File #16964

IN THE MATTER between **RKN**, Applicant, and **NP and GP**, 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:

RKN

Applicant/Tenant

-and-

NP and GP

Respondents/Landlords

REASONS FOR DECISION

Date of the Hearing: **July 3, 2020**

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

Appearances at Hearing: **RKN, Applicant**
NP, Respondent
GP, Respondent

Date of Decision: **July 3, 2020**

REASONS FOR DECISION

An application to a rental officer made by RKN as the Applicant/Tenant against NP and GP as the Respondents/Landlords was filed by the Rental Office May 25, 2020. The application was made regarding a residential tenancy agreement for a rental premises located in Fort Smith, Northwest Territories. The filed application was served on the Respondent by registered mail signed for June 23, 2020.

The Tenant alleged the Landlords had improperly withheld the security deposit at the end of the tenancy against disputed claims for repairs and cleaning, and the Landlords had not returned property the Tenant had left behind. An order was sought for the return of the security deposit and costs for the abandoned personal property.

The hearing scheduled for July 2, 2020, was postponed at the request of the Landlords to July 3, 2020. The hearing was held by three-way teleconference. RKN appeared as the Applicant/Tenant. NP and GP appeared as the Respondents/Landlords.

Tenancy agreement

The parties agreed that a written tenancy agreement had been entered into for a fixed term from April 3, 2019, to April 3, 2020. The Tenant vacated the rental premises on April 3, 2020. I am satisfied a valid tenancy agreement was in place in accordance with the *Residential Tenancies Act* (the Act).

Security deposit

The Tenant paid a $1,500 security deposit at the beginning of the tenancy. An entry inspection was conducted and a report was completed on April 3, 2019. An exit inspection was conducted on April 3, 2020, and a report was completed. It is unclear when exactly the exit inspection report was provided to the Tenant, but based on provided emails between the Landlord and Tenant dated April 4, 2020, it appears more likely than not that the Tenant was provided with the report on or about that date. Parts of an email sent by the Landlord to the Tenant on April 13, 2020, were provided and appear to itemize costs of repairs and cleaning against which the Landlord retained the security deposit.

I am satisfied the Landlords effectively complied with the spirit and intent of subsections 18(7) and 18(8) of the Act respecting the retention of the security deposit.

Cleaning

The emails from April 4th and April 13th list items requiring cleaning which are consistent with what was documented in the exit inspection as follows:

.../3

- remove decals from the kitchen windows and front door;
- clean the windows in the kitchen, dining room, living room, front entrance, hallway, and three bedrooms;
- mop the floors in the living room, kitchen, hallways, bathroom, and closet;
- wash the walls in the living room, dining room, hallways, kitchen, bedrooms, and bathroom;
- wash the doors and doorways;
- clean the oven, the top of the fridge, the kitchen sink, and the bathroom; and
- clean behind the stove and fridge.

The Landlord also identified yard cleaning that was required once the snow melted, about six weeks after the Tenant vacated the premises.

The Tenant disputed that the rental premises was left in a substantially unclean condition, conceding only to responsibility for removing the decals, cleaning the top of the fridge, cleaning behind the fridge and stove, and cleaning the bathroom. The Tenant claimed she had hired cleaners to clean the premises who were unable to complete the conceded items by April 3rd due to a family matter that arose. Additionally, as far as the yard is concerned, the Tenant claimed her cleaners focussed on cleaning the yard immediately around the house and did not venture further into the yard due to the snow cover. The Tenant argued that she was not provided fair opportunity to return to the premises after vacating to have the additional cleaning completed and therefore should not be held responsible for any cleaning beyond that which she has conceded to.

When a tenancy ends the Tenant is obligated to return the rental premises to the Landlord's possession on the last day of the tenancy in an ordinary state of cleanliness. Such cleanliness – particularly at the end of the tenancy – includes but is not limited to cleaning walls, doors, baseboards, windows, and in and behind appliances. Cleaning the yard during the winter does have its challenges, and often must wait until the snow melts. When that is the case, the revealed debris must be reasonably connected to occurring during the Tenant's occupancy for the Tenant to be held responsible for it. In some cases the Landlord may not be able to hold the past Tenant liable for cleaning the yard after the snow melts if the current Tenant has been occupying the premises since shortly after the past Tenant vacated.

In this case, the Landlord provided photographs of parts of the interior of the rental premises and of the yard taken April 3, 2020. The Tenant disputed that the photos were taken on that date claiming that she did not see the Landlord take the photos when they walked through the kitchen together. However, the Tenant did not remain in the rental premises with the Landlord for the entire time that the Landlord inspected the premises and therefore she cannot know that the Landlord did not take the photos during that time. I am satisfied on a balance of probabilities that the Landlord did take the provided photographs during their inspection of the rental premises on April 3, 2020.

