

IN THE MATTER between **NTHC**, Applicant, and **BM and MS**, 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:

NTHC

Applicant/Landlord

-and-

BM and MS

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: March 20, 2019

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: LE, representing the Applicant
TM, representing the Applicant
RM, witness for the Applicant

BRZ, representing the Respondents
BM, Respondent
MS, Respondent

Date of Decision: March 20, 2019

REASONS FOR DECISION

An application to a rental officer made by BKGK on behalf of the NTHC as the Applicant/Landlord against BM and MS as the Respondents/Tenants was filed by the Rental Office October 12, 2018. The application was made regarding a residential tenancy agreement for a rental premises located in Behchoko, Northwest Territories. The filed application was personally served on the Respondents November 13, 2018.

The Applicant alleged the Respondents had accumulated rental arrears, had failed to refill the fuel tank at the end of the tenancy, had caused damages to the rental premises, and had left the rental premises in an unclean condition. An order was sought for payment of rental arrears, payment of utilities arrears, and payment of costs for repairs and cleaning.

Hearings originally scheduled for December 4, 2018, and February 21, 2019, were adjourned at the request of the Respondents' representative, peremptory on the Respondents. The hearing was re-scheduled to March 20, 2019, by three-way teleconference. LE and TM appeared representing the Applicant, with RM appearing as a witness for the Applicant. BRZ appeared representing the Respondents, and BM and MS appeared as Respondents.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them for subsidized housing under the Applicant's Homeownership Entry Level Program (HELP) commencing March 19, 2008. The Respondents vacated the rental premises September 28, 2018, ending the tenancy effective September 30, 2018. I am satisfied a valid tenancy agreement was in place in accordance with the *Residential Tenancies Act* (the Act).

Rental arrears

The lease balance statement entered into evidence represents the Landlord's accounting of monthly assessed rents and payments received against the Respondents' rent account. All rents had been subsidized and were last assessed at \$350. Either insufficient payments or no payments were received in nine of the last 12 months of the tenancy. The security deposit of \$532.17 was retained at the end of the tenancy against the accumulated rental arrears.

The Respondents did not dispute the accuracy of the Landlord's accounting, acknowledging the rental arrears and accepting responsibility for them.

I am satisfied the lease balance statement accurately reflects the current status of the Respondents' rent account. I find the Respondents have accumulated rental arrears in the amount of \$2,617.83. That amount represents approximately eight months' subsidized rent.

Utilities

The Applicant's representatives and witness testified that a full fuel tank was provided with the rental premises when the tenancy began. Section 8 of the written tenancy agreement holds the Tenants responsible for all utilities to the premises, including fuel oil. The Applicant's witness testified that their maintenance personnel had discovered the fuel tank was empty on October 1, 2018.

The Respondents testified that they were not aware that they were required to refill the tank at the end of the tenancy. They also testified, and evidence was later provided, that they had put \$250 worth of fuel in the tank September 22, 2018.

Section 8 of the written tenancy agreement is clear that the Tenants were responsible for the fuel oil used during the tenancy. It is reasonably inferred that if the Tenants were provided with a full fuel tank at the commencement of the tenancy – which they were – that they would be required to return the rental premises to the Landlord's possession at the end of the tenancy with a full fuel tank. The \$250 worth of fuel that the Respondents put in the fuel tank on September 22, 2018, represents about 20% of a tank, and given the temperatures in Behchoko between September 22nd and 29th ranging from highs of 11 to 0 degrees it is believable that the 20% would have been used up. Regardless of having put 20% of fuel in the tank on September 22nd, the Respondents did not return the rental premises with a full fuel tank as required. I find the Respondents liable to the Applicant for the costs of refilling the fuel tank in the amount of \$1,200.

Repairs and cleaning

The Applicant submitted the entry and exit inspection reports, a condition rating report, and 34 photographs supporting their claims for the following repairs and cleaning:

Cleaning throughout	\$400.00
Repair fridge door handle	\$10.00
Replace range hood	\$200.00
Replace kitchen drawer and cabinet doors	\$100.00
Replace electrical covers	\$75.00
Repair holes in walls	\$200.00
Repair interior door knob, hinge, casing	\$140.00
Replace two interior doors	\$600.00
Replace toilet paper holder	\$40.00
Replace on vent cover	\$35.00
Replace smoke detector and carbon monoxide detector	\$85.00
Replace damaged floor tiles	\$125.00
Repair exterior light fixture	\$25.00
10% of total cost to repaint walls	\$350.00
Clean yard and dispose of vehicle	\$200.00
Repairs and cleaning total	\$2,585.00

The Respondents disputed responsibility for the damages to the fridge door handle, claiming that it had been torn away from the fridge under normal wear and tear. They claimed that the fridge was old and cheap, which contributed to the dislocation of the door handle. The Applicant's representatives provided evidence that the fridge was in fact new as of September 23, 2017. I am satisfied that the dislocation of the fridge door handle was the result of the Tenants' or other occupants negligent usage and I find the Respondents liable for the claimed cost to repair the fridge door handle.

