File #16280

IN THE MATTER between **NPRLP**, Applicant, and **LW**, 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-

LW

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: **December 13, 2018**

Place of the Hearing: **Yellowknife, Northwest Territories**

Appearances at Hearing: **BL, representing the Applicant**
CDL, representing the Applicant
NAY, representing the Applicant
LW, Respondent
IF, on behalf of the Respondent

Date of Decision: **February 4, 2019**

REASONS FOR DECISION

An application to a rental officer made by NPRLP as the Applicant/Landlord against LW as the Respondent/Tenant was filed by the Rental Office October 18, 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 November 3, 2018, pursuant to subsection 4(4) of the *Residential Tenancies Regulations* (the Regulations) and by registered mail signed for November 6, 2018.

The Applicant alleged the Respondent had failed to terminate the fixed-term tenancy agreement in accordance with the Act, resulting in lost future rent for the Applicant. An order was sought for payment of the lost future rent.

A hearing was scheduled for December 13, 2018, in Yellowknife. BL, CDL, and NAY appeared representing the Applicant. LW appeared as Respondent with IF appearing on her behalf.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them for a fixed-term from March 1, 2018, to February 28, 2019. I am satisfied a valid tenancy agreement was in place in accordance with the *Residential Tenancies Act* (the Act).

Disturbances

The Respondent had started complaining to the Applicant August 7, 2018, of disturbances occurring in the residential complex which impacted their quiet enjoyment and possession, and raised concerns for their personal safety and well-being. The Respondent also complained about the health issues arising from bodily fluids (spit, blood, vomit) repeatedly being observed in the common areas. This was the first complaint the Applicant received from the Respondent about the issues.

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The Applicant's cleaning staff regularly clean the residential complex, and when they are made aware of biological hazards they expedite their cleaning. They cannot control the actions of persons permitted on the premises or how often such persons might cause such biological hazards to occur. The Applicant has taken reasonable mitigating actions by cleaning the bodily fluids as soon as possible. Holding the persons causing the uncleanliness responsible would require being able to identify the persons, which the Landlord is unable to do.

The Applicant made inquiries into the reported disturbances, and the tenant the Applicant believed was causing the disturbances moved out of the residential complex August 31, 2018. Because the Applicant did not receive any further reports of disturbances from the Respondent after August 24, 2018, the Applicant believed the issue of disturbances had been resolved.

I am satisfied the Applicant complied with their obligation under subsection 44(1) of the Act to inquire into any complaints of disturbances and to take appropriate action.

Transfer request

August 7, 2018, was the first time the Respondent requested consideration for a transfer to a larger rental premises in a different building. The transfer request was made not only because of the disturbances, but also because the Respondent's family was growing and they would require the extra bedroom. The Applicant acknowledged the Respondent's emailed request to transfer and agreed to accommodate that request.

After being shown some transfer options, the Respondent submitted a formal written request on August 14, 2018, to transfer to another rental premises. I believe that request was mis-filed at the Applicant's office, as it did not reach the appropriate staff member until August 21, 2018. The Respondent received no further replies from the Applicant regarding the transfer request before terminating their tenancy agreement.

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Termination of the tenancy agreement

On September 4, 2018, the Respondent withdrew their transfer request and gave written notice to terminate the tenancy agreement for September 30, 2018. Referencing item 15 of Schedule "B" to the written tenancy agreement, the Respondent acknowledged the penalty for breaking the term of the lease as the equivalent of one month's rent. The Respondent believed that they would not be held responsible for any further costs for breaking the lease. They were initially prepared to pay the extra one month's rent.

Section 13 of the Act prohibits penalties from being charged for any breaches of the terms of either the written tenancy agreement or the Act. Charging one month's rent for terminating the tenancy agreement without proper notice constitutes a penalty. Therefore, item 15 of Schedule "B" to the written tenancy agreement is invalid and unenforceable.

Subsection 51(1) of the Act specifies that a tenant may only terminate a fixed-term tenancy agreement for the last day of the fixed-term by giving at least 30 days' advance written notice. In this case, the last day of the fixed-term was February 28, 2019, so that is the earliest the Tenant could have terminated the tenancy agreement without breaching the Act. In effect, the Tenant who vacates a rental premises earlier than the last day of a fixed-term tenancy agreement (breaks the lease) remains responsible for the monthly rent either until the end of the fixed-term period or until the Landlord re-rents the rental premises, whichever comes first.

Subsection 5(2) of the Act requires the landlord whose tenant has terminated a tenancy agreement other than in accordance with the Act or the tenancy agreement to mitigate their losses by re-renting the rental premises as soon as is practicable and at a reasonable rent. The Applicant's written submissions indicate that they had just shown and rented two one-bedroom apartments in the same residential complex the same day and the day after the Respondent's written notice to terminate was given. There were no showings of one-bedroom apartments at either the Respondent's residential complex or the immediately neighbouring

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residential complex between September 5th and October 1st because there were no prospective tenants seeking a one-bedroom to show the apartments to. The Respondent's rental premises was not shown to an interested prospective tenant until October 9th, at which time the prospective tenant entered into a tenancy agreement for that rental premises. I believe the original intent was for the prospective tenant to take possession November 1st; however, the Applicant indicated that the prospective tenant's possession date was delayed to November 15th due to pending government approvals.

I am satisfied that the Applicant did take all reasonable measures to mitigate their losses by re-renting the rental premises as soon as practicable in the circumstances. I am satisfied that the Respondent is liable for the lost rent for October 2018.

In my opinion, while it is not the Landlord's fault that the pending government approvals prevented the prospective tenant from taking occupancy November 1st, it is also not the Respondent's fault. It is likely that had the Applicant not had a fixed-term agreement with the Respondent to fall back on, the Applicant could and would have held the prospective tenant liable for the rent from the agreed upon tenancy commencement date of November 1st despite the pending government approvals.

I am not satisfied the Respondent should be held liable for the lost rent for November 1st to 15th. I find the Respondent liable to the Applicant for rental arrears in the amount of $1,565.

Security deposit and pet security deposit

The lease ledger entered into evidence represents the Landlord's accounting of transactions against the Respondent's rent account. A security deposit of $782.50 was paid by the Respondent at commencement of the tenancy. By the end of the tenancy, the Respondent's rent account carried a credit of $42.50. The Applicant returned the rent credit and the security deposit including interest to the Respondent in the total amount of $825.22.

The lease ledger also included monthly charges for “pet fees”. The written tenancy agreement does include a condition for monthly pet fees without reference to whether or not the pet fees are refundable and whether or not there is a maximum amount that will be collected.

The Act provides for a pet security deposit to a maximum value of 50 percent of one month’s rent. In my opinion, the monthly pet fees as described in the written tenancy agreement are contrary to the Act and therefore invalid. While I see no reason why the landlord could not collect the pet security deposit in monthly installments, the landlord would be prohibited from collecting more than 50 percent of one month’s rent as allowed for in the Act. Additionally, the landlord would be required to return or retain the pet security deposit at the end of the tenancy in accordance with the Act.

In this case, the Respondent paid $25 per month towards what I am deeming is the pet security deposit, for a total of $175. The pet security deposit was not returned to the Respondent at the end of the tenancy. It will be accounted for in an order for the Respondent to pay the rental arrears.

Order

An order will issue requiring the Respondent to pay rental arrears in the amount of $1,390.

Adelle Guigon
Rental Officer