File #17004

IN THE MATTER between **BW**, Applicant, and **APM**, 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 **Adelle Guigon**, Rental Officer;

BETWEEN:

BW

Applicant/Tenant

-and-

APM

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing:	**September 3, 2020, and October 21, 2020**
Place of the Hearing:	**Yellowknife, Northwest Territories**
Appearances at Hearing:	**BW, Applicant** **NH, on behalf of the Applicant** **RH, representing the Respondent**
Date of Decision:	**October 26, 2020**

REASONS FOR DECISION

An application to a rental officer made by BW and NH as the Applicant/Tenant against APM and RH as the Respondent/Landlord was filed by the Rental Office July 24, 2020. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was personally served on the Respondent August 26, 2020.

The Tenant alleged the Landlord had improperly retained the security deposit, and had charged the Tenant for costs of repairs and cleaning that were disputed by the Tenant. An order was sought for the return of the security deposit.

A hearing was held September 3, 2020, and October 21, 2020, by three-way teleconference. BW and NH appeared at both hearing dates as and on behalf of the Applicant. RH appeared at both hearing dates as and representing the Respondent.

Preliminary matter - style of cause

The application to a rental officer identified BW and NH as the Applicant/Tenant and APM and RH as the Respondent/Landlord. The written tenancy agreement identifies the Tenant as BW and the Landlord as APM. At the September 3rd hearing the parties agreed to amend the application to a rental officer to strike out NH as an Applicant/Tenant and RH as a Respondent/Landlord. The style of cause of this matter going forward will be BW v. APM.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between BW and APM commencing for a fixed-term from January 1, 2018, to September 1, 2018. The tenancy was automatically renewed as a month-to-month tenancy starting September 1, 2018. The tenancy ended November 25, 2019, when the Tenant vacated the rental premises. I am satisfied a valid tenancy agreement was in place in accordance with the *Residential Tenancies Act* (the Act).

.../3

Preliminary matter - exceeding time limit

Subsection 68(1) of the Act requires that an application to a rental officer be made within six months of when a breach occurred or a situation arose. Subsection 68(3) provides for the Rental Officer to extend the time for making the application where the Rental Officer is of the opinion that it would not be unfair to do so.

In practice, if an Applicant can show that they have been making regular and reasonable efforts to resolve the disputed situation before making the application, then they are likely to be granted an extension to the time for making the application.

In this case, the Tenant's partner had been in contact with the Rental Office at the end of May asking about the procedures and the flexibility of the time line for making the application. The Tenant's partner admitted at that time that when the issue of the security deposit and disputed cleaning and repairs costs arose they were experiencing personal circumstances and stressors making it difficult for them to prioritize and deal with certain issues. Upon reading the Act and learning that they had six months to make their application, the Tenant chose to "defer dealing with" the issue of the security deposit and costs claimed by the Landlord. They finally returned their focus to the matter in May and began collecting their evidence to complete the application.

I failed to clarify in response to the Tenant's partner's email queries whether they had notified the Landlord of the disputed issues and attempted any negotiation regarding them during the intervening six-month period. On the false assumption that they had, and contrary to my usual practice, I agreed to allow an extension to the time for making the application. I directed the Tenant to include the email exchange granting the extension to the application.

The Tenant made the application and it was filed on July 24, 2020. The application was processed and scheduled for the September 3rd hearing date, and copies of the filed application and the notices of attendance for the hearing were returned to the Tenant with instructions for them to serve the Landlord with one of the copies. The Tenant was told that they must serve the Landlord so that he receives it at least five business days before the scheduled hearing date, which in this case would have been no later than August 27, 2020. The Tenant served the Landlord August 26, 2020.

At the September 3rd hearing date, I learned that the Tenant had not in fact been in communication with the Landlord since early December, when they received the Landlord's notice that he was retaining the security deposit. The Tenant had not replied to that notice or given any indication to the Landlord that they had any issue with the retention of the security deposit. The first the Landlord learned of the Tenant's dispute was when he was served with the filed application. The Landlord argued against the extension to the time for making the application as being unfair to him. He further argued that although he would be willing to proceed with that day's hearing he had not had sufficient time to prepare a full defence to the allegations or properly collect relevant documentary evidence to submit.

