File #16959

IN THE MATTER between **LH**, Applicant, and **TM and PS**, 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:

LH

Applicant/Landlord

-and-

TM and PS

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing:	June 17, 2020 and July 8, 2020
Place of the Hearing:	Yellowknife, Northwest Territories
Appearances at Hearing:	LH, Applicant TM, Respondent PS, Respondent
Date of Decision:	August 10, 2020

REASONS FOR DECISION

An application to a rental officer made by LH as the Applicant/Landlord against TM and PS as the Respondents/Tenants was filed by the Rental Office on May 6, 2020. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was sent to the Respondents by registered mail on May 27, 2020, and delivered on June 2, 2020.

The Applicant claimed that at the termination of the tenancy the Respondents had not cleaned up after their pet, had not adequately cleaned the house, had caused damages, and had failed to comply with additional obligations. Orders were sought for the payment of costs for cleaning, payment of costs for repairing damages, payment of compensation for rent for January 2020, payment of costs related to travel, and payment of costs for filing the application, and payment for expenses associated with the additional obligations.

A hearing was held June 17, 2020, by three-way teleconference. Appearing at the hearing were: Janice Laycock, Rental Officer; LH, Applicant; and TM and PS, Respondents. The hearing was adjourned to continue on July 8, 2020, at which time all parties were present.

Leading up to the hearings, the Rental Office received 22 exhibits from the Applicant in addition to their statements and claims, as well as over 86 separate emails as evidence (photos, emails, copies of texts) from the Respondents. At the conclusion of the July 8th hearing I requested further details from the Applicant to support their claims for replacement of the laminate flooring, replacement of window trim, removal of the towel hook in the bathroom, and a breakdown of the labour for painting. This information was provided by email to the Rental Office and the Respondents on July 15, 2020.

Tenancy agreement

Evidence was provided establishing a residential tenancy agreement between the parties beginning on July 1, 2019, and ending on June 30, 2020. According to section 8 of the tenancy agreement "No damage deposit has been taken by the owner."

The parties agreed and evidence was presented that the Respondents provided notice on November 1, 2019, that they wished to end the tenancy at an earlier date and the tenancy agreement was terminated by agreement of both parties December 31, 2019.

.../3

At the hearing the Applicant claimed that they did not regain possession of the property until January 2, 2020, when the Respondents returned the keys. The Respondents testified that they tried to return the keys to the Applicant's Agent, Triton Property Management (the Agent) on the 31st but were unable to do so, and the Agent instructed them to hand in the keys on January 2, 2020, as no one was available before that to take the keys.

I am satisfied that a valid tenancy agreement was in place and that this tenancy was terminated by agreement of both parties on December 31, 2019, in accordance with the *Residential Tenancies Act* (the Act).

Inspections

At the hearing the Applicant and the Respondents testified and evidence was provided about the inspections that had taken place during the tenancy.

1. Entry

   At the beginning of the tenancy the Respondents did a walk-through of the rental premises with the Applicant. According to the Applicant, the Respondents were provided an opportunity to identify any damages or deficiencies then and the tenancy agreement also had a section titled "ADDITIONAL COMMENTS AND /OR DAMAGES NOTED ON MOVE IN". According to the Applicant, no damages were noted during the walk-through and the tenancy agreement signed by all parties does not include any comments. In their testimony and evidence, the Respondents claimed that when they raised issues during the walk-through the Applicant would say "oh, I'm not worried about that".

   At the hearing I advised the Applicant that they had not complied with the Act and reviewed the applicable sections of the Act relating to an entry inspection report. Under section 15 of the Act:

   15. (3) Without delay on the completion of an inspection, the landlord or his or her Agent shall

   (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.

.../4

(4) An entry inspection report may be in the approved form.

(5) A landlord shall ensure that a copy of an entry inspection report is given to the tenant within five days after the day of the inspection.

(6) A landlord shall

(a) retain an entry inspection report for at least 18 months after the tenant vacates or abandons the rental premises; and

(b) makes an entry inspection report available to a rental officer upon request.