The Applicant's witness confirmed that the \$200 claimed to replace the range hood represents the full cost, but he could not confirm the age of the range hood. He conceded it likely was at least as old as the tenancy. Depreciation cannot be calculated without knowing the age of the range hood. The Applicant's representatives agreed to withdraw the claim for the costs to replace the range hood.

The Respondents argued that the kitchen drawer and cabinet door had been damaged through 'normal' usage described as including children playing in the relevant cupboards. In my opinion, cupboards are not meant for children to be playing in or using aggressively, regardless of how innocent that play may be. I am satisfied that the damages caused to the kitchen cabinet door and drawer were caused by the Respondents' or other occupants' and guests' negligent conduct. I find the Respondents liable for the claimed costs to repair the kitchen drawer and cabinet door.

The Respondents suggested that the electrical plate covers had cracked with the shifting of the house. Although the Applicant's representatives and witness did not dispute that the house may shift seasonally, they did dispute that the electrical plate covers cracking as a result of the shifting was likely. I agree with the Applicant. The photographs do not show any cracking around any of the electrical outlets suggestive of the house shifting, and even if there was, the outlet covers are screwed to the outlet box, not directly to the wall. It seems extremely unlikely that the outlet boxes would twist or bend when the house shifts to cause the electrical plate covers to crack and break. I am satisfied the Respondents are responsible for the damaged electrical plate covers and I find the Respondents liable to the Applicant for the claimed costs to replace them.

The claim to replace two interior doors was for the back porch door and for the laundry room door. The Respondents did not dispute the back porch door, but they did dispute responsibility for the laundry room door. The Respondents claimed that the laundry room door "fell out" of its top hinge due to the small screws that were allegedly used to secure it. They don't remember when it fell out, admitting that it was a long time ago, but they removed it entirely at the time and claimed to have stored it under the house. The Respondents did not remember reporting the incident to the Landlord, conceding that they probably didn't. The Applicant's witness later confirmed that his maintenance personnel did not find the laundry room door anywhere on the property, including under the house. I am satisfied that the laundry room door was present when the Respondents took occupancy of the rental premises, and I am satisfied that the laundry room door was missing when the Respondents vacated the rental premises. I find the Respondents liable to the Applicant for the costs to replace the laundry room door.

There was no dispute regarding replacing one of the two smoke and carbon monoxide detectors. The entry and exit inspection reports only referenced one detector, but the condition rating report charged for two detectors. The Applicant's representatives agreed to reduce the costs claimed for replacing the detector by half.

The Respondents disputed the \$200 claimed to dispose of a vehicle, claiming they had removed the vehicle themselves. The Applicant's representatives agreed to withdraw their claim for the costs to dispose of the vehicle.

The Respondents did not dispute any of the other claims for repairs and cleaning. I find the Respondents liable to the Applicant for costs of repairs and cleaning in the amount of, calculated as follows:

Cleaning throughout	\$400.00
Repair fridge door handle	\$10.00
Replace kitchen drawer and cabinet doors	\$100.00
Replace electrical covers	\$75.00
Repair holes in walls	\$200.00
Repair interior door knob, hinge, casing	\$140.00
Replace two interior doors	\$600.00
Replace toilet paper holder	\$40.00
Replace on vent cover	\$35.00
Replace smoke detector and carbon monoxide detector	\$42.50
Replace damaged floor tiles	\$125.00
Repair exterior light fixture	\$25.00
10% of total cost to repaint walls	\$350.00
Clean yard	\$25.00
Repairs and cleaning total	\$2,167.50

Landlord maintenance

The Respondents made arguments regarding the condition of the rental premises throughout the tenancy, claiming that the Applicant had failed to maintain the rental premises in accordance with section 30 of the Act. To be clear, none of the above claimed damages and uncleanliness are related to maintenance issues. That is not to say that there were not maintenance issues that had not been attended to by the Landlord during the tenancy, and I acknowledge the Respondents purpose in raising the issues in an effort to draw attention to the Landlord's obligations and responsibilities in that regard.

Orders

An order will issue requiring the Respondents to pay rental arrears and utilities arrears in the total amount of \$3,817.83 (p. 41(4)(a), p. 45(4)(d)) and requiring the Respondents to pay costs of repairs and cleaning in the amount of \$2,167.50 (p. 42(3)(e), p. 45(4)(d)).

Adelle Guigon
Rental Officer