The Tenant explained that they did not believe there was any point to replying to the Landlord in December given the communications they had been having over the few weeks before vacating suggested they would be unable to come to an agreement. The Tenant's attitude was to say, why bother talking to the Landlord now when they're just going to have to get the issue adjudicated anyway.

Had I made the proper inquiries of the Tenant in May and June, and learned then that there had been no effort to resolve the dispute themselves during the intervening six months, I likely would not have granted the requested extension. I did not do that, and the Tenant made the application in good faith believing it remained appropriate to do so.

I agree with the Landlord that under usual circumstances it would not have been fair to the Landlord to extend the time for the Tenant to make the application; this unfairness was further aggravated by the Tenant waiting 29 days after receiving the filed application package to serve the Landlord with their copy. However, having already granted the extension based on incomplete information, I decided to mitigate the consequences by adjourning the hearing to October 21, 2020, to give the Landlord fair opportunity to prepare a defence and potentially negotiate a settlement with the Tenant. That date was agreed to by the parties. No settlement was reached prior to the re-scheduled hearing date, so that hearing proceeded.

The parties were advised that the lengthy period of time without efforts to communicate the disputed issues to or negotiate with the Landlord would bear some weight on my decision in this matter.

.../5

Security deposit

The security deposit paid by the Tenant at the beginning of the tenancy agreement amounted to $4,000, the equivalent of one month's rent. The pet security deposit paid by the Tenant amounted to $2,000, the equivalent of half a month's rent. These amounts are in accordance with the Act.

An itemized statement of account detailing the amount of the security deposit and reasons for retaining it was sent to the Tenant by email on December 10, 2019. The entire security deposits of $6,000 plus interest of $5.82 was retained against costs of repairs and cleaning. The interest was calculated in accordance with the Act.

Subsection 18(3) of the Act requires the Landlord to return the itemized statement of account within 10 days after the Tenant vacates the rental premises. Subsection 17.1(3) of the Act requires the Landlord to prepare and share an exit inspection report with the Tenant without delay upon completion of the exit inspection.

The tenancy ended when the Tenant gave up possession of the rental premises on November 25, 2019. The exit inspection report could have been provided with the security deposit statement, which technically should have been provided to the Tenant no later than December 6, 2019. As mentioned, the Landlord provided the security deposit statement to the Tenant December 10, 2019. The exit inspection report was not included with that email.

The Landlord explained that because he did not receive the keys to the rental premises, and because there was so much work to do to the rental premises before his new Tenant could take occupancy, and because the full month's rent to November 30, 2019, had been paid, he counted the 10 days for service of the security deposit statement from November 30th. The Landlord also explained that he thought he had attached the exit inspection report to the email along with the security deposit statement, admitting his own oversight in that regard.

The four-day delay in providing the security deposit statement in the circumstances to my mind is not unreasonable. The Landlord's oversight respecting the provision of the exit inspection report was not pursued by the Tenant at the time, meaning the Landlord was not given an opportunity to correct that oversight. Now that he is aware of the omission, the Landlord has provided the exit inspection report which was completed December 1, 2019, after the exit inspection which was completed in the Tenant's absence November 25 and 26, 2019.

I am not of the opinion that either of these errors in this case are fatal to the Landlord's right to retain the security deposits.

Repairs and cleaning

In the security deposit statement, the Landlord claimed the following costs of repairs and cleaning:

Cleaning throughout	$1,110.00
Steam cleaning carpets	$220.40
Re-keying locks	$530.25
Replacing three broken floor vents	$78.44
Repairing one hole in one wall	$1,680.00
Cleaning two pellet stoves and pipes	$1,365.00
Cleaning pet excrement from yard	$225.00
Sub-total	$5,209.09
20% management fee (admin fee)	$1,041.82
5% GST on management fee	$52.09
Total	$6,303.00
Less security deposits	$6,005.82
Balance	$297.18

It appears that the Tenant did not pay the claimed balance owing and the Landlord did not pursue payment of the claimed balance owing.

<u>Cleaning</u>

The Tenant does not dispute that the rental premises required cleaning, but they do dispute the costs claimed for the cleaning.

