

IN THE MATTER between **LM and DL**, Applicants, and **MV and IM**, Respondents.

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:

LM and DL

Applicants/Tenants

-and-

MV and IM

Respondents/Landlords

REASONS FOR DECISION

Date of the Hearing: December 13, 2018

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: LM, Applicant
DL, Applicant
MV, Respondent
IM, Respondent

Date of Decision: December 13, 2018

REASONS FOR DECISION

An application to a rental officer made by LM and DL as the Applicants/Tenants against MV and IM as the Respondents/Landlords 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 Respondents by registered mail signed for November 1, 2018.

The Tenants alleged the Landlords had failed to grant possession of the rental premises to them in accordance with the written tenancy agreement. An order was sought for compensation for losses suffered as a result of not receiving possession of the rental premises.

A hearing was scheduled for December 13, 2018, in Yellowknife. LM and DL appeared as Applicants/Tenants. MV and IM appeared as Respondents/Landlords.

Tenancy agreement

The written tenancy agreement entered into evidence establishes a month-to-month residential tenancy agreement between the parties commencing October 1, 2018, but entitling the Tenants to early possession of the rental premises on September 15, 2018. Rent was established at \$2,000 per month, due the first of each month. A security deposit was established at \$2,000. A pet security deposit was established at \$500.

Based on testimony, written submissions, and evidence, I am satisfied that there was a valid written residential tenancy agreement entered into between the parties effectively commencing September 15, 2018. Although the Tenants declined to take early occupation of the rental premises for that date, they did effectively accept early possession of the rental premises in their repeated requests since September 15th for the keys to the rental premises, in their actions of moving belongings on to the deck of the rental premises, in their actions of parking and working on a vehicle in the driveway, in their actions of moving a shed onto the boundary of the rental property, and in making what payments they did towards the rent account and security deposits.

The Landlords refused to provide the Tenants with the requested keys to the rental premises on the grounds that the Tenants had not paid the rent and both security deposits in full. They also felt that the Respondents' behaviour towards them and their use of the property without permission or consultation was disrespectful and boded ill for the tenancy.

The requirement to pay the rent and the security deposits does not define whether or not, or when, the Tenant is entitled to take possession of the rental premises. Subsection 2(1) of the *Residential Tenancies Act* (the Act) recognizes residential tenancy agreements as contracts, and subsection 2(4) of the Act sets the effective date of a tenancy agreement as the date the tenant is entitled to occupy the rental premises. It says nothing about the requirement to make any payments in advance of taking occupancy. In this case, section 7 of the written tenancy agreement specified that the Tenants were entitled to "possession of the property at 12:00 noon on September 15, 2018."

Subsection 41(1) of the Act requires the tenant to pay to the landlord the rent lawfully required by the tenancy agreement on the dates specified by the tenancy agreement. Section 8 of the written tenancy agreement set out the rent at \$2,000 per month, and section 9 of the written tenancy agreement set out that the rent was due on or before the 1st day of each and every month. In this case, because the Tenants were entitled to possession of the rental premises on September 15th, they would have been liable for the prorated rent of \$1,000 for September 15th to 30th, and that amount would have been due September 15th. Failure to pay that amount by September 15th would not have been grounds to refuse to grant possession of the rental premises to the Tenants and would not have invalidated, voided, or cancelled the tenancy agreement.

Subsection 14(2) of the Act sets out the Tenants' option to pay 50 percent of the security deposit at the commencement of the tenancy agreement and the remaining 50 percent of the security deposit within three months of the commencement of the tenancy. Section 11 of the written tenancy agreement specifies the full security deposit of \$2,000 was due upon execution of the tenancy agreement. The identified amount of the security deposit is in accordance with the Act, but the requirement to pay in full upon execution of the tenancy agreement is contrary to the Act and, therefore, that part of section 11 of the written tenancy agreement is invalid and unenforceable. In this case, the Tenant would have been required to pay \$1,000 of the security deposit on September 15th and the remaining \$1,000 of the security deposit would have been due in full by December 15th. Failure to pay the first 50 percent of the security deposit by September 15th would not have been grounds to refuse to grant possession of the rental premises to the Tenants, and would not have invalidated, voided, or cancelled the tenancy agreement.

Paragraph 14.1(1)(b) of the Act specifies that a pet security deposit must not exceed 50 percent of one month's rent. The Act does not specify when the pet security deposit must be paid by, but it is inferred that the pet security deposit is due in full when it is charged, or at the commencement of the tenancy. Section 15 of the written tenancy agreement specifies that the pet security deposit of \$500 is due upon execution of the written tenancy agreement. The written tenancy agreement was executed September 14, 2018. The Tenants did not pay the pet security deposit until September 21st. Failure to pay the pet security deposit by September 14th or 15th would not have been grounds to refuse to grant possession of the rental premises to the Tenants, and would not have invalidated, voided, or cancelled the tenancy agreement.

Subsection 34(1) of the Act prohibits a landlord from disturbing a tenant's possession or enjoyment of the rental premises or residential complex. As has been established, the fully executed residential tenancy agreement entitled the Tenants to possess the rental premises as early as September 15, 2018. By failing to grant the Tenants the keys to the rental premises, the Landlord disturbed the Tenants possession of the rental premises contrary to subsection 34(1) of the Act.

Payments

The Tenants paid the pet security deposit of \$500 on September 21st; the payment was late, but the pet security deposit was paid.

The Tenants paid \$700 towards the security deposit on September 23rd; not only was the payment late, but it was also insufficient to pay the 50 percent of the security deposit that was due September 15th.

The Tenants paid \$1,000 towards the rent on September 24th; this amount to my mind covered the rent due for September 15th to 30th, although it was paid 10 days late.