The photographs support that some cardboard debris was visible through the snow in the yard, which contradicts the Tenant's assertion that one of the people she hired to clean had picked up any debris from the yard. The photographs also appear to be consistent with the exit inspection report in establishing that the rental premises had not been cleaned to a state of ordinary cleanliness. Although there were a limited number of photographs provided, the depiction of uncleanliness represented in those photographs lends credence to the likelihood that the rest of the premises was in a similar condition.

The Landlord provided an invoice from their handyman that included costs for cleaning out the garbage bin, picking up garbage from the yard, and disposing of the garbage at the local landfill in the amount of $135. The Landlord also provided a statement of house cleaning from their hired house cleaner detailing the dates, hours, and description of areas cleaned, and confirming that the Landlord paid $400 for that cleaning.

I am satisfied that the rental premises was not in an ordinary state of cleanliness when the Tenant vacated on April 3, 2020. I am satisfied that the costs for cleaning claimed by the Landlord are reasonable in the circumstances. I find the Tenant liable to the Landlord for the costs of cleaning in the total amount of $535.

Repairs

The Tenant made a claim for the costs of a shower curtain rod and a hammock. Both of those items were consciously left behind by the Tenant when she vacated the rental premises and effectively constitute abandoned personal property. No efforts were made by the Tenant claim either of those items within 60 days of vacating the rental premises. The shower curtain rod remains installed at the rental premises. With respect to the hammock, the Tenant claimed that she was unable to retrieve it when she vacated because it remained attached to some trees in the back yard and she could not access it due to the snow cover. I fail to see how snow in the yard cannot be walked through to retrieve items. I am not satisfied the Landlord failed to comply with their obligation respecting the treatment of abandoned personal property. The Tenant's claim for costs associated with the shower curtain rod and the hammock are denied.

The Landlord made claims for costs of repairs related to refilling the fuel tank, restarting the furnace, reinstalling a curtain rod, replacing three exterior door deadbolts, replacing the carpet in one bedroom.

<u>Refilling the fuel tank and restarting the furnace</u>

The parties agreed and evidence was presented establishing that the Tenant was responsible for ensuring the fuel tank was refilled to three-quarters full when vacating the rental premises. The Tenant did make arrangements to have the fuel tank refilled, but did so at the last possible moment late in the afternoon on April 3rd.

.../5

The Tenant claimed that she had been on automatic delivery and was unaware until that afternoon that the deliveries had been suspended because she had failed to pay her fuel bills. Whether or not there was an automatic delivery schedule in place has not bearing on the Tenant's responsibility to ensure the fuel tank is filled as required at the end of her tenancy. Clearly, the Tenant did not take the necessary preliminary actions to ensure a final delivery was scheduled for April 3rd.

The Landlord testified that their handyman had attended the rental premises at 3:40 p.m. to check on the fuel level and discovered the tank was empty; he notified the Landlord of this about an hour later. The Landlord confirmed with the fuel provider that Tenant had only called them at about 4:52 p.m. to request the refill, which was after their cut-off time for same-day deliveries. The provider informed the Landlord that they could make the delivery that evening, but there would be an after-hours call-out fee of $150. Given that the fuel tank was empty and the weather was still cold, the Landlord agreed to the after-hours delivery. The fuel delivery occurred just after 5:30 p.m. while the Tenant was present. The Tenant paid the fuel bill while the Landlord was invoiced for the after-hours call-out fee.

After the Tenant left, the Landlord's handyman confirmed that the furnace was not working. A plumber was called and attended that evening, and he confirmed that the lack of fuel in the tank caused air to be pushed into the fuel line, resulting in the furnace being unable to start. The plumber de-aerated the fuel line and restarted the furnace, invoicing the Landlord $131.25 for the service.

However long the fuel tank had been empty for, it was clearly empty for long enough to cause the furnace to stop heating the rental premises to a noticeable degree. The Tenant did not take any precautionary actions to prevent this from occurring during her possession of the rental premises. The Tenant was responsible for ensuring the fuel supply was continuous and she failed to do so, resulting in both the after-hours call-out to refill the fuel tank and the restarting of the furnace. I am satisfied that the costs associated with both of those consequences represent a demonstrable monetary loss suffered by the Landlord as a direct result of the Tenant's failure to comply with her obligations respecting the provision of fuel. I find the Tenant liable to the Landlord for the costs of these repairs in the amount of $281.25.

Reinstalling a curtain rod

The parties agreed that when the Tenant moved into the rental premises she arranged for an existing curtain rod to be replaced with one of her own. At the end of the tenancy the Tenant did not reinstall the original curtain rod. The Landlord provided evidence supporting their monetary claim for a replacement curtain rod costing $26.24 and labour to reinstall the curtain rod costing $35.

I am satisfied the Tenant caused damages to the rental premises by failing to reinstall the original curtain rod at the end of the tenancy. I find the Tenant liable to the Landlord for the associated costs of repairs in the total amount of $61.24.

