File #16879

IN THE MATTER between **SP**, Applicant, and **JT**, 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:

SP

Applicant/Landlord

-and-

JT

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing:	June 3, 2020
Place of the Hearing:	Yellowknife, Northwest Territories
Appearances at Hearing:	SP, Applicant JT, Respondent DE, representing the Respondent
Date of Decision:	June 3, 2020

REASONS FOR DECISION

An application to a rental officer made by SP as the Applicant/Tenant against JT as the Respondent/Landlord was filed by the Rental Office on January 31, 2020. The application was made regarding a residential tenancy agreement for a rental premises located in Fort Simpson, Northwest Territories. The filed application was personally served on the Respondent on March 5, 2020.

The Applicant claimed the Respondent owed her a refund of half a month's rent for January 2020, the return of her security deposit, and a credit for propane. Orders were sought relating to these claims.

A hearing scheduled for March 18, 2020, was cancelled because the presiding Rental Officer was not able to attend. The hearing was rescheduled and held on June 3, 2020, by three-way teleconference. Appearing at the hearing were: Janice Laycock, Rental Officer; SP as the Applicant; JT as the Respondent, with DE appearing as the Respondent's representative. It was noted that although the application was made against Julie T'setso alone, both JT and DE are the Landlords according to the tenancy agreement.

Tenancy agreement

The parties agreed that there was a residential tenancy agreement between them beginning on August 1, 2017. The Landlords provided a copy of the written tenancy agreement as evidence. According to the agreement, the rent was $1,400 per month, due on the first of every month.

According to evidence provided by the Applicant, this tenancy was terminated on January 14, 2020, when she decided to enter into a new tenancy agreement with another landlord. The Applicant testified that they felt they had no choice but to find other accommodations when they returned to their unit on January 14, 2020, to find there was no heat to the rental premises and the plumbing was frozen and did not operate.

Based on further testimony from both parties it became clear that the Applicant had abandoned the rental premises before the Respondents had a chance to address the damages result from the freeze-up.

I am satisfied that a valid tenancy agreement was in place in accordance with the *Residential Tenancies Act* (the Act) and that this tenancy was terminated on January 14, 2020, when the Landlords became aware the Applicant had abandoned the rental premises.

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Tenant damages

According to their testimony and evidence, the Applicant left the rental premises to attend a funeral in another community. They were informed after they left the community that the unit was cold, but assumed it was because of the extremely cold day. They asked their daughter to turn up the heat before she left town. They also asked someone to check the premises while they were away. This person checked the unit a few days later, on January 13, 2020, and by that point the furnace had gone out and the plumbing had frozen.

The Applicant became aware that the furnace was not working and the plumbing had frozen on January 13, 2020, and contacted the Landlord right away. The Applicant arrived back in the community on January 14, 2020, to a frozen house. As mentioned earlier, the Applicant felt they could not stay in the unit and as the Landlords did not offer alternative accommodations they felt they had to find a new place to live. Later that day they entered into a tenancy agreement with another landlord and that evening they started to move out of the rental premises with the assistance of family.

The Landlords provided evidence and testimony of their efforts to repair the furnace and plumbing. According to the invoices from Flush Mechanical, work was initiated on the furnace on January 13, 2020, with further work being done on the 14th. All work to purchase and replace the plumbing and fixtures that had frozen including the water pump, toilet, and kitchen faucet was completed by January 28, 2020, which is the date of the invoice.

The Applicant claimed that the Landlords had failed to provide regular maintenance to the unit and that the problem with the furnace resulting in the freeze-up was as a consequence of this lack of maintenance.

The Landlords agreed that they had not regularly maintained the furnace, but they also had not received any complaints from the Applicant about the furnace, nor were they aware that the Applicant would be out of town. They claimed that because of the Applicant's negligence in not checking the house regularly or informing them of plans to be out of town so they could check it, the rental premises froze up resulting in the claimed damages.

The Landlords provided copies of invoices for work and materials to repair the furnace and replace the frozen plumbing as follows:

1. Repair of Furnace

   Flush Mechanical Invoice #438272 to clear the chimney, clear the pressure switch, start the furnace, replace the air filters, remove the pressure pump - total invoiced: $225.75

   TOTAL FOR FURNACE REPAIR: $225.75

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2. Replace fixtures and pump split and failed as a direct result of house freezing

   Flush Mechanical Invoice #438291 to instal the water pump, repair the toilet flange, instal the toilet, instal the kitchen faucet - total: $315.00

   Canadian Tire charge for the water pump - total: $201.52

   Flutterby Sales and Service charge for the toilet - total: $200.00

   Unity charge for the faucet and hardware - total: $93.95

   TOTAL FOR FREEZE UP REPAIRS: $810.47

Based on the evidence and testimony of both parties, I find that the Applicant and Respondent share in responsibility for the damages. The Applicant did not alert the Respondents that there may be an issue with the furnace, and considering the extremely low outdoor temperatures at the time they were away the Applicant was negligent in checking the house. The person the Applicant asked to check the house did not do so until after it had frozen up.

Under subsection 30(5) of the Act a tenant must give reasonable notice to the Landlord of any substantial breach of their obligations under subsection 30(1) to maintaining the rental premises in good state of repair. Under subsection 42(1) the tenant is responsible for the repair of damages caused by "willful or negligent conduct of the tenant."

I find that the Applicant is responsible for the costs related to replacing the fixtures and pump caused when the house froze-up in the total amount of total $810.47.

Under subsection 30(1) of the Act the Landlords were responsible for providing and maintaining the rental premises in a good state of repair and fit for habitation. By not regularly maintaining the furnace they may have contributed to the freeze-up and related damages. I find that the Respondent is responsible for the costs related to repairing the furnace in the total amount of $225.75.

