

IN THE MATTER between **AREL**, Applicant, and **BK and CI**, 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:

AREL

Applicant/Landlord

-and-

BK and CI

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing:	July 14, 2020
Place of the Hearing:	Yellowknife, Northwest Territories
Appearances at Hearing:	BD, representing the Applicant
Date of Decision:	August 7, 2020

REASONS FOR DECISION

An application to a rental officer made by AREL as the Applicant/Landlord against BK and CI the Respondents/Tenants was filed by the Rental Office on June 5, 2020. The application was made regarding a residential tenancy agreement for a rental premises located in Fort Liard, Northwest Territories. The filed application was sent to the Respondents by registered mail signed for on July 10, 2020.

The Applicant claimed that the Respondents had left damages when they vacated the rental premises and an order was sought for payment of expenses related to the repair of the damages and cleaning.

A hearing was held July 14, 2020, by three-way teleconference. Appearing at the hearing were Janice Laycock, Rental Officer, and BD, representing the Applicant. No one appeared for the Respondents. As the Respondents failed to appear after receiving sufficient notice, the hearing proceeded in their absence under subsection 80(2) of the *Residential Tenancies Act* (the Act).

At the hearing I reserved my decision pending receipt of further information from the Applicant, including the entry inspection report, a further breakdown of the labour claimed for repair of damages and cleaning, information on the security deposit, and confirmation of the date that the Respondents vacated the rental premises. This information was received at the Rental Office on July 22, 2020.

Previous order

Rental Officer Order #16541 was issued on July 4, 2019, ordering:

1. The Tenants to pay rental arrears of \$2,710.70;
2. The Tenants to pay future rent on time; and
3. The termination of the tenancy agreement on September 30, 2019, unless the rental arrears were paid in full and the monthly rents for August and September were paid on time.

Tenancy agreement

The Applicant testified and evidence was provided establishing a residential tenancy agreement between the parties beginning on February 19, 2019, and ending when the tenancy was terminated under Rental Officer Order #16541 on September 30, 2019. According to the testimony of the Applicant and the information provided after the hearing, the Respondents did not fulfill the conditions of the order and vacated the rental premises on October 14, 2019.

I am satisfied that a valid tenancy agreement was in place and that this tenancy was terminated on September 30, 2019, under the authority of Rental Officer Order #16541 and in accordance with the Act.

Tenant damages and cleaning

Based on the testimony of the Applicant and the information provided after the hearing, an entry inspection report was not prepared, but the house had been completely repainted and new flooring installed throughout the unit immediately prior to the Tenants moving in.

An exit inspection report detailing the damages and supporting photographs were provided as evidence with the application, including a breakdown of the cost for materials and labour to repair the damages.

At the hearing I found the claim for damages made out by the evidence, but asked for a further breakdown of the labour costs. The following repairs and cleaning were claimed:

- Living room - repair 3 holes in drywall, prime and paint;
- Kitchen - repair 1 hole, remove and replace damaged vinyl sheet flooring;
- Main bedroom - repair 3 holes and deep gouges, replace broken bifold door tracks;
- Back Entrance - replace damaged exterior door, deadbolt and passage set, replace door trim and paint, replace missing interior latch on storm door, repair damaged drywall by light switch, replace missing florescent light fixture cover;
- Bathroom - repair 1 hole in drywall, replace passage privacy set, repair exhaust fan
- Front entrance - replace damaged exterior door, replace door trim and paint, replace deadbolt set and passage set;
- Front closet - replace 2 bifold doors; and
- Janitorial (cleaning) - remove litter/garbage throughout the house and complete house cleaning.

Costs claimed to effect the referenced repairs and cleaning were:

Materials (detailed list of materials provided as evidence)	\$2,106
10% Administration fee (clarified at hearing this is what "materials mark up" is)	\$ 211
Freight on materials	\$ 200
TOTAL MATERIALS	\$2,517

Repair of damages (based on 3 employees at \$50/hour for 59 hours)	\$2,950
Hauling materials to dump	\$ 100
TOTAL LABOUR FOR REPAIRS	\$3,050
TOTAL CLEANING	\$ 280
GRAND TOTAL FOR MATERIALS, LABOUR, AND CLEANING	\$5,847

At the hearing the Applicant included in their claim for damages the cost to replace both exterior doors. Under subsection 42(1) of the Act a tenant is responsible for the repair of damages "caused by the wilful or negligent conduct of the tenant or persons who are permitted on the premises by the tenant." Although it was clear from the photos that the doors were damaged and in need of repair, I asked if the Applicant was aware of the circumstances surrounding the damages to the outside of the exterior doors and if the Tenants were responsible. The Applicant testified that the Tenants were responsible because they did not report the damages to either the Landlord or Police, made attempts to repair the damages, and were known to lock each other out of the unit. The Applicant testified that the damages resulted when the other Tenant tried to gain entry.

