File #16539

IN THE MATTER between **KC and SB**, Applicants, and **DS and KS c/o TPM**, 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:

KC and SB

Applicants/Tenants

-and-

DS and KS

c/o TPM

Respondents/Landlords

REASONS FOR DECISION

Date of the Hearing: **July 4, 2019**

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

Appearances at Hearing: **KC, Applicant**
SB, Applicant

RS, representing the Respondents
PS, representing the Respondents

Date of Decision: **July 20, 2019**

REASONS FOR DECISION

An application to a rental officer made by KC and SB as the Applicants/Tenants against TPM - RS as the Respondents/Landlords was filed by the Rental Office May 3, 2019. 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 May 24, 2019.

The Tenants alleged the Landlords had improperly terminated the tenancy agreement and failed to return the security deposit. An order was sought for losses suffered as a direct result of the improper termination of the tenancy agreement and for the return of the security deposit.

A hearing was scheduled for July 4, 2019, in Yellowknife. KC and SB appeared as the Applicants. RS and PS appeared representing the Respondents.

Preliminary matter

The application to a rental officer identified the Respondents/Landlords as TPM - RS. The written tenancy agreement identified the Landlords as DS and KS c/o TPM. The Respondents/Landlords' representatives requested the amendment of the application to reflect the Landlords as DS and KS. It was clarified that TPM is the agent of the Landlords. I agreed to amend the application to identify the Respondents/Landlords exactly as they are identified in the written tenancy agreement. The style of cause going forward will be KC and SB v. DS and KS c/o TPM.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them commencing October 1, 2017, for a fixed-term to June 30, 2019. The written tenancy agreement in fact specified a commencement date of October 1, 2016, but the parties agreed this was a typographical error that should have read October 1, 2017.

.../3

There was debate as well regarding the specified end date of June 30, 2019. When the parties were discussing the term of the tenancy prior to entering into the tenancy agreement, the Tenants had requested a two-year fixed-term which would have taken them to September 30, 2019. The Landlords' agents requested a term that would end in the summer rather than the winter to accommodate ease of moves for all concerned. The Tenants agreed, but assumed the Landlords' agents meant to extend the end date to June 30, 2020. The Tenants admitted they did not read the tenancy agreement closely enough to notice the years written were different from what they expected. Despite what was expected, the written tenancy agreement clearly specifies the end date of the fixed-term as June 30, 2019, and the Tenants signed the agreement as is. I am satisfied a valid tenancy agreement for a fixed-term from October 1, 2017, to June 30, 2019, was in place in accordance with the *Residential Tenancies Act* (the Act).

Improper termination of the tenancy agreement

In January 2019 the Tenants received a notice from the Landlords' agent terminating their tenancy agreement for April 30, 2019, because the Landlords intended to reside at the premises themselves. The Tenants were led to believe and assured by the Landlords' agent that termination of the tenancy agreement in this manner was in accordance with the Act. The Tenants accepted that information from the Landlords' agent in good faith, despite the disadvantage it put them in, and proceeded to look for alternate accommodations. The Landlords' agents attempted to assist the Tenants with finding alternate accommodations, but ultimately the Tenants found it themselves with another landlord at the end of March with an available move-in date of April 15, 2019.

Between January and March, the Tenants had continued to ask questions about the validity of the termination notice they had been given, and testified that they had been assured by the Landlords' agents that the notice was valid and they were expected to vacate the rental premises by April 30th. In mid- to late-March, at around the time that the Tenants found their alternate accommodations, they decided to do some more research of the Act themselves. That is when they learned that the notice did not in fact comply with the requirements of the Act, specifically as they relate to either subsection 51(2) or paragraph 58(1)(a).

The alternate accommodations that the Tenants had secured did not have the same amenities that they enjoyed at the rental premises and the rent was $300 more per month than what they were paying for rent at the rental premises. The Tenants called the Landlords' agents on their findings regarding the improper termination of the tenancy agreement, outlined the inconveniences and duress they endured believing they were required to vacate by April 30th, and requested minor

.../4

compensation in the form of the full month's rent for April. The Landlords' agents refused the request, but the Landlords offered half a month's rent plus $200 if the premises was returned in a clean and undamaged condition. The Tenants were not entirely happy with this offer, particularly given they were prepared to agree in writing to terminate the tenancy agreement April 15th which would render them not responsible for half the month's rent anyway. When the Landlords would not negotiate further, the Tenants signed the notice to vacate on April 15th with a reference to doing so under duress.

The Landlords' agents did not dispute that the first notice to terminate given in January 2019 was not proper notice in accordance with the Act. They testified that when they realized the error of the notice they met with the Tenants and worked with them to resolve the issue in the best way possible for both the Tenants and the Landlord. The Landlords' agents believed there was an agreement to terminate the tenancy for April 30th, and they worked as best they could to find alternate accommodations for the Tenants within the property manager's inventory. The Landlords' agents acknowledged that no such agreement was specifically put in writing, but insisted that the verbal interactions successfully communicated that the termination of the tenancy for April 30th was mutual, and that conversations with the Landlords themselves were positive and accommodating. The Tenants denied any knowledge of any conversations with the Landlords and maintain that they believed the termination date was binding based on the notice they were given.

In effect, the contradictory testimonies create what is often commonly referred to as a 'he said/she-said' situation. I have no reason to disbelieve either of the parties in their testimonies. It seems to me that, whatever was said in their conversations, neither of them came away with the same interpretation. There being no other way to balance the differing testimonies, I am left with considering what was put in writing and what the Act specifically requires.