The rental premises is described as a three-bedroom executive house, with a den, and a finished basement with another bedroom. The basement and second floor have carpeted floors, as do the stairs.

The exit inspection report documented that essentially nothing had been cleaned, there was a smoke stain on the ceiling in the kitchen above the stove, a pervasive pet odour remained, and pet hair was evident in some areas of the carpets and in the floor vents. Photographs provided by the Landlord corroborate the condition of the refrigerator, the kitchen ceiling, and the floor vents.

The Landlord had received an estimate from the cleaning company on November 22, 2019, based on a description of the size of the premises sight unseen in the amount of $600. When the cleaning company representative viewed the premises with the Tenant they provided an estimate of between $1,040 and $1,300. The cleaning company effected the cleaning on November 26, 2020, and charged the Landlord $1,110.

The Tenant had asked the cleaning company if the estimate included costs for washing the walls and told them that the walls were not clean when they moved in so they would not pay for cleaning the walls. The entry inspection report does not document any uncleanliness issues with the walls. The Tenant testified that shortly after moving in they discovered dead mosquitos on at least two walls and one part of the ceiling. Other than an unspecific reference to finding “a few more minor marks around the house” in an email sent to the Landlord January 30, 2018, the Tenant did not notify the Landlord that the walls were unclean or ask the Landlord to have them cleaned.

As previously mentioned, the Act requires that an application be made within six months of when an issue arose. The Landlord was not given an opportunity to address the alleged uncleanliness of the walls at the beginning of the tenancy, nor was an application made regarding this issue within six months.

The Tenant testified that despite doing essentially nothing else, they did wipe down the walls at the end of the tenancy. No mention was made of whether the trim was also wiped down. Given the condition of the premises as documented in the exit inspection report, it seems unlikely that the trim was wiped down. It is also of note that the Tenant did not vacuum out the floor vents of pet hair.

Under subsection 45(2) of the Act, the Tenant is responsible for maintaining the ordinary cleanliness of the rental premises during their tenancy. I am satisfied that the rental premises was provided to the Tenant in an ordinary state of cleanliness at the beginning of the tenancy. While I may be satisfied that the Tenant wiped down the walls at the end of the tenancy, I am not satisfied that this included wiping down the trim (baseboards, casings, moulding).

.../8

I am satisfied the cleaning costs incurred by the Landlord are actual costs to remedy the effects of the uncleanliness of the rental premises. Given the size of the rental premises, the admitted failure to clean the premises, and the presence of animal hair and odours, I am satisfied the costs charged back to the Tenant are reasonable. I find the Tenant liable for the costs of cleaning in the amount of $1,110.

Steam cleaning

Because of the presence of two dogs and a cat in the rental premises, steam cleaning the carpets was required to remove pet hair, dander, and odours. The Tenant did not dispute this requirement, and they did in fact have the carpets steam cleaned at a cost of $682.50. The Tenant confirmed that the steam cleaning was done November 23, 2019, after the second floor and basement (carpeted areas) had been emptied of possessions. No cleaning of anything, including the walls, had yet been completed when this steam cleaning was performed. The Tenant testified that the pets had also been removed from the rental premises and did not return. They also testified that once the steam cleaning was done they did not access those two floors except to wipe down the walls.

The Landlord testified that when he conducted the exit inspection he observed that pet hair had accumulated in a few areas of the carpeted rooms and that the odour from the pets remained noticeable. The Landlord's new Tenant had also attended to view the premises and noted the pet hair on the carpets and in the floor vents (amongst the other uncleanliness), as well as the pet odour. As a result, the Landlord had to have the affected areas steam cleaned again. The subsequent steam cleaning was performed November 27, 2019 – the day after the rental premises was cleaned – at a cost of $220.40.

The Tenant disputed that the additional steam cleaning was either necessary or their liability given that they had already complied with the requirement to have the carpets steam cleaned. They argued that the carpets had been professionally cleaned and did not have any further exposure to accumulate additional pet hair or odours because the pets were not present in the rental premises after the steam cleaning was done, and the Tenant did not access those areas except to clean the walls.