2. Walk-through on November 14, 2019

After notice was provided by the Respondents of their intention to terminate the tenancy, an inspection of the rental premises was conducted on November 14, 2019. Attending the inspection was the Applicant and a representative of the Agent. The Applicant testified that this walk-through was not intended to be an inspection but just to give the Agent an idea of the condition of the unit for issues that might need to be addressed prior to renting the unit in January 2020. The report, completed on November 14, 2019, and provided as evidence, is entitled "Triton Property Management and Maintenance Services, Home Inspection notes: 148 Herriman Road, November 14, 2019" and includes the following:

- Entry Way - Carbon Monoxide detector needs to be screwed in.
- Kitchen - vents in addition blow cold air - have look at during furnace servicing
- Living Room - hole from satellite dish
- Dining room - [no comments]
- Main Bathroom - venting in bathroom, have it looked at
- Bedroom 1 - carpets need to be steam cleaned
- Bedroom 2 - [no comments]
- Master bedroom - draft from window have it looked at.
- En-suite bathroom - [no comments]
- Laundry room/utility room - [no comments]

- Front of House - [no comments]
- Backyard - [no comments]
- Additional Comment - blinds that plants are hanging on need to be replaced, minor holes need to be filled, front of trailer very cold.

The Applicant also stated in the application to the rental office that a number of issues were raised verbally with the Respondents on November 14, 2019, but were not completed on move out:

- Holes in the walls were to be repaired and painted;
- The satellite dish damage to the siding and wall was to be repaired;
- The towel hook that had been installed without permission was to be removed and the wall repaired;
- The curtain rods and hooks that had been installed without permission were to be removed and the window trim repaired or replaced; and
- The wood ashes that had been put in the garden boxes without permission were to be removed.

3. Walk-through on December 30, 2019

Prior to the termination of the tenancy on December 31, 2019, the Respondents completed a walk-through of the rental premises with a representative from Triton. According to the Respondent's testimony the representative from Triton told them that the unit was in good condition, was adequately clean, and "they should have no problems with the homeowner" regarding the condition and cleanliness.

Prior to the inspection on January 8, 2020, with the Applicant, the Respondents received an email from Triton clarifying the purpose of the December 30, 2019, inspection. In that email Kaitlyn Marchiori, Rental Property Coordinator, explains that the walk-through was "just so I could point out any issues I noticed for cleanliness, as I would be unable to comment on any damages or the condition of the unit as I did not know the condition of the unit when you took possession."

4. Inspection on January 8, 2020

An inspection was carried out on January 8, 2020, with the Applicant and the Respondents. This inspection was documented in the approved form, signed by the Applicant on January 8, 2020, and provided by email to the Respondents. The inspection report commented on further cleaning (despite the earlier inspection) and repairs that were required.

The copy of the inspection report provided with the application also includes the Applicant's notes added after the inspection about "fixes required". This includes reference to advice provided by Northern Disaster Services (NDS) and work undertaken by the Landlord after the inspection.

Conclusions respecting inspections

During the hearing I expressed my concern about the difference between the results of the inspections carried out on November 14 and December 30, 2019, and the inspection carried out on January 8, 2020. The Applicant testified that the exit inspection was the January 8th inspection and the others were walk-throughs and shouldn't be considered as inspections. The Applicant asserted that they needed to participate in the exit inspection because their Agent had not been present during the entry inspection and was not aware of the condition of the unit at that time.

I commented that an entry inspection report would have helped and that the Agent's representative should have been able to assess "ordinary cleanliness", as this would not require prior knowledge of the condition of the unit at entry. It is clear from the Agent's email to the Respondents on January 8, 2020, that they did assess cleanliness on December 30, 2019, and in fact that was part of the purpose of the walk-through.

Under section 1 of the Act, "exit inspection report" means a report in respect of the condition and contents of rental premises, prepared after an inspection of the premises at the end of a tenancy. I believe that the walk-through carried out on November 14, 2019, was an inspection but clearly not the exit inspection as it was not at the termination of the tenancy. As the Applicant and their Agent participated in the inspection, it should have given the Respondents a good indication of the work that they needed to do prior to handover of the unit at the end of December.

The walk through on December 30, 2019, with the Respondents and the Agent for the Landlord, could also be considered an inspection, and although the Agent for the Landlord commented on the condition of the unit at the time, they clarified that the purpose of this inspection was to assess cleanliness only as they were not there when the Tenants moved in.