Section 50 of the Act provides for landlords and tenants to agree *in writing* to terminate a tenancy agreement on a specific date and that written agreement is binding, regardless of whether the tenancy agreement is for a fixed-term or month-to-month. There is no evidence in this case of the parties agreeing in writing to terminate the tenancy agreement on April 30, 2019. Nor do I accept the notice to vacate April 15, 2019, dated April 9, 2019, as an agreement in writing under section 50 for two reasons: it is clearly marked as being given under duress and the Landlords have not signed it. I am not satisfied the tenancy agreement between the parties was terminated in accordance with section 50 of the Act.

.../5

Subsection 51(2) of the Act provides for a landlord to give a tenant of a fixed-term tenancy at least 30 days' written notice to terminate the tenancy for the last day of the fixed-term *where the rental premises is the landlord's only residence in the Northwest Territories*. No evidence was presented suggesting the rental premises is the Landlord's only residence in the Northwest Territories. I am not satisfied the tenancy agreement between the parties was terminated in accordance with subsection 51(2) of the Act.

Paragraph 58(1)(a) of the Act provides for a landlord to make an application to a rental officer to terminate a tenancy if the landlord requires possession of the rental premises for use as a residence by the landlord or a member of the landlord's immediate family. Sub-paragraph 58(1.1)(a)(ii) goes on to say that the Rental Officer who in good faith requires the rental premises for the reason stated may make an order terminating a fixed-term tenancy agreement on a day no earlier than the fixed-term end date. In this case, that means that the earliest the Landlords could have terminated this tenancy agreement without the Tenants' agreement was June 30, 2019, and then only by making an application to a rental officer ordering the termination of the tenancy. Again in this case, that also means the Landlords could have made the required application to a rental officer at any time before the end of the fixed-term (although in consideration of Rental Office application processing time lines, it would have been best to make the application at least 30 days before the fixed-term end date).

The Landlords did not make any application to a rental officer, instead apparently relying on what they believed was a verbal agreement to terminate the tenancy April 30, 2019. As previously mentioned, I am not satisfied that there was any valid agreement to terminate the tenancy in accordance with the Act. I am satisfied that the Tenants were mislead and misinformed – whether intentional or not – and that their actions to secure alternate accommodations for when they did was not because they agreed with the termination date they were given but because they believed the Landlords were acting in compliance with the Act. In effect, I find the tenancy was improperly terminated by the Landlords and that the Tenants are entitled to compensation.

Subsection 60(1) of the Act provides for two possible monetary remedies where a tenancy has been improperly terminated by a landlord. Those remedies are either for the Landlords to pay the reasonable moving expenses of the Tenants to their new accommodation or for the Landlords to compensate the Tenants for any additional reasonable expenses incurred by the tenant, including any increased rent that the tenant was obligated to pay as a result of the improper termination.

.../6

No evidence was presented regarding the Tenants moving costs. Evidence was presented establishing the Tenants' monthly rent of $2,500 at their alternate accommodations, representing a difference of $300 from the monthly rent at the rental premises. Given that the Tenants returned possession of the rental premises to the Landlords April 16, 2019, I find the Tenants entitled to compensation for the difference in 2.5 months' rent in the amount of $750.

Security deposit

There was mention in email conversations between the parties of a $200 credit as compensation for improper termination of the tenancy. However, the Landlords referenced the $200 credit as something more akin to an extra security deposit credit rather than a rent credit when they said in the emails it would be given to the Tenants upon return of possession of the rental premises in an undamaged and clean condition. The Tenants attempted to ensure they received the $200 credit by deducting that amount from the half-month's rent for April, only paying $900 of the $1,100 that the Landlords were entitled to for the rent.

The Landlords returned the security deposit of $2,200 less $200 for rental arrears and $66.69 for a can of paint. The Landlords testified that the $200 security deposit credit was not granted because the yard had not (and could not be until the snow melted) cleaned of dog faeces. They opted not to grant the $200 credit at all when the Tenants chose to make this application to a rental officer.

Subsection 18(4) of the Act provides for a landlord to retain all or part of a security deposit for rental arrears and for repairs of damages to the premises. Subsection 18(5)(b) of the Act goes on to prohibit the retention of the security deposit for repairs of damages to the premises if the landlord fails to give a copy of each of the entry and exit inspection reports to the tenant. For further reference, subsections 15(5) and 17.1(5) of the Act require the landlord to give the tenant a copy of the entry and exit inspection reports within five days after the date of each inspection.

With respect to the $200 credit, as I've mentioned, it appears to have been a credit specifically offered dependent on the condition of the rental premises, not as a rent credit. The Tenants' failure to pay the full $1,100 for the half-month's rent did in my mind create rental arrears in the amount of $200. The Landlords' retention of $200 from the security deposit for the rental arrears was appropriate and in accordance with the Act.

The Tenants denied ever having received a copy of either the entry inspection report or the exit inspection report until it was provided to them with the partial return of their security deposit cheque 10 days after the end of the tenancy. The Landlords claimed to have provided the entry inspection report to the Tenants at the beginning of the tenancy, but had no evidence to support that claim. Regardless, they could not dispute having provided the exit inspection report to the Tenants five days after it was due. I am not satisfied the Landlords provided copies of the entry and exit inspections reports to the Tenants when required under the Act. I find the Landlords' failure to comply with the requirements of subsections 15(5) and 17.1(5) renders the Landlords ineligible to retain any portion of the security deposit against costs of repairs. Additionally, there is no evidence to support what the $66.69 can of paint was for or why the Tenants might be responsible for it. I find the Tenants entitled to the return of a portion of their security deposit in the amount of $66.69.

Orders

An order will issue requiring the Landlords to return a portion of the security deposit to the Tenants in the amount of $66.69 and requiring the Landlords to compensate the Tenants for losses suffered as a direct result of the improper termination of their tenancy agreement in the amount of $750.

Adelle Guigon
Rental Officer