.../9

Despite the Tenant's alleged effort to stay out of the steam cleaned areas, it seems unlikely that the pet hair which remained in the floor vents and in the uncarpeted and uncleaned areas of the premises would not travel throughout the premises, be it through the ducts or carried on the air currents or transferred on people's clothes. Given the Tenant's steam cleaning occurred three days before the rental premises was cleaned, I am satisfied that a secondary steam cleaning touch-up was necessary. I find the Tenant liable to the Landlord for the costs of the secondary steam cleaning in the amount of $220.40.

Re-keying locks

The tenancy ended November 25, 2019, when the Applicant vacated and the exit inspection was completed November 26, 2019. The Landlord's new Tenant was entitled to take occupancy as of November 27, 2019, and in fact expected to, but they could not because of the required cleaning and repairs. The new Tenant was not able to start moving their property into the premises until November 30, 2019.

The Applicant had been issued six sets of keys to the rental premises at the beginning of the tenancy. The keys should have been returned to the Landlord on November 25, 2019, when the Applicant returned possession of the rental premises to the Landlord, but they were not. The Applicant ended up having an additional five days to return the keys to the Landlord before it became a security issue for the new Tenant. The Landlord reached out to the Applicant on November 28, 2019, requesting the keys. The Applicant replied on November 30, 2019, that they had yet to collect all the keys and would return them on December 2, 2019. The Applicant was unable to connect with the Landlord on December 2nd to return the keys.

Given the new Tenant's occupancy of the rental premises, the Landlord was not in a position to wait for the Applicant to return the keys before having the locks re-keyed, particularly given the Applicant had more than adequate time to return them. The Landlord had the locks re-keyed on December 2, 2019, at a cost of $530.25.

I am satisfied that had the Applicant returned the keys to the rental premises upon giving up possession as required that the Landlord would not have incurred the costs to re-key the locks to the rental premises. I am satisfied that re-keying the locks to the rental premises was necessary to ensure the security of the rental premises for both the Landlord and the new Tenant. I find the Applicant liable to the Landlord for the costs of re-keying the locks to the rental premises in the amount of $530.25.

Floor vent covers

The Landlord claimed $78.44 to replace three floor vent covers which were missing during the exit inspection. The entry inspection report documented that the floor vent cover in the main floor powder room was broken; there was no reference to any of the other floor vent covers being damaged at the beginning of the tenancy. The exit inspection report documented two missing floor vents from the living room and one broken floor vent in the main floor den.

The Tenant claimed the three referenced floor vent covers were discovered broken by them shortly after moving into the rental premises. They did not notify the Landlord, choosing to attempt to repair the floor vent covers themselves. The Tenant's daughter claimed in a written statement that she was successful at repairing two of them, but the third could not be repaired so they placed it in a drawer so as not to lose it.

As previously mentioned, the Act requires that an application be made within six months of when an issue arose. The Landlord was not given an opportunity to address the repair or replacement of the floor vent covers that were allegedly damaged before the tenancy began, nor was an application made regarding this issue within six months.

It is unclear if the three missing floor vent covers referenced in the exit inspection report are the same three floor vent covers the Tenant claims to have attempted to repair. I am satisfied that as of the end of the tenancy there were three floor vent covers missing from the rental premises. I find the Tenant liable for the costs of replacing three floor vent covers in the amount of $78.44.

Hole in stairwell wall

Evidence was presented establishing that a hole existed in the stairwell wall. The Tenant acknowledged the damage as caused by them and accepted responsibility for repairing it. The Tenant disputed the costs claimed for the repair as unreasonable.

The Tenant confirmed that they had a family friend alleged to be a professional contractor begin the repair by trimming and replacing the damaged 10" x 10" section of drywall (in a wall measuring approximately 8' x 10') and applying the first coat of mud.

.../11

The Landlord provided his contractor's cost to repair the drywall and a written statement from the contractor confirming that the attempted patch was done incorrectly using fiber tape over a large hole rather than a proper drywall patch. The contractor described the result as "structurally unfit and aesthetically unpleasing", and in order to ensure the repair met industry standards the improper repair had to be removed and redone. The resulting cost to repair the wall amounted to $1,680.

