File #16228

IN THE MATTER between **C.F. AND R.D.**, Applicants, and **X.Y. AND C.T.**, 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:

C.F. AND R.D.

Applicants/Tenants

-and-

X.Y. AND C.T.

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing:	**October 24, 2018**
Place of the Hearing:	**Yellowknife, NT**
Appearances at Hearing:	**C.F., applicant** **R.D., applicant** **C.T., representing the respondents**
Date of Decision:	**November 8, 2018**

REASONS FOR DECISION

The tenancy agreement between the parties was made in writing for a six month term commencing on December 1, 2017 and was subsequently renewed on a monthly basis. The tenancy agreement was executed on November 3, 2017. The monthly rent for the premises was $1650 and a security deposit of $1200 was required. A check-in inspection report was completed on December 8, 2017. It was not signed by the by applicants but they were provided with a copy. A notation on the tenancy agreement sets out the payment schedule for the security deposit:

$200 on signing of the lease
$500 on December 01, 2017
$500 on January 15, 2018

The applicants vacated the premises on or about September 12, 2018. The application was filed on September 12, 2018. The applicants allege that the respondents failed to maintain the premises in a good state of repair and forced them to vacate the premises when they sought an inspection of the premises by an environmental health officer.

The respondents completed a statement of the security deposit on October 4, 2018 deducting carpet cleaning costs ($173.25) from the security deposit ($700) and accrued interest ($0.28) leaving a balance owing to the applicants of $527.03. The statement and a cheque for the balance was given to the applicants.

There is no evidence of a check-out inspection being conducted.

The applicants sought monetary relief related to both the alleged failure of the landlord to repair as well as the alleged disturbance of their possession. The applicants also sought the return of their security deposit and interest in full.

Security Deposit

The parties disagree with the amount of security deposit paid by the applicants. The applicants testified that the security deposit was paid in full in three installments in accordance with the schedule set out in the tenancy agreement. The respondent testified that they received only two payments totalling $700 as follows:

$200 paid on October 19, 2017
$500 paid on January 16, 2017

The respondent's record of security deposits indicated that only two payments were received totalling $700. The applicants provided a statement of account activity for October, 2017 and noted that there was no payment of $200 dated October 19. The applicants offered no evidence that the security deposit was paid in full or that all three installments were paid. The burden of proof lies with the applicants in this case and I can find no adequate proof, other than the testimony of the applicants that the full payment of the security deposit was made.

Section 18 sets out the provisions regarding the retention of a security deposit.

> *18.(4) A landlord may, in accordance with this section, retain all or a part of a security deposit, a pet security deposit or both for arrears of rent owing from a tenant to the landlord in respect of the rental premises, and for repairs of damage to the premises caused by the tenant or a person permitted on the premises by the tenant.*
>
> *(5) A landlord may not retain any amount of a security deposit or pet security deposit for repairs of damage to the rental premises if the landlord or his or her agent*
>
> *(a) fails to complete an entry inspection report and an exit inspection report; or*
>
> *(b) fails, without a reasonable excuse accepted by a rental officer, to give a copy of each report to the tenant.*

I find no evidence that a check-out inspection report was completed or provided to the tenants. Therefore the respondents are not entitled to retain the carpet cleaning costs regardless of the condition of the carpet at the end of the tenancy. Therefore an order shall issue requiring the respondents to return a portion of the retained security deposit in the amount of $173.25.

Failure to Maintain Premises

During the term of the tenancy, there were numerous problems with the premises that were reported to the respondents. The applicants provided a number of emails that documented

the complaints and the responses by the landlord. Most of the problems appear to have been resolved in a reasonable amount of time and the applicants appeared to be satisfied with the actions taken. On May 2, 2018, the applicants wrote, ...”we really do appreciate the quick movement on those two issues as well as the little break on rent. All in all we are happy that you and your team are taking action as quickly as you are.”

During the summer of 2018, the premises suffered significant water infiltration and the landlord took down an area of ceiling to identify the source of leakage and undertake repairs. Photographs of the area show considerable black discolouration in this area and around the door frame. The applicants stated that it was black mould and that they had noticed problems with their health that they attributed to the “mould”. The respondent stated that the discolouration was the result of the wood being stained by the leakage through the deck membrane above and was not mould.

The applicants appear to have been unconvinced that the black matter was not black mould. The respondent attended to the leakage and sealed up the ceiling cavity.

The applicants have not provided any documentation to verify the existence of mould or that their health problems were related to mould exposure. Had the application been filed while the applicants were tenants, the premises could have been inspected by a rental officer and an environmental health officer to determine the nature of the problem and the most appropriate remedy.

In my opinion, the respondents took reasonable steps to maintain the premises and undertake repairs in a timely manner. I find no evidence that the applicants suffered any financial loss or significant loss of full enjoyment of the premises, particularly in light of the landlord’s willingness to provide rent reductions during the term. I find no breach of section 30.

Disturbance of Possession

On September 5, 2018 the applicants contacted the landlord stating that they were staying at another location until the “mould” was addressed and were having an environmental health officer attend the premises. The respondent replied by text,

> “I do not appreciate calling an environment health officer to our house. We have been nothing other than on top of the repairs at our earliest, once we were told of any issues. Kindly cancel that appointment and move your positions (sic) out at your earliest. Friday

September 7th would work nicely."

The applicants replied that they had been actively looking for another place to live and planned to leave on September 12, 2018. The landlord acknowledged that September 12 would be "most agreeable".

The applicants testified that they felt threatened by the landlord and felt they had to vacate. The respondent stated that she did not feel that tenants were happy living there and simply "asked them to kindly leave."

Section 34 prohibits a landlord from disturbing a tenant's possession or quiet enjoyment of the rental premises.

> *34.* (*1*) *No landlord shall disturb a tenant's possession or enjoyment of the rental premises or residential complex.*

In addition, it is an offence under section 91(1)(c) to harass a tenant to for the purpose of forcing the tenant to vacate or abandon rental premises.

To disturb a tenant's possession a landlord must interrupt or hinder possession. The respondent took no action to disturb possession nor did they voice any consequences should the applicants fail to vacate. In my opinion, the landlord's words did not act to disturb the tenant's possession.

Did the landlord harass the tenant? Clearly, there is a difference between suggesting that a tenant move out if they are not satisfied and stating that if they are not out by a certain date and time the locks will be changed. Where do the landlord's words and actions lie on such a continuum? In my opinion, they are somewhat more than a suggestion but fall considerably short of a threat or harassment.

I do not wish to suggest that such words are suitable. A prudent, professional property manager would avoid such language. But, in my opinion they do not meet the test of disturbance or harassment.

I find no breach of section 34 or 91.

Hal Logsdon
Rental Officer