The Applicant claimed \$296 for cleaning after the Respondents vacated the rental premises. Under subsection 45(2) of the Act "a tenant shall maintain the rental premises and all services and facilities provided by the landlord of which the tenant has exclusive use in a state of ordinary cleanliness." The Applicant testified and provided evidence including photos of the condition of the unit at the end of the tenancy and the need for further cleaning. Based on the accounting of 8 hours labour at \$35 per hour provided by the Applicant, I find that the total should be \$280, not \$296 as claimed.

In the application the Applicant had also claimed costs for their time to conduct the exit inspection and prepare the application to the Rental Office. At the hearing I commented that in my opinion these costs were part of doing business as a landlord and were not provided for in the legislation. In the additional information provided after the hearing the Applicant acknowledged this and deducted the corresponding costs of \$230 from their claim.

Under subsection 68(1) of the Act, an application to a rental officer must be made within six months of a breach of an obligation. In this case the application was filed on June 5, 2020, about eight months after the tenants vacated the rental premises. I asked why the application was not made earlier. The Applicant testified that they were not able to start work on the unit right away because of other projects in the community.

Based on the testimony and evidence provided by the Applicant, both in the application and after the hearing, I am satisfied that the costs for repairs of damages amounting to \$5,567 and cleaning amounting to \$280, totalling \$5,847, is justified and reasonable.

Security deposit

At the hearing I asked if a security deposit had been paid and what the Applicant's plans were for the security deposit. The representative for the Applicant was not sure if the Respondents had paid a security deposit or what the plans were regarding it but promised to provide further information after the hearing.

After the hearing the Applicant provided further information to the Rental Office, including that according to their records the Respondents had paid a security deposit of \$1,100 on February 19, 2019. No details were provided regarding plans for the return of the security deposit including interest, or if a statement of the security deposit had been provided to the Respondents as required under the Act.

Under section 16 of the Act the Landlord must calculate interest on any deposit received and annually credit the interest to the Tenant until they vacate or abandon the rental premises. In this case the deposit is calculated from February 19, 2019, to the date the tenants vacated the unit on October 14, 2020. According to the rate established in the *Residential Tenancies Regulations* (the Regulations), the interest for this period would be \$0.91 and the total security deposit with interest would be \$1,100.91.

Subsections 18(7) and 18(8) of the Act state:

18. (7) A landlord who intends to withhold all or a portion of a security deposit, a pet security deposit or both shall, within 10 days after the day a tenant vacates or abandons the rental premises,

(a) give written notice to the tenant of that intention; and

(b) subject to subsection (9), return the balance of the deposit or deposits to the tenant.

18. (8) A notice must include:

(a) an itemized statement of account for the deposit or deposits;

(b) a final itemized statement of account for any arrears of rent that the landlord is claiming; and

(c) subject to subsection (9), a final itemized statement of account for any repairs that the landlord is claiming.

From the testimony of the Applicant after the hearing I have concluded that the security deposit was not returned nor was a notice of intention to withhold all or a portion of the security deposit provided to the Respondents. I also understand that the Applicant failed to complete an entry inspection. Under subsection 18(5) a landlord may not retain any amount of the security deposit for repairs of damages if an entry inspection was not conducted.

However, despite this contravention of the Act, the Applicant retains the security deposit and I believe this must be considered when calculating an order for payment of costs for repairs of damages and cleaning. After the security deposit, including interest, of \$1,100.91 is deducted from the total expenses related to the repairs of damages and cleaning of \$5,847, the total owing to the Landlord is \$4,746.09.

Orders

An Order will be issued requiring the Respondents to pay to the Applicant \$4,746.09 for expenses relating to the repair of damages and cleaning of the rental premises. (p. 42(3)(e), p. 45(4)(d)).

Janice Laycock
Rental Officer