The Tenant initially disputed that their friend's repair job was unprofessional, claiming that they had seen the contractor use drywall materials to do it. However, after reviewing the photographs of the wall provided by the Landlord they conceded that it did not look like their friend actually use a drywall patch. The Tenant still contested the value of the repair work as they had obtained an estimate from another contractor which estimated the costs to repair the wall at $950 plus GST. The Tenant acknowledged that they did not tell this contractor that the repair to the hole had been started. I additionally note that the contractor's quote describes the work as: "Repair approximately one square foot section of drywall dented by impact from fall down stairs." [emphasis mine]

I am satisfied that the Tenant is responsible for the damage to the stairwell wall, and that the final repair required additional work to remedy the effects of an improper attempt to patch the hole in the wall. I am satisfied that the claimed costs to repair the wall are reasonable, and they are the actual costs the Landlord had to pay for the repair. I find the Tenant liable to the Landlord for the costs of repairing the stairwell wall in the amount of $1,680.

Cleaning pellet stoves

The Landlord claimed costs for cleaning the two pellet stoves and chimneys provided with the rental premises. The Tenant questioned their liability for these costs given that they had cleaned the exterior areas and the ash out of the pellet stoves before vacating as they understood that would be a part of maintaining the ordinary cleanliness of the rental premises. They were not aware that it was their responsibility to have the mechanics of the pellet stove and chimney cleaned.

The Landlord argued that the costs for stove and chimney cleaning are not the Landlord's responsibility and are always part of the Tenant's responsibility to do. He suggested that this maintenance was not the same as the annual inspections and cleaning required and expected for facilities such as the furnace or boiler.

Respectfully, I disagree with the Landlord on this. Section 30 of the Act clearly specifies that the Landlord is obligated to ensure that all services and facilities provided by the Landlord comply with all health, safety, maintenance, and occupancy standards required by law. Services and facilities are defined as including heating facilities or services. Pellet stoves are clearly a form of heating facility, whether they are supplementary to a furnace or not. Even the Landlord acknowledged that if one were to ask the Deputy Fire Chief about maintenance of pellet stoves and chimneys they would likely recommend annual cleaning and maintenance by a qualified person. The average person is not necessarily qualified to do such cleaning and maintenance, nor would that work be the Tenant's responsibility. Ensuring the cleaning and maintenance of services and facilities, particularly heating facilities, is as much a fire prevention and safety issue as anything else.

I am not satisfied the Tenant is responsible for the cleaning and maintenance of the pellet stoves and chimneys. The Landlord's claim for costs of cleaning and maintenance of the pellet stoves and chimneys in the amount of $1,365 is denied.

Yard cleaning

The yard to the rental premises is an unfenced area bordering against a local walking trail. As previously mentioned, the Tenant has two dogs which were secured in an area of the yard where they would do their business. Despite doing his best to clear the yard of dog feces from the snow-covered yard before vacating the rental premises, the Landlord's inspection discovered there were still traces left behind. The Landlord hired someone to clean the yard, resulting in a charge of $225.

The Tenant suggested that the remaining dog feces likely was not from their dogs given that it is common for dog walkers to cut across their yard from the walking trail, and for stray dogs to wander through the yard. Regardless of this, it remains the Tenant's responsibility to maintain the rental premises – including the yard – in an ordinary state of cleanliness, even if that means cleaning up after stray dogs.

I am satisfied the yard required cleaning for which the Tenant is responsible. I find the Tenant liable to the Landlord for yard cleaning in the amount of $225.

Conclusion

Given the above findings, the Tenant is liable to the Landlord for cleaning and repairs as follows:

Cleaning throughout	$1,110.00
Steam cleaning carpets	$220.40
Re-keying locks	$530.25
Replacing three broken floor vents	$78.44
Repairing one hole in one wall	$1,680.00
Cleaning pet excrement from yard	$225.00
Sub-total	$3,844.09
20% management fee (admin fee)	$768.82
5% GST on management fee	$38.44
Total	$4,651.35
Less security deposits	$6,005.82
Balance	($1,354.47)

As a result of the retention of the security deposit against the costs of repairs and cleaning, the Landlord is now in the position of owing $1,354.47 to the Tenant for the remaining security deposit credit.

Order

An order will issue requiring the Landlord to return a portion of the security deposit to the Tenant in the amount of $1,354.47 (p. 18.1(b)).

Adelle Guigon
Rental Officer