File #16224

IN THE MATTER between **DM and KO**, Applicants, and **NAR**, 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:

DM and KO

Applicants/Tenants

-and-

NAR

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing:	**October 30, 2018**
Place of the Hearing:	**Yellowknife, Northwest Territories**
Appearances at Hearing:	**DM, Applicant/Tenant** **KO, Applicant/Tenant** **BL, representing the Respondent/Landlord** **LF, representing the Respondent/Landlord** **IA, witness for the Respondent/Landlord**
Date of Decision:	**December 17, 2018**

REASONS FOR DECISION

An application to a rental officer made by DM and KO as the Applicants/Tenants against NAR as the Respondent/Landlord was filed by the Rental Office August 31, 2018. The application was made regarding a residential tenancy agreement for a rental premises located in Inuvik, Northwest Territories. The filed application was personally served on the Respondent September 24, 2018.

The Tenants alleged that a representative of the Landlord had acted unethically and unprofessionally, and that the Landlord had failed to provide and maintain the rental premises in a good state of repair. An order was sought to amend the tenancy agreement from a fixed-term to a month-to-month tenancy, to repair and renovate the rental premises, for costs of replacing damaged property, for copies of documents pertaining to an internal inquiry of misconduct, for a letter of apology from the Landlord's representative, and for authorization to pay future rent to the Rental Officer to hold in trust until all ordered actions were satisfied.

A hearing was scheduled for October 30, 2018, by three-way teleconference. DM and KO appeared as Applicants/Tenants. BL and LF appeared representing the Respondent/Landlord, with IA appearing as a witness for the Respondent/Landlord. The hearing was adjourned *sine die* to permit the parties to make final submissions in writing before my deliberations, the last of which was received November 9, 2018.

Tenancy agreement

Two written residential tenancy agreements were entered into evidence. The first tenancy agreement was dated January 29, 2018, for a fixed-term from March 1, 2018, to February 28, 2019, with an agreed early occupancy date of February 22, 2018. The second tenancy agreement was dated March 8, 2018, for a fixed-term from March 1, 2018, to February 28, 2019, with an agreed early occupancy date of February 22, 2018.

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The difference between the two tenancy agreements is that the first tenancy agreement included a section 14 saying: “Promised the tenant to take #53 Natala (3 Bedroom) rate $1875 as he waits for #15 Bomps (4 Bedroom) $2050 per month.” I heard that this section was removed after the Tenants learned that #15 Bomps had been rented out to another party. The second tenancy agreement effectively supercedes the first tenancy agreement.

Although section 3 of the tenancy agreement acknowledged that access to the rental premises would be given to the tenants as early as February 22, 2018, the Tenants did not in fact claim possession of the rental premises until February 24, 2018.

I am satisfied that a valid tenancy agreement is in place between the parties in accordance with the *Residential Tenancies Act* (the Act).

In their application, the Tenants had requested the terms of the tenancy agreement be altered from a fixed-term tenancy agreement to a month-to-month tenancy agreement so that they could terminate the tenancy at their convenience without penalty. Given that the tenancy agreement as written is not in contravention of the Act, I have no authority to change the term of the tenancy for any reason. The Tenants’ request is denied.

Termination of the tenancy agreement

In written submissions received after the hearing, the Landlord and Tenants agreed to terminate the tenancy agreement as being in the best interests of both parties. The Tenants requested a termination date of January 31, 2019, because they had found more suitable alternate accommodations which would not be available until February 1, 2019. The Landlord requested a termination date of December 15, 2018, but left the final decision on a termination date to my discretion. Given that the Tenants would remain liable for the rents, there is no real loss to the Landlord to grant the termination date requested by the Tenants.

Section 50 of the Act establishes that a written agreement between the parties to terminate the tenancy agreement on a specific date is binding. Despite the parties disagreeing on a termination date, to my mind they have satisfied the spirit of section 50 by agreeing in writing to terminate the tenancy agreement on a date to be determined by the Rental Officer. The termination of the tenancy agreement will be ordered for January 31, 2019.

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Unethical and unprofessional conduct

The Tenants were scheduled to take possession of the rental premises on February 22, 2018. Ms. O. and her child had taken a plane to Inuvik while Mr. M. drove their vehicle through Yukon intending to drive up the Dempster Highway. Due to unexpected delays, while Ms. O. arrived in Inuvik Tuesday, February 20th, Mr. M. did not expect to arrive in Inuvik until the evening of February 22nd. Arrangements were made for Ms. O. to move into the rental premises earlier in the day on February 22nd while waiting for Mr. M. to arrive. On February 22nd, at the Leasing Agent's suggestion, the Tenants agreed to postpone moving into the rental premises until Mr. M.'s safe arrival in the community. A new date to move in had not been scheduled. The Dempster Highway was closed on Friday, February 23rd, stranding Mr. M. in Dawson City. The evening of February 23rd the Tenants decided that Ms. O. should not wait any longer for Mr. M. to arrive in Inuvik to move into the rental premises.