The Tenants paid \$1,000 towards the rent on September 29th; this amount to my mind would have gone towards the October rent, which was not due in full until October 1st.

The Landlords returned all monies paid, totalling \$3,200 (plus a \$100 payment regarding a storage unit agreement which is separate from the tenancy agreement), to the Tenants later in the day on September 29th after telling them they were not prepared to allow the tenancy agreement to continue.

Tenants' claims for compensation

One of the remedies available to tenants whose possession of the rental premises has been disturbed by the landlord is to order the landlord to compensate the tenant for loss suffered as a direct result of the breach. Such losses must be demonstrable monetary losses, meaning the Tenant must prove that they actually had to pay money for something that they would not have had to pay for if the landlord had not disturbed their enjoyment or possession of the rental premises.

The Tenants had expected to receive full possession of the rental premises on September 29th, and had made arrangements to move their belongings in over that weekend. In the filed application to a rental officer, the Tenants claimed costs related to arranging for and moving their belongings to the rental premises. The costs claimed included:

- a total of \$2,100 for seven people (including the Tenants) working 69 hours over two days at \$20 per hour;
- \$544 for one of the Tenant's lost wages;
- a total of \$140 for two vehicles; and
- \$210 for change of address fees.

Those costs were listed on an invoice from Whale Done Exteriors dated October 1, 2018, addressed to the Landlords. No supporting evidence proving that the Tenants had actually paid out or lost any of those monies was provided. The Tenants were granted at hearing an opportunity to provide the necessary receipts to establish any of the claimed payments, and the Landlords were given an opportunity to review those submissions.

An untitled invoice dated "Sept 29, 30 Oct 1" for "Rental Vehicle" sold to DL and shipped to N.D.S., with a salesperson identified as "Patrick" was submitted by the Tenants. The invoice detailed costs of \$540 to rent a "Ford F250 Unit 21", \$540 to rent a "1 Ton Unit 32", and \$540 to rent a "Dodge Ram", plus \$80 GST, for a total of \$1,700. No actual receipts or invoices from the purported rental company were provided for the claimed vehicle rentals. The Landlords disputed the authenticity and accuracy of the invoice, providing examples of actual NDS invoices which include proper letterhead with a logo. The Landlords also pointed out a significant increase in the dollar amounts claimed between the original application and this new invoice, citing it as self-serving. I am in agreement with the Landlords. I am not satisfied the untitled invoice represents actual costs paid out by the Tenants to rent the vehicles as claimed. The claim for costs associated with renting vehicles to facilitate moving the Tenants' belongings is denied.

Two receipts dated October 1, 2018, acknowledging receipt of \$180 and \$150 from the Tenants for services as a zoom-boom operator and assisting with moving a shed were submitted by the Tenants. The Landlords disputed liability for the costs associated with moving the shed because the storage shed owned by the Tenants fell under a separate agreement from the residential tenancy agreement. There is no mention in the written residential tenancy agreement about the shed. I am not satisfied the Landlords are responsible for any costs related to the storage and/or removal of the storage shed. The Tenants claim for costs of a zoom-boom operator and for assistance moving the shed are denied.

Three receipts dated September 28 and 29, 2018, acknowledging receipt of \$250 each from the Tenants for packing and moving/loading the Tenants' belongings to the rental premises were submitted by the Tenants. Those amounts are at least \$90 more per person than what was originally claimed in the application. The Tenants were unable to provide receipts for the remaining two 'moving helpers' that were listed on the original invoice in the application. The Tenants claims for the hours they themselves put into moving were denied at the hearing, as was the claim for the one Tenant's lost wages due to there being no evidence of the actual wages lost. The Landlords disputed that the amount of belongings which were observed in the pick-up truck that arrived at the rental premises September 29th would require the amount of hours of work being claimed by the Tenants. However, I think it is likely that the observed pick-up truck represented only one load, and that there were more packed up belongings waiting for transport. Based on the original claim of \$20 per hour for moving costs, the new claims of \$250 per person represent 12.5 hours' work per person. The 4.5 hours difference between what was originally claimed and what is represented in the new receipts seems self-serving, an attempt to recover costs allegedly paid to the individuals that receipts could not be obtained from, and puts the credibility of the three receipts that were provided into question. Because of those discrepancies, I cannot be satisfied that these three receipts accurately represent losses suffered by the Tenants for packing and moving their belongings. The Tenants' claim for costs of packing and moving/loading their belongings is denied.

No evidence of the costs paid for change of address fees was submitted. Those claimed costs are denied.

In summary, the Tenants have failed to demonstrate actual monetary losses suffered by them as a direct result of the Landlords' improper termination of the tenancy agreement.

Landlord's counter claim

The Landlord submitted a counter claim at hearing for:

- rent for September 15th to 30th of \$1,000;
- rent for October of \$2,000, claiming the cancellation of the tenancy agreement was due to the Tenants' actions, behaviour, and failure to pay monies when due;
- rent for November of \$2,000 as lost future rent; and
- \$200 for five hours of the Landlords' time spent responding to the Tenants' demands on September 28th and 29th.

Having found that the tenancy agreement commenced September 15th and the Tenants took possession of the exterior of the property, and being satisfied that the Tenants had removed all their belongings from the property by September 30th after the Landlords refused to grant full possession of the rental premises, I am satisfied that the Landlords are entitled to some compensation for the use and occupation of the rental premises that the Tenants benefited from. Given that possession was of only half of the property, I am only prepared to grant half the rent for September 15th to 30th in the amount of \$500.

Having found that it was in fact the Landlords who improperly terminated the tenancy agreement, I am not satisfied the Landlords are entitled to any of the remaining counter claims that they have made.

Order

An order will issue requiring the Tenants to pay to the Landlords rental arrears in the amount of \$500.

Adelle Guigon
Rental Officer