.../6

Replacing deadbolts

The parties agreed that at the beginning of the tenancy the Landlord agreed to install a keypad deadbolt to the front door in place of the existing standard deadbolt. The porch door and the back door both had standard deadbolts. The Tenant was provided with keys for all three deadbolts. No keys were returned to the Landlord at the end of the tenancy.

The Tenant and her daughters did not use the keys as they relied instead on the keypad code for access. The back door deadbolt was left locked at all times and the porch door deadbolt was left unlocked at all times.

The Tenant's daughter unintentionally locked the porch deadbolt before going to sleep. The Tenant discovered that the keys she had been provided with did not work on the deadbolts, resulting in the Tenant having been locked out of the rental premises. The Tenant called the Landlord for assistance. The Landlord sent their handyman with their set of keys to grant the Tenant access to the rental premises only to discover that their keys did not work either. The handyman had to break the porch deadbolt to gain access and the Landlord replaced that deadbolt.

After hearing the testimony of both parties, it remains unclear as to whether the defective keys were in fact replaced and provided to the Tenant. The Tenant claims that none of the keys she had in her possession actually worked in the deadbolts so there was no point in returning keys that did not work to the Landlord at the end of the Tenancy. Because no keys were returned, the Landlord is claiming costs associated with replacing the keypad deadbolt and two standard deadbolts with three standard deadbolts.

It seems to me that if none of the keys, including those the Landlord had, worked in the deadbolts then there would not be a risk of unauthorized entry to the rental premises when the Tenant failed to return defective keys. The deadbolts themselves by all accounts appeared to be functioning appropriately, including the keypad. The code to the keypad could easily be changed – which would have been appropriate to do between tenancies anyway. New keys could have been cut for all three existing deadbolts, or the deadbolts could have been re-keyed rather than replaced.

I am not satisfied that the Tenant's failure to return defective keys at the end of the tenancy constitutes a breach of the Tenant's obligations, nor am I satisfied that the Tenant is responsible for failing to ensure the security of the rental premises. The Landlord's claim for the costs of replacing three deadbolts is denied.

.../7

Replacing the carpet

The entry inspection report documents the carpet in Bedroom 1 as being in "clean/ok" condition. The exit inspection report documents the carpet in Bedroom 1 as being stained. The photographs, previously confirmed as being taken on April 3rd, show the light beige carpet was damaged with several blotches of what appears to be dark blue ink.

The Tenant did not dispute that the carpet had been stained but seemed to be under the impression that her only obligation to mitigate the damage was to steam clean the carpet. Certainly, if the steam cleaning had removed the stains then the damage would have been mitigated. However, not only did the Tenant's steam cleaning efforts fail to remove the stains, neither did the Landlord's professional steam cleaner succeed in removing the stains. I am satisfied the Tenant is responsible for damaging the carpet in Bedroom 1 of the rental premises.

The Landlord testified that the carpet was new, having just been installed two years ago. The Landlord provided a quote from a flooring installation company to remove and replace the carpeting in the total amount of $1,909.06. The quote included a charge of $283.34 to "remove and replace furniture". I assume this to mean that a new Tenant has already taken occupancy of the rental premises and this cost is to remove their property from the room so that the carpet can be replaced. I am not satisfied the Applicant/Tenant is responsible for the costs to remove and replace the current Tenant's property from the Room and that portion of the claim is denied.

The average useful life expectancy of carpets in a residential setting is 10 years. A Tenant who is responsible for damaging carpet is responsible either for the value of the costs of replacing the carpet proportional to the size of the damaged area or for depreciated value of replacing the entire carpeted area. In this case, the stained area seems to be over a substantial portion of the carpet, rendering the necessity to replace the entire carpeted area. To my mind it is more reasonable in this case to apply the depreciated value of replacing the entire carpeted area. The total amount of the quote was $1,909.06 less the denied costs to remove the furniture of $283.34 leaves $1,625.72. Given that the carpet is only two years old, the Tenant is responsible for 80 percent of the costs to replace the carpet, which amounts to $1,300.58.

I find the Tenant liable to the Landlord for the costs of relacing the carpet in Bedroom 1 in the amount of $1,300.58.

In summary with respect to the claims for repairs, the Tenant is liable to the Landlord for the after-hours delivery of fuel, for restarting the furnace, for reinstalling a curtain rod, and for replacing the carpet in the total amount of $1,643.07.

Conclusion

The total amount allowed to the Landlord for costs of repairs and cleaning is $2,178.07. After applying the security deposit (including interest) of $1,500.75 against the costs of repairs and cleaning, the remaining balance for costs of repairs and cleaning is $677.32. I find the Tenant liable to the Landlord for outstanding costs of repairs and cleaning in the amount of $677.32.

Order

An order will issue requiring the Tenant to pay the Landlord for costs of repairs and cleaning in the amount of $677.32.

Adelle Guigon
Rental Officer