Based on the Agent's characterization of the inspection, the Respondents understanding, and the Applicant's testimony, I find that the inspection on December 30, 2019, was an "exit" inspection for the purposes of assessing cleanliness alone. The Respondents were aware that the second part of the exit inspection would be carried out with the Applicant in January 2020 to assess the condition of the unit relating to damages and repairs required.

Under paragraph 17.1(1)(a) of the Act:

> "A landlord or his or her agent shall
>
> (a) conduct an inspection of the condition and contents of rental premises vacated by a tenant at the end of a tenancy;"

I argue that considering the end of the tenancy was New Years Eve, and that the Applicant needed to travel to participate in the inspection, that it was reasonable to schedule an inspection of the condition of the unit for damages on January 8, 2020, just over one week from the end of the tenancy.

However, even though I recognize this as an exit inspection for the purposes of determining damages and required repairs, I appreciate that the Respondents would have assumed, based on the Agent's earlier comments, that they would have no problems with this part of the exit inspection. The fact that at the January 8, 2020, inspection the Applicant found numerous deficiencies is not consistent with these earlier assurances from the Agent for the Landlord. Despite this, I agreed to consider the claims from the January 8, 2020, inspection for the condition respecting damages only.

Claims for cleaning

Under paragraph 45(4)(d) of the Act where on the application of the landlord a Rental Officer who determines that a tenant has breached an obligation, such as the obligation to maintain the rental premises in a state of "ordinary cleanliness", the Rental Officer may make an order "authorizing any action that is to be taken by the landlord to remedy the effects of the tenants breach and requiring the tenant to pay any reasonable expenses directly associated with the action."

.../8

In the application the Applicant claimed for materials as well as her time and that of a friend to clean and paint the interior walls and ceiling and to shovel snow off the back deck. At the hearing I asked the Applicant to break these costs down so I could have a better idea of the cost of cleaning alone. This information was provided by email to the Rental Office and the Respondents on July 15, 2020. Based on this information, the Applicant claimed $720 for labour (36 hours at $20 per hour), $35.47 for cleaning materials, and $10 for dump run charges, totalling $765.47 related to cleaning the rental premises.

I appreciate that based on the evidence presented by the Applicant and documentation of labour and materials provided in the application and later in follow-up to the hearing, that the Applicant did further cleaning in January 2020. However, as discussed earlier, I have found that the exit inspection on December 30, 2019, was for the purpose of determining cleanliness, and this purpose was verified by the Agent for the Landlord. According to the testimony of the Respondents (which was not refuted by the Applicant) the Agent for the Landlord found the rental premises to be "adequately clean." Based on this assessment by the Landlord's representative, I deny the Applicant's claim for expenses related to further cleaning of the rental premises.

Claims for repair of damages

Under subsection 42(1) of the Act:

> "A tenant shall repair damage to the rental premises and the residential complex caused by the wilful or negligent conduct of the tenant or persons who are permitted on the premises by the tenant."

Under subsection 42(2) of the Act:

> "Ordinary wear and tear of rental premises does not constitute damage to the premises."

The exit inspection report includes the following deficiencies related to damages [my summary, not including cleaning]:

- Exterior - snow not removed, repair of wall where satellite dish installed needed, pet urine on deck.
- Entry - screen door screen irreparable and needs replacement, walls and trim need paint.

.../9

- Kitchen - walls and trim need paint, split frame kitchen window, soot damage on ceiling.
- Living Room - soot damage on walls and ceiling, water damage to laminate as well as rust stains needs replacing, 3 broken tiles on hearth, hole to exterior (satellite dish) was filled by tenant not painted.
- Dining Room - 2 repair holes not painted, windows sill water damaged require paint.
- Master Bedroom - paint repair, unauthorized towel hook and shelf need repair.
- Bedroom 2 (pink) - shelf off wall.
- Other - pavement has grease, oil and RV glycol; wood is broken on gate; driven on storage area; no maintenance of yard; ash in garden beds.

