File #16944

IN THE MATTER between **KM and LM**, Applicants, and **BM**, Respondent.

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:

KM and LM

Applicants/Tenants

-and-

BM

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing:	April 22, 2020
Place of the Hearing:	Yellowknife, Northwest Territories
Appearances at Hearing:	KM, Applicant LM, Applicant BM, Respondent GL, representing the Respondent
Date of Decision:	April 24, 2020

REASONS FOR DECISION

An application to a rental officer made by KM and LM as the Applicants/Tenants against BM and EES as the Respondents/Landlords was filed by the Rental Office on March 9, 2020. The application was made regarding a residential tenancy agreement for rental premises located in Hay River, Northwest Territories. The filed application was sent to the Respondent by registered mail signed for March 25, 2020.

The Applicants claimed and sought recourse under the *Residential Tenancies Act* (the Act) for the following:

1. Tenancy Agreement
    a. The tenancy agreement was not consistent with the Act;
    b. The Respondent had agreed to rental payments twice monthly, but was now charging late payment penalties;
2. No entry inspection was done;
3. A rental increase was imposed in breach of the Act;
4. The Applicants do not have full use of the rental premises;
5. Repairs to the bathroom ceiling took too long;
6. The Respondent appears at the rental premises without notice; and
7. The Respondent had given the Applicants notice of eviction.

A hearing was held April 22, 2020, by three-way teleconference. KM and LM appeared as the Applicants. BM appeared as the Respondent with GL appearing as the Respondent's representative.

Preliminary matters

At the hearing it was clarified that the tenancy agreement between the parties was with BM as the sole Landlord, although EES had an ownership interest in the building. BM stated that she would be speaking on behalf of EES and GL would act as a witness. The Applicants also explained that LM wore a hearing aid and may have difficulty participating in the teleconference. When asked, LM confirmed that she could hear me, and I requested that she let me know if she had any difficulty during the proceedings.

.../3

Evidence related to the hearing had been sent by email to the Rental Office and the Applicants, on behalf of the Respondent on April 19, 2020. The Applicants testified that they did not receive this information. Because of the restrictions related to COVID-19, the Applicants had not been able to access the internet at the public library, and had not received the information. The hearing proceeded without this evidence.

At the end of the hearing I stated that I would issue my order and reasons in the next few days after I had time to review the testimony and consider the issues further.

Tenancy agreement

A tenancy agreement with the Respondents was provided as evidence. The tenancy agreement was signed by the Applicants on September 25, 2017, for a tenancy starting on September 15, 2017, and continuing month to month. The Agreement was not signed by the Respondent.

In their application, the Applicants asked that a proper lease agreement be provided that also included the Landlord's obligations. Subsection 9(3) of the Act sets out that the form of the tenancy agreement may be in the form of a tenancy agreement set out in the *Residential Tenancies Regulations* (the Regulations). No matter the form of the tenancy agreement, subsection 10(1) of the Act says that the tenancy agreement is deemed to include the provisions of the form of a tenancy agreement set out in the Regulations and under subsection 12(1) landlords and tenants may include in a written tenancy agreement additional rights and obligations that are not inconsistent with the Act and Regulations. Also, subsection 12(5) of the Act allows a rental officer to determine whether an additional obligation or rule is reasonable.

I reviewed the current tenancy agreement between the parties and found that there are two provisions relating to additional obligations that I found are not reasonable or enforceable:

1. Rent is to be paid by the 3rd of each month. Late charge of $10.00 per day for each additional day.

2. If an eviction is issued, the tenants must vacate within one week of notice.

The first obligation with respect to the imposition of a late charge is not consistent with the Act and Regulations. Section 3 of the Regulations sets out the calculation of penalties for late payment of rent must not exceed $5 plus $1 for each day after the due date that the rent is late, to a maximum of $65.

.../4

The second obligation is also not consistent with the Act. Section 63 of the Act provides for the Landlord to make an application to a rental officer for an eviction. Under this section it is the Rental Officer who, after being satisfied that a tenancy has been terminated in accordance with the Act, can order an eviction and specify the date the eviction may be executed if the Tenant does not voluntarily vacate the rental premises before that date.