Ms. O. contacted the Leasing Agent with only a few hours' notice that she wished to move into the rental premises the afternoon of Saturday, February 24th. No adequate notice was provided to the Landlord to accommodate a weekend move-in date. The Leasing Agent was unavailable to do the move-in with Ms. O., but provided the Regional Property Manager's contact information to see if he would be available.

The Regional Property Manager was committed to a volunteer fire fighter training session for the weekend. He was aware that no move-ins were scheduled to take place that weekend. He was not aware of the possibility that the tenant might want to move-in over the weekend. The Regional Property Manager did not receive Ms. O.'s voicemail message until the training session's morning break. He made the effort to accommodate the tenant's request over his scheduled lunch break. Due to his training session commitment, the Regional Property Manager was not able to conduct an entry inspection with Ms. O..

I heard from both Ms. O. and the Regional Property Manager at hearing regarding what happened when they made contact with each other, and the mannerisms and behaviours that were exhibited. I am not going to relate the details here.

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Ms. O. took umbrage from the Regional Property Manager's behaviour towards her and her child during their transportation and entry to the rental premises, and the subsequent inconvenience to the Regional Property Manager's wife when he asked her to attend Ms. O.. Ms. O. described the Regional Property Manager's behaviour as disrespectful, traumatic, unethical, and unprofessional.

I believe that in the rush of accommodating an unexpected move-in within the time limitations of the training session that the Regional Property Manager was participating in that he was likely flustered and feeling under pressure. I believe those feelings likely appeared to Ms. O. to be aggressive, pushy, and rude. I believe the Regional Property Manager's request to his wife to help Ms. O. was likely done in an effort to make up for his own inability to provide the full move-in and courtesy that a new tenant would normally receive.

There are no provisions in the Act governing the way a landlord provides customer service, other than perhaps subsection 34(1) which states: "No landlord shall disturb a tenant's possession or enjoyment of the rental premises or residential complex." I do not believe that the Regional Property Manager's behaviour was intended to be disrespectful or harmful. Nor do I believe that the Regional Property Manager's behaviour or Ms. O.'s interpretation of his behaviour constitute a disturbance of the tenant's possession or enjoyment of the rental premises given that the tenant was in the process of receiving possession of the rental premises. Nor did the Regional Property Manager's behaviour interfere with the tenant's occupancy of the rental premises.

Additional communication between Ms. O. and the Regional Property Manager was limited after the Saturday afternoon interaction to a few text messages on Sunday, February 25, 2018, during which Ms. O. demanded no further communication with the Regional Property Manager. That request was honoured, and all future communications were through other employees of the Landlord. All subsequent communications from the Landlord to the Tenant were highly professional and responsive. I am not satisfied that the Landlord has breached their obligation not to disturb the tenant's enjoyment or possession of the rental premises.

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With regard to the behaviour of the Regional Property Manager, the Tenants were not satisfied with the results of an internal investigation conducted by the Landlord and demanded as part of this application to a rental officer compensation for physical and psychological stresses and trauma, compensation for damages caused to their child's property, documents pertaining to the Landlord's internal code of conduct inquiry, and a formal written apology and explanation from the Regional Property Manager.

The Act does not provide for consideration of costs for pain and suffering. It only provides for demonstrable monetary losses suffered as a direct result of a breach. Nor does the Act provide for eliciting documents pertaining to internal inquiries or apologies from either landlords or tenants, and certainly not for an interaction that is not a breach of the terms of a tenancy agreement or the Act. And whether or not the Regional Property Manager is responsible for damaging the Tenants' child's property, no evidence was provided demonstrating how much it cost to repair or replace the property. The Tenants' demands are denied.

Improper entry

Ms. O. claimed that the Leasing Coordinator improperly entered the rental premises on Sunday, February 25th. Ms. O. had texted the Regional Property Manager about having odiferous paint cans removed from the rental premises. The Regional Property Manager agreed to attend by lunch time to remove the paint cans and to do the move-in inspection then. Ms. O. demanded no further communication with the Regional Property Manager, who was still participating in the training session. The Regional Property Manager arranged for the Leasing Coordinator to attend the premises to conduct the move-in inspection. He did not notify Ms. O. of this action until after the Leasing Coordinator's first attempt to attend the rental premises. The Leasing Coordinator had attended the rental premises around lunch time and repeatedly knocked on the door. She did not enter the premises, nor did Ms. O. answer the door. The Leasing Coordinator then texted Ms. O., introducing herself, telling Ms. O. that she had just been there, providing her cell number, and indicating she would return later.