For the purposes of assessing the Applicant's claims for damages, I divided the claims into the following categories:

1. Painting walls and ceilings

   According to the inspection report there was soot damage to the ceiling and walls in the kitchen and the living room, and there were holes in the walls that were filled but not painted in the kitchen, living room, dining room, and master bedroom. The Applicant claimed costs associated with labour and materials to paint the ceilings and walls in those rooms with two coats of paint. The Applicant provided as evidence photos showing the damages caused by soot. Subsequent to the exit inspection the Applicant also claimed that there was soot damage in master bedroom on 3 walls and claimed for costs to paint those walls.

   The Respondents did not refute the Applicant's claim relating to damages to the ceilings, but said that when they moved in the Applicant told them that the baseboards, chair rail, and cover plates were not on because the painting was not completed. The Applicant testified that painting of these walls was not included in the claim.

   In the application, the Applicant claimed for materials as well as labour to clean and paint the interior walls and ceiling, and to shovel snow off the back deck. At the hearing I asked the Applicant to break these costs down so I could have a better idea of the cost of painting. This information was provided by email to the Rental Office and the Respondents on July 15, 2020, and includes the following:

.../10

- 3 hours at $20 per hour to paint green wall (x2 coats) patched by Tenant, Grey wall patched by Tenant;
- 0.5 hours at $20 per hour to sand and wipe wall patches so they could be painted;
- 4 hours to paint 3 master bedroom walls - could not be cleaned, soot damage and scuffed;
- 3 hours at $20 per hour to paint ceiling edging kitchen and front room;
- 6 hours at $20 per hour to paint ceiling front room and kitchen, 2 coats; and
- 2 hours labour at $20 per hour to paint dining room arch - could not be cleaned soot damage.
- TOTAL 18.5 HOURS AT $20 PER HOUR + MATERIALS $533.09 (receipts previously provided) = $903.09 CLAIMED

The absence of an entry inspection report makes it difficult to assess the condition of the walls at the beginning of the tenancy. The exit inspection report identified soot damage in the kitchen and the living room, as well as the need for touch up painting elsewhere, but did not identify the need to paint the master bedroom.

On the soot damage, I appreciate the need to paint the ceiling, which from the photos appeared to be "textured" and as such difficult to wash. I am not convinced that the walls in this area required painting as a result of the soot.

On the painting of walls that had been filled by the tenant, I'm not clear why they couldn't have been touched up. Although the Applicant’s paint supply was damaged and couldn't be used, Aurora Decorating Centre in Yellowknife keeps a record of their client's paint choices. The Applicant could have accessed that information to obtain new paint for touch up. The Applicant has quoted 0.5 hours to sand and prepare the walls. I would suggest that a further 2 hours at $20 per hour would be sufficient to do the touch up plus $60 for materials, resulting in a total of $100 for this work.

Based on the details provided by the Applicant on July 15, 2020, I find that the costs to paint the ceiling in the kitchen and living room, and the dining room arch are: $220 for labour (11 hours at $20 per hour) and $165.70 for materials related to that work, including 2 gallons of ceiling paint, rollers, paint tray, and paint pail. The total cost for labour and materials is $385.70.

.../11

I find that the costs claimed by the Applicant to paint the ceiling (2 coats) and archway including materials of $385.70 is reasonable and consistent with the exit inspection report and the testimony of both parties. I am not convinced that painting of the walls was justified, but I will grant a further $100 to cover costs related to labour and materials for touching up the walls. The total granted for painting of walls and ceiling is $485.70.

2. Painting or replacement of trim

According to the exit inspection report the trim on the kitchen window was split, and there was water damage on the sill of a window in the dining room. However, according to the Applicant's breakdown of labour for painting that was provided to the Rental Office on July 15, 2020, the claim for painting of trim exceeds those damages including the following:

- 3 hours at $20 per hour to paint wall trim/front door - entry/dining room/kitchen/laundry room, badly chipped and or could not be cleaned/scuffed; and
- 2 hours at $20 per hour to paint window trim entry/dining room/kitchen - could not be cleaned, soot damage/scuffed:
- TOTAL 5 HOURS LABOUR = $100.