Compensation

The Applicant testified that they were unable to live in the rental premises, that the Landlords did not offer to assist them with alternate accommodations, and that they had no choice but to enter into a new tenancy agreement with another landlord. The Applicant said that she would have continued the tenancy with the Landlords if they had been offered some help. The Applicant claimed compensation in form of a refund of the rent for half the month of January 2020 in the amount of $700.

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The Landlords testified that the Applicant told them she would stay with her daughter that night, and then the Applicant abandoned the tenancy. The Landlords admitted they should have made more of an effort to assist the Applicant to secure temporary accommodations while the repairs were being made to the rental premises, but they were focused on getting the unit thawed out and the furnace operating. The Landlords offered the Applicant $50 in compensation for one night of private accommodation. They claimed that because the Applicant abandoned the rental premises the Respondent should receive compensation for loss of rental income in the amount of $1,400 for the month of February.

Under subsection 30(4) of the Act, where a landlord has failed to maintain the rental premises in a good state of repair and fit for habitation a Rental Officer may order the Landlord to compensate the Tenant for loss that has been suffered as a direct result of the breach. In this case the Applicant, who was at least partially responsible for the freeze-up, did not give the Landlords a chance to remedy the breach and chose to abandon the tenancy the day after they found out about the freeze-up.

It is my position that the freeze-up is at least partially the fault of the Applicant, and she lost her right to claim compensation when, instead of finding temporary accommodation which could have been charged back to the Landlords under paragraph 30(4)(d) of the Act and waiting for the repairs to be carried out, they chose to abandon the rental premises immediately. Under subsection 62(1) of the Act, "where a tenant abandons a rental premises the tenancy agreement is terminated on the date the rental premises were abandoned, but the tenant remains liable to compensate the landlord for loss of future rent."

I am satisfied that the Landlords' offer of compensation of $50 to the Applicant for one night of accommodation is reasonable, and I find the Respondent owes the Applicant $50 for loss suffered as a direct result of the freeze-up. I am satisfied that the Applicant terminated the tenancy agreement without proper notice resulting in the Respondent suffering the loss of future rent. I find that the Applicant owes the Respondent compensation for lost future rent for February in the amount of $1,400.

Security deposit

According to the provided evidence, a security deposit of $1,400 was paid on July 28, 2017. Interest calculated according to the Act and *Residential Tenancies Regulations* (the Regulations) is $1.73 resulting in a total security deposit credit of $1,401.73. Under subsection 15(3) of the Act, the Landlord is obligated, without delay on the completion of an inspection, to (a) Prepare an entry inspection report, (b) sign the entry inspection report, and (c) provide the tenant with the opportunity to include comments in the entry inspection report and to sign it.

Both the entry and exit inspections were carried out, however, the condition at the beginning of the tenancy was documented in a rough list on the back of the tenancy agreement. An entry inspection report was not provided to the Applicant as required under the Act, and the Applicant testified that they did not receive a copy of the exit inspection report. Under subsection 18(5) of the Act the Landlord is prohibited from retaining any part of the security deposit for repairs of damages where the landlord fails, without a reasonable excuse accepted by a Rental Officer, to give a copy of both the entry and exit inspection reports to the Tenant.

I am satisfied that neither of the inspection reports were provided to the Applicant as required under the Act. I find that the Respondent should return the full security deposit of $1,401.73 to the Applicant.

Propane refund

The parties agreed that there was a credit owing to the Applicant at the end of the tenancy for propane. According to the tenancy agreement, the Tenant was responsible for leaving the tank at 45% capacity at the end of their tenancy. Based on calculations provided by the Landlords, and confirmed by receipts, on January 21, 2020, the tank was at 67% capacity prior to being filled and it took 1002.8 litres to fill it. As the Applicant was only responsible for 45% capacity of the tank, a refund from the Respondent of $341.20 was offered, which I am satisfied is reasonable.

Summary and conclusions

Based on the testimony and evidence of the parties, I find that the following are the costs incurred by each party:

Item	Applicant Costs	Respondent Costs
Furnace and freeze-up damages	$810.47	$225.75*
Compensation for rent	$1,400.00	$50
Security Deposit		$1,401.73
Propane Refund		$341.20
Total owed to the Applicant	**$2,210.47**	
Total owed to the Respondent		**$2,018.68**

At the hearing I explained that based on the evidence and my findings, once I compared the Applicant's costs for lost rent and tenant damages against the Respondent's costs for repairs, compensation for one night, return of the security deposit, and refund of propane there was a difference of $191.79 in favour of the Respondent. I confirmed that the Applicant could be ordered to pay this amount.

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After further review while writing these reasons for decision, I realize that at the hearing I made a mistake in my calculations. *In determining the amounts that could be ordered I included the costs of $225.75 to repair the furnace. That amount is the responsibility of the Respondent, but they have already paid it. This means that based on my findings the Applicant would owe to the Respondent $2,210.47 and the Respondent would owe to the Applicant $1,792.93. The revised difference that could be ordered is $417.54 in favour of the Respondent.

During the hearing both parties were respectful and open to mediating a resolution. At various times they offered to waive part or all of a claim. At the end of the hearing I asked all parties if they wanted to proceed any further with their claims. Both the Applicant and the Landlords said they did not. The Applicant said she was happy to be heard. The Landlords admitted they were new landlords and had made some mistakes. They both agreed to drop their claims. Consequently, the application was effectively withdrawn at the hearing and no order will be issued.

Janice Laycock
Rental Officer