Subsection 26(1) of the Act states: "A landlord shall not enter rental premises except as provided by this section and section 27."

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Subsection 26(3) of the Act states: "A landlord who intends to exercise the right to enter under subsection (2) shall give written notice to the tenant at least 24 hours before the first time of entry under the notice, specifying the purpose of the entry and the days and the hours during which the landlord intends to enter the rental premises."

Paragraph 27(1)(b) of the Act states: "A landlord has the right to enter the rental premises without giving the notice required by subsection 26(3) where the tenant consents at the time of entry."

I am not satisfied that the Leasing Coordinator entered the rental premises at all, let alone without the Tenants' consent.

Repairs

The entry inspection report was completed by the Leasing Agent with Ms. O. on February 28, 2018. By this point the Tenants' belongings had been delivered to the rental premises, with furniture and boxes throughout.

On April 6th the Tenants reported a black hole under the sink. The Landlord repaired the hole on April 10th.

On April 17th the Tenants reported a number of items that required repairs. All except the exterior door and the carpets on the stairs were repaired by April 23rd.

The Customer Service Coordinator acknowledged the gap in the door had yet to be addressed on April 24th, and indicated in an email that the Maintenance Manager had been notified. It appears this issue fell through the cracks, so to speak, and the Landlord did not become aware of it again until the application to a rental officer was made. The exterior door was repaired on November 6th.

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After Ms. Onuwdinjo slipped on the stairs, the Tenants claimed that the carpeting on the stairs was worn to the point of having no traction, and as a result was a safety hazard. The tenant claimed that the maintenance personnel who attended the rental premises April 20th inspected the carpets and said he would have to inform his supervisor because the stairs required major overhaul. The maintenance personnel's work order makes no reference to a major overhaul, simply stating "not replacing carpet at this time - tenant will be more careful when using the stairs." No further actions were taken by the Landlord respecting the stairway carpeting.

After the October 30th hearing and in response to the Tenants' claims, the Landlord issued a new work order to its maintenance personnel to inspect the stairway carpeting. In the Landlord's final written submission they indicated that their Facility Manager and Maintenance Technician both attended the rental premises between November 1st and 6th. Their professional opinion was that the carpeting did not show signs of substantial wear or disrepair justifying its replacement. Photographs of the stairs were provided. Although there are shadows making the upper stairs difficult to assess, the lower stairs are clear enough to notice that there is wear in the center sections of the treads. However, the wear does not appear to be substantial, and the carpeting does not appear to be worn through or in any state of disrepair. A cursory internet search suggests that carpets, particularly on stairs, tend to be somewhat slippery even when new.

Subsection 30(1) states: "A landlord shall (a) provide and maintain the rental premises, the residential complex and all services and facilities provided by the landlord, whether or not included in a written tenancy agreement, in a good state of repair and fit for habitation during the tenancy; and (b) ensure that the rental premises, the residential complex and all services and facilities provided by the landlord comply with all health, safety and maintenance and occupancy standards required by law."

I am not satisfied that the condition of the carpets on the stairs is in such a state of disrepair as to constitute a failure of the Landlord to maintain the rental premises in a good state of repair, nor is there any evidence before me to establish the state of wear that must be present to constitute a failure to comply with safety and maintenance standards required by law. The Tenants' request for the Landlord to replace the stairway carpet is denied.

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The Tenants reported to the Landlord on April 23rd that the melting snow had revealed a substantial amount of dog excrement in the yard, suggesting the neighbouring tenant had not been cleaning up after their dog. The Landlord immediately contacted the neighbouring tenant and had given them until the end of the day on April 24th to clean up the mess. The neighbouring tenant complied by removing the visible excrement, but as the snow continued to melt it revealed more. The Tenants notified the Landlord on April 27th that the matter was not fully resolved, and they requested the yard be thoroughly cleaned up. The Landlord committed to speaking with both immediate neighbours with dogs to clean up after their pets. On June 4th the Tenants again notified the Landlord that the final melting of the snow had revealed even more dog excrement, preventing the Tenants from enjoying their yard. They again asked the Landlord to have the excrement removed and the yard cleaned. The Landlord had the yard cleaned and disinfected on June 6th. It should be noted that the cleaning and disinfecting could not have been fully completed until all the snow had melted. However, it is the neighbouring tenants' failure to clean up after their dogs in the first place that is the aggravating factor which interfered with the Tenants' enjoyment of the yard. Although the Tenants' enjoyment of their yard was disturbed for upwards of a month and a half, I am satisfied that the Landlord complied with their obligation to hold the neighbouring tenants accountable for their inaction. The Landlord further mitigated the situation by ultimately having the yard cleaned and disinfected as soon as they reasonably could upon being notified that the problem persisted.