The Applicant also claimed expenses related to the removal and replacement of trim around the living room and kitchen windows for a total of $1,650, based on a quote from NDS. The Applicant testified that the trim in the living room and kitchen could not be repaired and needed to be replaced. They received a quote from NDS for this work totalling $1,650. At the hearing I asked the Applicant to provide a breakdown of this work so I could look at what they planned to do for this amount. On July 15, 2020, the Applicant emailed further information to the Rental Office and the Respondents, and amended their claim from seven windows to six (five in the living room and one in the kitchen) for a revised total of $1,425 for labour and materials.

Based on the exit inspection report as well as the testimony and evidence of the Respondents and Applicant, I am not convinced that painting the trim throughout the unit or replacement of the window trim in the living room is justified and therefore I am denying the Applicant's claim for those costs.

I do, however, find that based on the exit inspection and testimony during the hearing that the trim in the kitchen window was split as a result of the Respondents installing hardware and requires replacement. Based on the breakdown from NDS provided by the Applicant on July 15, 2020, the total for this work would be 2.5 hours per window at $75 per hour for the labour to install and paint the trim, and the materials would be about $50 for a total of $237.50. I find this claim reasonable and will order payment.

3. Replacement of the laminate floor

The exit inspection report identified that there was water damage to the flooring and that it needs replacing. According to a quote from NDS provided as evidence, the cost to remove and replace the laminate flooring in the living room was $1,680. A more detailed breakdown of the costs to replace the flooring including materials and labour was provided by email to the Rental Office and the Respondents on July 15, 2020, with labour of 9 hours at $75 per hour and materials totalling $1,021.64.

The Applicant testified and provided evidence that the laminate floor in the living room had been damaged by plants sitting on the floor in trays full of water. According to evidence presented, NDS suspected that there may be black mould. Based on the premise that mould starts to grow in 72 hours, NDS assessed the mould identified in the provided photographs could be a few weeks old or more, which meant it could have been present prior to the end of the tenancy.

The Applicant testified that the flooring which had been installed four years earlier, could not be repaired as there was no colour match available and they were advised that the entire floor in the living room had to be removed and replaced.

The Respondents agreed that the floors were in good condition when they moved in but testified when they left the rental premises on December 30, 2019, the plants, which were the property of the Landlord, were dry and that they hadn't over-watered them.

The photos taken January 6, 2020, and provided as evidence by the Applicant show at least five very large plants sitting on trays with water in them and some water damage to the floor. The Respondents testified that the trays were dry when they left the rental premises at the end of their tenancy. The Applicant testified that they had not watered the plants after the Respondents left the rental premises and no one else had watered them prior to taking the photos on January 6, 2020.

.../13

Under the Act a tenant is responsible for damages caused by their "wilful or negligent conduct", and that ordinary wear and tear does not constitute damages. I am not convinced by the Applicant's testimony or evidence that the Respondents were wilful or negligent in their conduct leading to the damages to the floor. Based on the evidence, damages were probably caused by either the Applicant or the Respondents over-watering the plants and, despite efforts to protect the floor, water leaking out of the trays onto the floor. This is a risk of owning plants in any household. I believe the Applicant accepted that risk when they decided to leave the plants in the rental unit. Without the Applicant's plants, the damages wouldn't have occurred. I deny the Applicant's claim of $1,680 to replace the laminate flooring.

4. Replacement of broken tiles around the fireplace

   The exit inspection report mentions that three tiles were broken on the fireplace. The Applicant testified that these tiles were broken after the Tenants moved into the rental premises.

   Initially the Respondents claimed that these tiles were already broken when they moved in, however after some discussion it was determined that although some of the tiles were broken when they moved in, only those tiles that had been broken during their tenancy were being claimed. The Respondents claimed that this was ordinary wear and tear when using a fireplace, however I disagree. I find that the claim of $185 to replace the broken tiles is reasonable and will order payment.

5. Replacement of screen on screen door

   The exit inspection report includes a comment that the front screen is irreparable and needs replacement. This is supported by the photos provided as evidence. The Applicant claimed $300 based on a quote from NDS to do this work and testified that only the screen was replaced but the door had to be removed in order to do this.

