amount of \$6.32.

The Applicant testified that they had not received confirmation that the Respondent had vacated the rental premises until February 28, 2018. The Applicant acknowledged that the Respondent had mentioned verbally that they wanted to end the tenancy due to serious safety issues which arose involving the other tenant sharing the rental premises, but denied receiving any written notice of the Respondent's intention to vacate the rental premises. The Applicant conceded, and provided evidence, that the room was not advertised as available to rent until March 14, 2018. The Applicant successfully re-rent the room as of April 1, 2018.

Respondent's submissions

The Respondent testified and provided evidence that he did in fact send the Applicant written notice to terminate the tenancy agreement by email sent to the Applicant's confirmed email address on February 15th. Additional arguments were put forward related to the safety issue which instigated the Respondent's desire to end the tenancy, but those arguments are not technically relevant to the issues forming this application.

Lost future rent

Subsection 51(1) of the Act specifies that a tenant may only terminate a fixed-term tenancy agreement by giving the landlord at least 30 days' written notice for the last day of the fixed-term. In this case, the fixed-term tenancy was set to end May 31st, therefore the earliest the Respondent could have terminated the tenancy agreement in accordance with the Act would have been for May 31st, and then only if he had given the Applicant written notice on or before May 1st. Had the tenancy been terminated in this manner then the Respondent would have had no further obligations to the Applicant after May 31st.

Subsection 1(3)(a) of the Act specifies that a tenant has abandoned the rental premises where the tenancy has not been terminated in accordance with the Act and the landlord has reasonable grounds to believe that the tenant has left the rental premises. In this case, while the Respondent did give the Applicant written notice to terminate the tenancy agreement, that written notice was given for February 28th not May 31st and, therefore, the tenancy was not terminated in accordance with the Act. The Respondent did in fact vacate the rental premises for February 28th and the Applicant had reasonable grounds to believe that the Respondent had left the rental premises by February 28th. I am satisfied that the Respondent abandoned the rental premises February 28th.

Because the tenancy was for a fixed-term, the Respondent would normally be liable for the rent either until the end of the fixed-term period or until the date a new tenant took occupancy, whichever came first. However, subsection 5(2) of the Act specifies that where a tenant vacates or abandons rental premises other than in accordance with the Act or the tenancy agreement, the landlord *must* mitigate their losses by renting the rental premises again as soon as is practicable and at a reasonable rent. That means the landlord cannot delay in their efforts to find a new tenant.

In this case, the Applicant was notified by email on February 15th that the Respondent intended to vacate the rental premises by February 28th. The Applicant could reasonably expect that the rental premises would be available to re-rent as of March 1st. The Applicant received confirmation that the rental premises had been vacated February 28th, and the subsequent exit inspection confirmed that there were no damages to the rental premises and the rental premises was clean; there were no reasons why the rental premises could not be immediately moved into by another tenant.

The Applicant did not advertise the rental premises as available to rent until March 14th. Had the Applicant started advertising the rental premises as available to rent within days of receiving the emailed notification from the Respondent then they would have made reasonable efforts to mitigate their losses. It is possible they may have been able to secure a new tenant for March 1st or even March 15th had they advertised right away. If the Applicant had advertised right away and still not been able to secure a new tenant until April 1st then they would undeniably have been entitled to the rent for March from the Respondent.

I am not satisfied that the Applicant made reasonable efforts to re-rent the rental premises for after the Respondent vacated, and as such I am not satisfied the Applicant is entitled to the rent for March from the Respondent. The Applicant's claim for the rent for March is denied.

Advertising fees

The Applicant claimed compensation for the costs of advertising the rental premises as available to rent. Given that the rental premises would have to be advertised as available to rent if the tenancy had been terminated in accordance with the Act, it seems to me that advertising costs are a cost of doing business as a landlord rather than a loss suffered as a direct result of a tenant's breach. The Applicant's claim for costs of advertising is denied.

Application filing fee

The Applicant claimed compensation for the \$100 application filing fee. This too is a cost of doing business as a landlord, and there are no provisions in the Act for costs of making an application to be awarded to either party. The Applicant's claim for the application filing fee is denied.

Administration fee and GST

The Applicant claimed a 15 percent administration fee and 5 percent GST calculated against the above denied claims. Clearly given the denial of those claims there are no amounts to calculate the administration fee and GST against. I would like to clarify, however, that while a reasonable administration fee is usually allowed against costs incurred for items the landlord would not normally be responsible for correcting, such an administration fee would be inappropriate against rental arrears or lost future rent. The Act and Regulations provide for late payment penalties for rent that is late; no other penalties are permitted for rent.

Decision

The Applicant's claim is denied in full for the reasons stated above.

Adelle Guigon
Rental Officer