The Tenants complained to the Landlord that the rental premises was too hot on May 6th. Maintenance personnel attended the rental premises on May 7th and determined that the heat was fine and that the thermostat had not been properly adjusted.

On June 4th the Tenants notified the Landlord that several window screens required repair as they had gaps large enough to permit flies through. The Landlord repaired the screens and replaced a broken window on June 5th.

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It is unclear from the evidence when the Tenants first complained about a missing stairway handrail, but it was raised as an issue in the application to a rental officer. The Landlord did install a second handrail on November 5th. I am not satisfied, however, that the Landlord failed to comply with their obligation to either maintain the rental premises in a good state of repair or to ensure the rental premises complied with safety and maintenance standards required by law. The National Building Code does require that stairways that are 1100 mm or less wide have one handrail, but it does not require that they have two handrails.

Paragraph 3.10 of the Tenants' written reasons for making the application to a rental officer refers to an email informing the Landlord of the state of the exterior walls and a mushroom growing from the wall, but that email was not included in the application and was not later submitted. Nor was the date of the email referenced. Given this lack of clarity, I must presume that the Landlord was first made aware of the Tenants' complaints about the exterior walls in the application to a rental officer.

The parties agreed that the paint was peeling from the exterior walls of the residential complex. The Landlord provided evidence showing that they had in fact made arrangements to have three different residential complexes sanded, repaired, and repainted by a local contractor over the summer, including the residential complex occupied by the Tenants. Attempts were made to secure a second contractor to help with the work, unfortunately, all the other contractors already had full summer workloads. The secured contractor was able to complete two of the residential complexes before the end of the summer season, but not the residential complex occupied by the Tenants. The Landlord indicated that the Tenants' residential complex will be completed in the 2019 summer season. Although the condition of the exterior walls clearly requires attention, I am not satisfied that their current condition is either a substantial breach of the Landlord's obligations under subsection 30(1) of the Act, or constitutes a disturbance of the Tenants' possession or enjoyment of the rental premises or residential complex under subsection 34(1) of the Act. I am satisfied that the Landlord has been making all reasonable efforts to return the exterior walls to a good state of repair.

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The Landlord also acknowledged that a mushroom was growing in a circular cut out in the wall. The cut out was identified as where a dryer exhaust vent used to be. On November 5th, the Landlord removed the mushroom, cleaned the hole with mold and mildew cleaner, and then patched the hole. I am satisfied that the Landlord has met their obligation to repair that area of the exterior wall.

On August 24th the Tenants gave the Landlord "official Notice" of a "substantial breach of the obligation imposed by" subsection 30(1) of the Act pursuant to subsection 30(5) of the Act.

Subsection 30(1) of the Act has been referenced earlier in these reasons. Subsection 30(5) of the Act states: "A tenant shall give reasonable notice to the landlord of any substantial breach of the obligation imposed by subsection (1) that comes to the attention of the tenant."

Subsection 30(6) of the Act states: "A landlord shall, within 10 days, remedy any breach referred to in subsection (5)."

Subsection 30(2) of the Act states: "Any substantial reduction in the provision of services and facilities is deemed to be a breach of subsection (1)."

Services and facilities are defined in the Act as including: "furniture, appliances and furnishings, parking and related facilities, laundry facilities, elevator facilities, common recreational facilities, garbage facilities and related services, cleaning or maintenance services, storage facilities, intercom systems, cable television facilities, heating facilities or services, air-conditioning facilities, utilities and related services, and security services or facilities."

The Tenants did not identify in their August 24th notice what substantial breaches they were notifying the Landlord of. This would be required information in order for the Landlord to be able to effect necessary repairs within 10 days. That information would also be required in order to determine whether or not the breach is in fact substantial. Not only are none of the issues identified in these reasons substantial breaches of section 30 of the Act, but despite them not being substantial breaches the Landlord in most cases effected repairs within six days of being notified of the issues. All the complaints received by the landlord were addressed within a reasonable period of time, and those that were or have been delayed have been reasonably explained.

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Conclusion

Except for the termination of the tenancy agreement, all the remedies requested by the Tenants are denied, either because I do not have authority to grant them, they are unjustified, or the requested repairs have been effected.

Adelle Guigon
Rental Officer