   The Respondents agreed that the screen had been damaged although they claimed that it was only normal wear and tear while they were there and it had some damage when they moved in. I disagree that this kind of damage is only wear and tear, and I find that the claim to replace the screen is reasonable and will order payment of $300 to cover the costs.

6. Replacement of bedroom closet door

   The exit inspection report does not reference a broken closet door. In their claim the Applicant states that the Respondents tried to fix the door which resulted in the damage. Photos of the door showing damages were provided.

   The Respondents testified that the door fell off when they were moving out and they reported it to the Agent. The repairs were not attempted by them. Based on the Respondent's testimony, I deny the Applicant's claim of $500 to replace the closet door.

7. Repair hole through wall for satellite dish

   The exit inspection report includes a comment on a repair to the west wall made by the tenant. The Applicant testified that it was the responsibility of the Respondents to repair the wall after the satellite dish was removed, and recognized that they had tried to do the work. However according to NDS the repairs were not done correctly and further work is needed to properly repair the hole including spray foaming the hole and finishing the outside properly. The estimate from NDS to do this work is $450.

   The Respondents argued that a hole for a television, computer, or telephone is not damage and that the Applicant had agreed to the installation. They also provided evidence that they had filled the hole on the inside and testified at the hearing that they had puttied the hole on the exterior to seal it.

   I think that the installation of a satellite dish is different than a television, computer or telephone. The latter are necessary (typically) and we recognize that a hole will be necessary to install them. In the case of the satellite dish the Applicant did give permission for installation but was also clear that the Respondents were responsible to remove it and repair damages when they left.

   I agree that further work is required to properly insulate and seal the hole and repair the exterior finishes, and this was the responsibility of the Respondents. I approve the claim to repair the damage caused by the installation of the satellite dish totalling $450.

.../15

8. Remount a shelf on the wall

   The exit inspection report includes a comment that the shelf is off the wall in the second bedroom. The Applicant testified and provided evidence that the shelf had been remounted on the wall by NDS at a cost of $95. The Respondents testified that the shelf was mounted with drywall anchors and fell off when they used it.

   I find that the damage occurred through use, not through wilful or negligent actions on the part of the Respondents. I deny the Applicant's claim of $95 to remount the shelf.

9. Remove towel hook in ensuite and repair/paint wall

   The exit inspection report includes a note about the unauthorized installation of the towel hook in the bathroom. The Applicant provided a quote from NDS for removing the towel hook, as well as repairing and painting the wall of $400. At the hearing I asked the Applicant to provide a breakdown of this amount. This additional information was provided by email to the Rental office and the Respondents on July 15, 2020. According to this breakdown NDS estimated that materials for the repair, including primer, paint, mud, brush, roll, etcetera, would be $100 and it would take 4 hours at $75 per hour for the work.

   At the hearing I asked the Applicant why the towel hook could not stay where it was. The Applicant testified that every time they looked at the towel hook it upset then because it reminded them of all the troubles that they had encountered with the Respondents.

   The Respondents testified that they installed the hook near the sink as there was no convenient place to hang a towel in that area. They also provided photos of the installation and had previously offered to compensate the Applicant $200 to remove the towel hook.

   In considering this claim I struggled to determine what if any damages had been caused by the wilful or negligent conduct of the Respondents. The Applicant did not argue that the towel hook had to be removed because it was installed poorly and/or was unsafe, only that it was unauthorized and upsetting.

   The removal of the towel hook at the direction of the Applicant will cause damages that need to be repaired. If the Applicant wishes to do that, they, and not the Respondents, should be responsible for the costs. I deny the Applicant's claim of $400 for the removal of the towel hook.

10. Put seal in and fix leaking toilet

    At the hearing the Applicant withdrew their claim for $95 to fix the leaking toilet. It was pointed out that this work is not damage but maintenance and they agreed.

11. Repair fence

    The exit inspection report includes a comment on the gate that "wood is broken". The Applicant provided a quote from NDS for the repairs on the loose boards on the fence of $175. The Applicant testified that the damaged occurred when the Respondents opened the gate to store their trailer, and that it was locked and they were not authorized to open the gate.

    The Respondents testified that they had not received any direction that they should not use the gate and had received the key to the gate with the keys to the rental premises. They argued that one use of the gate should not have resulted in damages.

