

IN THE MATTER between **RS and JS**, Applicants, and **GD and MN**, 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:

RS and JS

Applicants/Landlords

-and-

GD and MN

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: July 10, 2019

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: RS, Applicant
JS, Applicant
MN, Respondent
SG, representing the Respondents

Date of Decision: August 10, 2019

REASONS FOR DECISION

An application to a rental officer made by RS and JS as the Applicants/Landlords against GD and MN as the Respondents/Tenants was filed by the Rental Office April 23, 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 email confirmed received May 27, 2019.

The Applicant alleged the Respondents had caused damages to the rental premises, had failed to pay the rent for the last month of the tenancy, and had failed to pay utilities (propane). An order was sought for payment of the costs of repairs, payment of rental arrears, and payment of utilities.

A hearing scheduled for June 4, 2019, was postponed at the Respondents' request. The hearing was re-scheduled to July 10, 2019, in Yellowknife. RS and JS appeared as the Applicants. MN appeared by telephone as Respondent and on behalf of GD. SG appeared representing the Respondents.

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 Act. The rental premises is an apartment governed by a condo corporation.

Effective date of termination of the tenancy

The parties agreed and evidence was presented establishing that the rental premises became uninhabitable as of January 17, 2019, due to the unit freezing after the boiler failed. The extent of the resulting damages required extensive renovations. The premises was not available for habitation for several months. The Respondents were required to find alternate accommodations. Given that the contract (tenancy agreement) could no longer be fulfilled because the rental premises could not be inhabited, I find the contract was frustrated and the tenancy effectively terminated as of January 18, 2019.

Damages

At approximately 9:00 p.m. on January 17, 2019, the Applicants were contacted by the condo corporation to check on the rental premises as they had received reports from neighbouring tenants that there appeared to be frozen water pipes in the building. The Respondents were travelling at the time, so the Applicants notified the Respondents by email that they needed to enter the premises.

Upon entering the rental premises, the Applicants confirmed that the boiler was not working which caused the water lines throughout the apartment to freeze up. Photographs were provided showing the water in the toilet and the refrigerator's water dispenser were frozen as well. It was later determined that the fire suppression system had also frozen, which contributed to a significant amount of water damage throughout the premises. The extent of the damages rendered the rental premises uninhabitable, and renovations and repairs were predicted to take several months.

Both the Applicants' insurance and the condo's insurance covered the majority of the damages. The costs the Applicants' incurred which were not covered by the insurance were related to the emergency call-out to repair the boiler, a small amount for repair or replacement of the damaged appliances, and the Applicants' \$1,000 insurance deductible. The total amount the Applicant claimed against the Respondents for those costs was \$3,693.13.

The Respondents had been travelling for a few weeks over December 2018 and January 2019, returning late at night on January 17, 2019. They had arranged for a house-sitter to check on the rental premises during their absence. During the insurance adjuster's investigation, they interviewed the house-sitter, who confirmed to them that he had been checking on the rental premises every day of the Respondents' absence to make sure everything was in order. On the morning of January 17, 2019, the house-sitter did not observe frozen water in the appliances or fixtures, but did note the premises felt cool. Aware that the Respondents were returning to the rental premises that night, the house-sitter turned the thermostat up in an effort to ensure the Respondents would return to a comfortably warm home. No warning notifications indicating the boiler was not working were reported or noticed by the house-sitter.

During the boiler repair technician's investigation, he reported that the boiler unit failed because it ran out of fluid which caused the unit to shut down. After reading the boiler's manual, I learned that the boiler requires fluid – either water or coolant or a combination thereof – to run through its system to ensure it does not overheat or otherwise damage any part of the system. When a problem arises, the boiler shuts down and reports a 'blocking error' which cannot be cleared until the problem is corrected. The boiler burner is not permitted to operate while a blocking error exists, and the blocking error will not be cleared by cycling the power off and on, or by pressing the RESET button. When the boiler is shut down due to a blocking error, the letters 'Loc' will appear on the thermostat display with a lockout code which can be looked up in the manual to determine the nature of the problem.

The Applicants provided a photograph of the thermostat display taken the evening of January 17, 2019, when they entered the premises in response to the condo corporation's notification. The thermostat display read 'Loc 11'. Referring to the boiler manual, 'Loc 11' is defined as "Uncorrected Blocking Error - a blocking error (Err) has lasted for 20 consecutive hours." I interpret this to mean that the boiler burner was shut down at least 20 hours prior to this photo being taken, likely some time around or before Midnight that day. Given that the temperatures on January 16th and 17th ranged from -32C to -37C, 24 hours could reasonably be enough time for the extent of freezing that was found. The house-sitter did not report observing cool temperatures in the rental premises on January 16th, so on a balance of probabilities it seems likely that the boiler failed either shortly before or after the house-sitter attended the rental premises January 16th.

