

IN THE MATTER between **MW**, Applicant, and **TDV and JJ**, 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 **Janice Laycock**, Rental Officer,

BETWEEN:

MW

Applicant/Landlord

-and-

TDV and JJ

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: March 4, 2020

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: MW, Applicant
CR, representing the Applicant
MA, representing the Applicant
TDV, Respondent
VDV, representing the Respondents

Date of Decision: March 6, 2020

REASONS FOR DECISION

An application to a rental officer made by MW as the Applicant/Landlord against TDV and JJ as the Respondents/Tenants was filed by the Rental Office on October 25, 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 on November 15, 2019.

The Applicant claimed the Respondents had vacated the rental premises prior to the end of their lease and an order was sought for compensation for lost rent for May and June totalling \$4,600, as well as unpaid invoices and expenses for cleaning at \$150, replacement of a piece of furniture valued at \$250, utilities at \$490.93, and a lost mail key valued at \$10.

A hearing was originally scheduled for December 4, 2019, but was rescheduled to March 4, 2020, at the request of the Applicant to allow time to review documentation provided by the Respondents just prior to the December 4th hearing date. All parties were provided notice of the revised hearing date.

The hearing proceeded on March 4, 2020. All parties appeared in person at the hearing, including: the Rental Officer, Janice Laycock; the Applicant, MW, with her representatives CR and MA; and the Respondent TDV with her representative VDV. It was clarified that TDV was also there on behalf of JJ.

Previous orders

Rental Officer Order #16589 dated October 11, 2019, ordered MW to return to the Tenant the security deposit in the amount of \$1,450.

Tenancy agreement

Evidence was presented establishing a tenancy agreement between the parties. Section 3, "Term", of the tenancy agreement sets out the term of the tenancy as being from February 1, 2019, to July 1, 2019. The Applicant testified that although a one-year term was her normal practice, she and the Tenants had agreed to this shorter term in recognition that the Tenants may need to move earlier to find work.

The Respondents vacated the rental premises on April 26, 2019, prior to the end of the term set out in their tenancy agreement. They testified that they needed to vacate the unit early to respond to a job opportunity outside of the Northwest Territories.

Section 50 of the *Residential Tenancies Act* (the Act) allows the landlord and tenant to agree in writing after a tenancy agreement has been made to terminate the tenancy on a specified date. The Applicant testified that they did not agree to an early termination.

I am satisfied that a valid tenancy agreement was in place for the period of February 1, 2019, to July 1, 2019, that the rental premises were vacated by the Respondents on April 26, 2019, and that the tenancy agreement was not terminated in accordance with the Act.

Rental arrears - "lost rent"

No statement of rental arrears was provided as evidence. Section 4 titled "Rent" in the tenancy agreement sets out the monthly rent as \$2,300. All parties agreed that rent had been paid for the months of February, March, and April 2019. No rent was paid for the months of May and June 2019, even though under subsection 41(1) of the Act the Respondents were required to pay to the landlord the rent required by the tenancy agreement.

Although the Act requires rent to be paid, it also requires the Landlord to mitigate their losses when a Tenant leaves the tenancy early by re-renting the premises as soon as possible after the Tenant leaves. Subsection 5(2) of the Act says *"Where a tenant terminates a tenancy agreement, contravenes a tenancy agreement, or vacates or abandons rental premises, other than in accordance with this Act or the tenancy agreement, the landlord shall rent the rental premises again as soon as practicable and at a reasonable rent in order to mitigate the damages of the landlord."*

It is clear that the Respondents vacated the rental premises in contravention of their tenancy agreement and the Act. However, it is not clear that the actions taken by the Landlord to rent the rental premises again were "as soon as practicable." The Applicant testified she was not able to rent the unit again until July 1, 2019.

At the hearing evidence was presented by the Respondent that they notified the Applicant by text message on March 11, 2019, they were planning to vacate the rental premises in April 2019 to pursue employment outside the Northwest Territories. The Respondent testified that they had offered to assist the Applicant to find new renters, but this offer was not accepted.