    As the Respondents had the keys to the gate I think it was reasonable that they assumed they could use it. I conclude that any damages to the fence that resulted from their limited use of the gate were the result of ordinary wear and tear. I deny the Applicant’s claim of $175 to repair the fence.

12. Deodorize back deck

    The exit inspection report mentions that there was pet urine on the back deck. The Applicant testified that the deck also had pet urine pads on it and provided a quote of $250 from NDS to deodorize the deck boards.

    The Respondents testified that they had a small dog that did not go out the back and they had not used pet urine pads for their dog. They also said that a fox was living in the landlord's doghouse in the back yard and had been urinating and defecating on the back deck while they were there.

    During their tenancy, the Respondents were responsible for any damages to the rental premises including the deck and yard. If they were aware that a fox was damaging the deck they were responsible for addressing this issue. I find the Respondents in breach of subsection 42(1) of the Act and approve the claim of $250 to deodorize the deck.

.../17

13. Remove ash in garden beds

The exit inspection report mentions that there was ash from the fireplace in the backyard flower beds. The Applicant testified that the ash needed to be removed so the garden could be used and provided a quote from NDS to do this work for $170.

The Respondents testified that it was common practice where they came from to put wood ash in the garden. The Applicant testified that this may be the case but the amount of ash was more than was reasonable.

Based on the testimony of the Respondents and the Applicant, it is clear that the Respondents did place ash on the flower bed, however, they did so in good faith. It is not clear that their actions could be considered wilful or negligent, nor did it necessarily cause damages. I deny the Applicant's claim for $170 to remove the ash from the flower beds.

Based on my review of the Applicant's claim for damages, I will order the Respondents to pay expenses related to the repair of damages totalling $1,908.20.

Additional obligations

Under subsection 45(1) of the Act:

> "Where in a written tenancy agreement a tenant has undertaken additional obligations, the tenant shall comply with the obligations under the tenancy agreement and with the rules of the landlord that are reasonable in all circumstances."

The Applicant has made claims related to the following additional obligations:

1. Cleaning and resurfacing the driveway

The exit inspection report includes a comment that the driveway was sealed in June 2019 and had oil, grease, and RV glycol on it, and needed to be cleaned and sealed again. The Applicant provided a quote of $950 from NDS for this work.

The Respondents testified that aside from a small amount of glycol from the RV, they had not caused damage to the driveway. They also claimed that over the course of their tenancy other vehicles had been on the driveway and could have caused the damages.

I do not believe that cleaning oil, grease, etcetera, from a driveway is typically the responsibility of the Tenant; this seems to me to be a result of ordinary wear and tear. It is the obligation of the Landlord to maintain the rental premises in a good state of repair, which would include maintenance of the driveway. Nor did the tenancy agreement between the parties reference this maintenance as an additional obligation for the Tenant.

For these reasons I am denying the Applicant's claim of $950 to clean and resurface the driveway.

2. Remove snow from decks and driveway

The exit inspection report includes comments that the snow was not removed from the decks. The Applicant testified that the decks were impassable and the driveway also had to be cleared of snow. Based on information received by the Rental Office and the Respondents on July 15, 2020, the Applicant paid 4 hours of labour at $20 per hour for a total of $80 for someone to shovel the decks, and provided a receipt for $80 representing the cost for Reid's Services to clear the driveway of snow.

The Respondents testified that they did not use the decks in the winter and saw no need to clear them. The tenancy agreement does not include clearing snow as an additional obligation. For these reasons I find that the Respondents are not responsible for this work and deny the Applicant's claim of $160.

3. Yard maintenance, including removing dog faeces

The exit inspection mentions that there was no maintenance in the garden/yard. The Applicant provided an invoice from Ric's Grounds Maintenance Ltd. for $288.76. The work which was carried out in June 2020 included:

- Yard clean-up, bushes trimmed and planters cleaned out, removal of dog faeces
- Disposal of bags at waste facility
- Power rake/aerate fertilize/lime.

The tenancy agreement between the parties says at section 15:

> "The owner has left water hoses, lawn mower, and may make arrangements with the renters for access in the spring 2020 for regular professional lawn maintenance."