I am satisfied that a written tenancy agreement is in place between the parties, but that portions of the agreement are not in accordance with the Act. Although I do not have the authority under the Act to order that a new agreement be produced, I did repeatedly suggest that the Respondent prepare a new tenancy agreement using the Act as a reference. It is my belief that not only would this be an opportunity to remove the sections found to be unenforceable, it might also address other issues that have arisen between the parties. The Respondent agreed that they would be taking this recommendation.

Payment of rent

According to the Applicants, the Respondent had previously agreed that the rent could be paid in two payments of $700 each, but had recently started charging late payment penalties. The Applicants provided as evidence invoices for January and February that include fees for late payment of rent. As described previously, the late rent penalties charged at $10 per day are not consistent with the Act and Regulations.

The Respondent denied agreeing to receive the rent in two payments, but said that they had only recently started charging penalties and that the penalties had not been paid. I pointed out that the tenancy agreement requires that rent be paid by the 3rd of each month, but information on payments made in the past as provided by the Applicants shows that payments were regularly made throughout the month.

As the late payment penalties referenced in the written tenancy agreement have already been found to be inconsistent with the Act and unenforceable, the invoices issued are also unenforceable. I suggested that the issue of the date for payment of rent be clearly addressed with the Applicants and set out in the new tenancy agreement.

Entry inspection

According to the Applicants no entry inspection was carried out when they moved into the unit. It was their belief that no claim can be made against the security deposit for the cost of damages (if any) when they move out.

The Respondent testified that they did carry out a very rudimentary condition inspection of the unit with one of the Applicants when they moved in. They admitted that the inspection was limited, did not follow the form set out in the Act, and was not signed. They stated that they would in the future make sure to carry out the proper inspections with their tenants. As no claim for damages has been made by the Respondent, no further action is required on this issue.

Rent increase

According to the Applicants' testimony and supporting evidence, the Respondent increased the rent on August 1, 2018, with a notice dated May 10, 2018. The Applicants claimed that this increase was in contravention of the Act as it was less than 12 months since the rent was first charged.

Subsection 47(1) of the Act says:

> 47. (1) Notwithstanding a change in landlord, no landlord shall increase the rent in respect of a rental premises until 12 months have expired from
>
> (a) the date the last increase in rent for the rental premises became effective; or
>
> (b) the date on which rent was first charged, where the rental premises have not been previously rented.

The Respondent testified that the unit was not previously rented and they were now aware that the increase should have been effective the 15th of September, which was twelve months after the unit was rented by the Applicants. I pointed out that the rent was (according to the Respondent) due at the beginning of the month, so the increase should not have been levied until the beginning of October. This would mean returning $400 to the Applicants or crediting their rent account for this amount as provided for in subsection 47(3.1) of the Act.

The breach relating to the rent increase occurred in August 2018. Under subsection 68(1) of the Act, an application to a rental officer must be made within six months of the breach of an obligation under the Act or the tenancy agreement, or when the situation referred to in the application arose. It is now well over a year since the breach, and this is the first time that the Applicant has raised this issue. They testified that they were not aware that this was a breach under the Act. Subsection 68(3) of the Act allows a Rental Officer to extend the time for making an application if the Rental Officer is of the opinion that it would not be unfair to do so.

Considering that there was a clear breach of the Act and that the Respondent has recognized the breach and is willing to correct it, I think it is fair to extend the time for making the application on this issue. I find that the Respondent has failed to comply with their obligation respecting the imposition of rent increases and must credit the overpaid amount of $400 to the Applicants' rent account.

.../6

Loss of use of the rental premises

The Applicants made two complaints relating to the loss of use of a portion of the rental premises. In the first complaint the Applicants claimed that although they had rented a three-bedroom home they only had use of part of the home and wanted compensation for their loss of use. They alleged that the Respondent had stored their possessions in two of the three bedrooms and despite repeated requests to move the items the Respondent had not complied.

The Respondent testified that the Applicants were aware that items were stored in the unit when they moved in and had told the Respondent that it wasn't an issue. At various times the Respondent had offered to move the items but the Applicants continued to reply that it wasn't an issue.