The Applicant testified that they advertised the unit for rent in April. Both parties agreed that potential renters came to view the unit that month. The receipts provided by the Applicant and accepted as evidence show advertising through YK Trader dated June 2 to 30, 2019.

In considering “as soon as practicable” I looked at when the Applicant knew the Respondents planned to move out as well as steps the Applicant took to find renters. The Applicant knew in March the tenants would not be there in May. The Applicant had half of March and most of April to begin to advertise and rent the rental premises for May 1, 2019, and they also had an offer of assistance in this from the Respondents. I appreciate that the Applicant wanted to vet prospective tenants but she could have vetted anyone referred to her by the Respondents. With or without this help, I find it difficult to accept that it took the Applicant three-and-a-half months to re-rent the unit.

Based on the testimony and evidence presented it is my conclusion that it should have been reasonable (or practicable) for the Applicant to re-rent the premises by at least June 1, 2019. As the Respondents had an obligation to pay their rent, they still need to compensate the Applicant for “lost rent” totalling \$2,300 for the month of May 2019.

Rental arrears - utilities

The definition of “rent” in the Act is quite broad and includes “*any consideration paid or required to be paid by a tenant to a landlord or his or her agent for the right to occupy rental premises and for any services and facilities, privilege, accommodation or thing that the landlord provides for the tenant in respect of his or her occupancy of the rental premises, whether or not a separate charge is made for the service and facilities.*”

Section 5 “Utilities” of the tenancy agreement sets out that the charges for power will be paid by the Landlord and then reimbursed by the Tenant monthly. I find that this charge-back for services by the Landlord to the Tenant falls under the definition of “rent” and any amount owing is rental arrears.

At the hearing, the Applicant testified that they had provided the amounts owing to the Respondents but had received no payments. Invoices were provided as evidence totalling \$430.93 paid by the Applicant on behalf of the Respondents for power utilities during the months of February, March, and April 2019.

The Respondents testified that they had not received the invoices or notice of the amounts due until they received the filed application to the Rental Office. Further, they testified that they had understood they would not have to pay part or all of these costs in recognition of a delay in moving in and not being able to use part of the unit in February. The Applicant testified that they had not agreed to waiving these costs.

The Respondents signed the tenancy agreement on February 25, 2019, confirming the tenancy began on February 1, 2019, and agreeing to reimburse the Applicant for the power utilities. If the invoices were not supplied to them by the Applicant, it was still their responsibility to enquire as to the amounts. Without any evidence of an agreement to waive the utilities, and considering the testimony of the Applicant, I find that the Respondents owe the Applicant for the cost of power for February, March, and April 2019 totalling \$430.93.

Breach of obligations - cleaning

Under subsection 45(2) of the Act a tenant shall maintain the rental premises in a state of ordinary cleanliness. The Applicant claimed \$150 for cleaning cat hair from the apartment. However, the Applicant was not able to supply an entry or exit inspection report, or any invoices or receipts for the cleaning. The Respondent provided as evidence copies of pictures taken when they moved out of the rental premises showing that the unit was clean. Without evidence to support their claim the Applicant withdrew their request for compensation for cleaning.

Breach of obligation - furniture

The Applicant claimed that the Respondents had removed a piece of furniture that was loaned to them during their tenancy. The Respondent did not dispute this claim. The Applicant claimed that the value of this piece of furniture was \$250.00 but was not able to provide a substantiation of that amount. The Respondents had sold this item after they moved out of Yellowknife and were only able to get \$10. Without evidence to support their claim and not willing to accept compensation of \$10 the Applicant withdrew their request for compensation.

Orders

An order will be issued requiring the Respondents to pay rental arrears of \$2,300 to the Applicant in compensation for lost rent and \$430.93 in compensation for utilities owed (p. 41(4)(a)).

Janice Laycock
Rental Officer