.../19

The Applicant testified that the Tenants had not maintained the yard and lawn.

The Respondents testified that they had picked up after their dog and their dog had not used the back yard because there was a fox living there. Although the tenancy agreement did not include lawn maintenance as an additional obligation, I felt that the Respondents were still responsible for cleaning up the yard including cleaning up after the fox.

According to the Respondents there are currently Tenants in the rental premises and they have two big dogs. I pointed out that although I agreed that the Respondents had responsibility for the yard, it was difficult to tell five months later which grass was being cut that grew when the Respondents were there, and if the dog or fox faeces was left in the yard during the time that the Respondents were there or later.

After some further discussion the Applicant decided to drop their claim of $288.76 for these expenses.

Compensation for lost rent

The Applicant also claimed for loss of rental income for January 2020 totalling $2,300. In their application the Applicant argued that they were not able to rent the property for January 1, 2020, because of the Respondents' lack of cooperation to show the unit and because of the state of the premises at the end of the tenancy.

Under subsection 62(1) of the Act, where a tenant abandons a rental premises they remain liable (subject to section 5) to compensate the landlord for loss of future rent that would have been payable under the tenancy agreement. In this case, the Respondents did not abandon the rental premises. Rather, at the beginning of November they sought and received agreement from the Applicant to end the tenancy December 31, 2019.

On the claim from the Applicant that the Respondents did not cooperate with inspections or showings, the Respondents provided testimony and evidence that they did offer opportunities for the inspection and showings. They offered to conduct the inspection on November 14, 2019, at 7:00 pm and the Agent informed them that the inspection would happen at 5:00 pm.

Under subsection 26(4) of the Act, the hours during which the Landlord intends to enter the rental premises must be between 8:00 am and 8:00 pm, the Landlord is required to give 24 hours' notice before entering the rental premises (subsection 26(3)), and the Tenant has the right to specify alternate days and hours.

The Respondents also testified that they provided opportunities for showing the unit, but did not want pictures taken of the contents because of concerns about the security of their possessions. I believe that this is a reasonable restriction for a tenant to make.

Under section 28 of the Act, where a Rental Officer determines that a tenant has breached section 26 they can make an order requiring the person who breached the obligation to compensate the affected party for loss suffered as a direct result of the breach. In this situation I do not believe that the Respondents breached their obligations under section 26 and, therefore, I am denying the Landlord any compensation.

The Applicant has also testified that because of the damages and cleaning required that they could not rent the rental premises until the beginning of February. Under paragraph 42(3)(c) where a Rental Officer determines that a Tenant has breached the obligation under subsection 42(1) (damages) the Rental Officer may make an order requiring the Tenant to compensate the Landlord for loss suffered as a direct result of the breach.

In this case, although I have found the Respondents in breach of subsection 42(1), most of these breaches are minor and should not have resulted in a delay in renting the premises in January 2020. The Respondents provided notice of termination of the tenancy at the beginning of November and an inspection was carried out in mid-November. There was ample time and opportunity to rent the unit. It was the Applicant's choice to schedule the condition inspection for January 8, 2020.

For all of these reasons I deny the Applicant's claim of $2,300 for compensation of lost future rent.

Other Claims - replacement of Landlord's possessions

The Applicant claimed that a bar stool, two 6-inch silk plants, a wooden shelf, and a metal shelf that were in the rental unit when the Respondents moved in were no longer there. The Applicant sought compensation for the loss of these items of $100. The Respondents testified that the Applicant had told them when they moved in that they didn't care about these items and the Respondents could use them or get rid of them.

Based on the testimony of the Respondents I deny the Applicant’s claim of $100 as compensation for loss of possessions.

.../21

Other Claims - compensation for travel and application fee

The Applicant also claimed compensation from the Respondents for her travel to Yellowknife for $500 and the cost of the application filing fee for $100. At the hearing I said that these claims were denied as the Act did not provide for compensation for these purposes. I believe that these are the costs of doing business as a Landlord.

Orders

An Order will be issued requiring the Respondents to pay to the Applicant expenses related to the costs of repairing damages in the amount of $1,908.20 (p. 42(3)(e)).

Janice Laycock
Rental Officer