The Applicants were asked at hearing if they were aware of whether or not any warning notices would or should be displayed on the interior thermostat display, and if so, what they would mean if they came up. They admitted they did not know, and believed the display was simply about adjusting the temperature. They believed a hard copy of the manual for the boiler was with the boiler, but have not been able to locate it since the renovations. They provided an Internet link to a manual for the same or similar boiler system. The depiction of the thermostat display in the manual is the same as that shown in the provided photograph, which suggests to me the provided manual link is likely the correct one or for a version of the unit similar enough to the one in the rental premises.

The Applicants confirmed that as the Landlords they are responsible for the regular maintenance of the boiler. The parties agreed that at the beginning of the tenancy the Respondents were shown how to adjust the temperature on the thermostat display. The Respondents were also provided with contact information in the event the boiler failed, but since not even the Applicants knew what, if any, warning notices the thermostat display might give, it stands to reason that the Respondents were not provided with information on what to watch for.

The Applicants mentioned that there were some boiler issues last winter that were identified and repaired by a certified technician. Because that was just done in February 2018, they took the requirement for annual maintenance literally and had not yet arranged for the boiler maintenance when the freeze-up occurred, intending to do it in February 2019. However, the boiler manual at section 16.0 Annual Maintenance and Inspection specifically says in the first line: “This unit must be inspected *at the beginning of every heating season* by a Qualified Technician” (my emphasis). I take judicial notice that the heating season in Yellowknife generally begins in October of each year, which means that the Applicants should have had the boiler maintenance done no later than November, despite the repairs having been completed in the prior February. Had they done so, the technician may have identified at that time that the fluid levels were low and corrected the problem before it could cause the boiler to shut down.

Subsection 42(1) of the *Residential Tenancies Act* (the Act) says that the tenant shall repair damage to the rental premises and residential complex caused by the *wilful or negligent conduct of the tenant or persons who are permitted on the premises by the tenant* (my emphasis).

Paragraph 30(1)(a) of the Act says that the landlord shall provide *and maintain* the rental premises, the residential complex, and *all services and facilities* provided by the landlord in a good state of repair and fit for habitation during the tenancy (my emphasis).

Subsection 1(1) of the Act defines “services and facilities” as including heating facilities or services.

Because the boiler shutting down cannot be attributed to an action of either the Tenants or their house-sitter, and because there is no evidence to suggest that the house-sitter should have known that the boiler was not in fact functioning, I am not satisfied that either the Respondents or their house-sitter were negligent. I find the Respondents are not liable for the costs associated with repairing the damages resulting from the boiler failing and the rental premises freezing up. The Applicants' claim for costs of repairs in the amount of \$3,693.13 is denied.

Rental arrears and utilities

The parties agreed that the rent was \$2,500 per month. The parties also agreed that the Respondents were responsible for paying for propane on a quarterly basis. The written tenancy agreement confirms that the security deposit of \$2,500 was paid February 10, 2018. The Respondents provided proof of having paid the pet security deposit of \$1,250 on April 1, 2018. My calculation of the interest on the total security and pet security deposits to the previously determined date the tenancy ended of January 18, 2019, amounts to \$1.68.

The Applicants retained the security deposits against claimed rental arrears for February 2019 of \$2,500 and the claimed outstanding propane costs for October 1, 2018, to February 28, 2019, of \$1,802.16.

The Respondents disputed their responsibility for the February 2019 rent given they were unable to occupy the rental premises for that month. They did not dispute their responsibility for the outstanding propane costs. The Respondents requested at hearing the return of a portion of their security deposits.

Having found that the tenancy agreement had been frustrated when it became uninhabitable and effectively ended the tenancy as of January 18, 2019, I find the Respondents are not responsible for the rent for the month of February. Additionally, the frustration of the contract was not as a result of the actions of the Respondents, so the Respondents cannot be held responsible for lost future rent. The Applicants' claim for the rent for February 2019 is denied.

Again, having found that the tenancy agreement ended January 18, 2019, through no fault of their own, the Respondents' responsibility for the propane costs ended at the same time. The Respondents agreed to pay the outstanding propane costs for October 2018 to the end of January 2019 – acknowledging they had not paid those bills – but disputed their responsibility for the propane costs for February. I agree that the Respondents are not responsible for the propane costs for February. Prorating the first quarter propane costs, I find the Respondents responsible for the propane costs from October 2018 to January 2019 in the amount of \$1,352.64.

I am satisfied the Respondents have failed to comply with their obligation to pay for utilities (propane). Applying both the security deposits against the total propane costs of \$1,352.64 results in a remaining security deposit credit balance of \$2,399.04.

Order

An order will issue requiring the Landlords to return a portion of the security deposit to the Tenants in the amount of \$2,399.04.

Adelle Guigon
Rental Officer