The Applicants testified that they were unable to use one of the bedrooms to accommodate visitors. The Respondent testified that they had provided a bed as well as other furnishings for the use of the Applicants.

In the second complaint, the Applicants claimed that it had taken four months for repairs to the second bathroom to be completed and they wanted compensation for their loss of use. The Respondent testified that the damages happened in the winter and it took them a few months to secure the services of a contractor to do the work, but they proceeded with repairs as fast as possible. During the repairs the bathroom was useable and the main bathroom was not affected and could be used.

The testimony of the parties on these issues was contradictory. However, I think it is important to note that despite their complaint, the Applicants had provided no evidence to show that they had raised these issues with the Respondent at any time in the past, including giving reasonable notice as required under subsection 30(5) of the Act, or making an application to a rental officer within six months of the breach.

In the case of the items stored in the rental premises, I appreciate that the Applicants may now want some or all of the items removed. However, I do not believe that there was a breach of the Landlord's obligation under subsection 30(1) of the Act, or that compensation is due for the term of the tenancy. At the hearing the Respondent testified that they had previously offered to move the items but had been told by the Applicants that it wasn't necessary. At the hearing the Respondent made this offer again.

In the case of the bathroom renovations, I cannot see that there was a loss of use requiring compensation. There was another bathroom (the main bathroom) available for their use, and although repairs to the ceiling were required, the Applicants could also use this bathroom during this time.

.../7

Right to enter - notice

The Applicants have claimed that the Respondent, or their representative, had appeared at the rental premises without providing proper notice as required under the Act. The Act sets out the rights of Landlords to enter the rental premises under subsections 26(1) and (2), the notice that is required under subsection 26(3), the hours when entry is permitted under subsection 26(4), and situations where a landlord can enter without notice or permission under subsections 27(1) and (2). Unless there is an emergency, or the Landlord believes the Tenant has vacated or abandoned the unit, or the Tenant consents at the time of entry, the Landlord must provide at least 24 hours' written notice before entry.

At the hearing the Respondent testified that they did typically provide notice to the Applicants, but on occasion had entered with the permission of the tenant. It was pointed out to the Applicants that they had the right to refuse entry if notice was require and not provided.

There was some discussion about how to provide written notice as required under the Act. Although the Applicants had provided email as a method of communication they typically had limited access to the internet at the library, and during COVID-19 they had no access. I encouraged the parties to determine a method that worked for them.

I am satisfied that, on occasion, notice of intent to enter was not provided by the Landlord to the Tenant as required under the Act. I find the Respondent has failed to comply with their obligation to give the Applicant at least 24 hours' written notice of their intent to enter the rental premises.

Eviction

The Applicants claimed that the Respondent had given them notice of eviction after the Applicants called the Health Inspector to determine if there was mold present in the rental premises. As previously stated, the Landlord cannot give notice of eviction. Under section 63 of the Act, a Landlord can make an application to a rental officer for an eviction. Under this section it is the Rental Officer who can, upon being satisfied that a tenancy agreement has been terminated in accordance with the Act, order an eviction and specifying the date the eviction may be executed if the Tenants do not voluntarily vacate the rental premises. At the hearing the Respondent testified that they had not provided notice of eviction but had suggested that if the tenants were still concerned about mold or anything else in the unit they were welcome to move.

Other issues

At the hearing the Applicants started to raise issues relating to the high cost of heating the unit. As this was not part of their application, and they had not provided any supporting evidence for the hearing, I denied their request to include this issue under the current application.

.../8

Finally, at the conclusion of the hearing I again recommended that a new tenancy agreement, based on the form in the Act, be developed by the Respondent, discussed with the Applicants, and signed by both parties. This process may help them resolve some of the issues and make it clearer what their respective obligations are.

Orders

An Order will be issued:

- requiring the Respondent to record a credit of $400 against the Applicants' rent account to compensate them for a rent increase collected in contravention of the Act (ss. 47(3.1)); and
- requiring the Respondent not to breach their obligation to provide proper notice of their intention to exercise their right to enter the rental premises again (p. 28(a)).

Janice Laycock
Rental Officer