

IN THE MATTER between **LP**, Applicant, and **DK and SG**, 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:

LP

Applicant/Landlord

-and-

DK and SG

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	October 28, 2020
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	LP, representing the Applicant DK, Respondent SG, Respondent
<u>Date of Decision:</u>	October 30, 2020

REASONS FOR DECISION

An application to a rental officer made by LP as the Applicant/Landlord against DK and SG as the Respondents/Tenants was filed by the Rental Office September 21, 2020. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was served on the Respondents by email deemed received on October 17, 2020, under subsection 4(4) of the *Residential Tenancies Regulations* (the Regulations).

The Applicant claimed that the Respondents had vacated the rental premises early and owed compensation for lost rent, had caused damages, and had not paid the utilities owing. An order was sought for payment of the rental arrears, payment of costs for repair of damages, and payment of utilities owing.

A hearing was held October 28, 2020, by three-way teleconference. Appearing at the hearing were LP as the Applicant, as well as DK and SG as the Respondents.

At the hearing I reserved my decision in order to give the Applicant time to provide further information relating to notice of tenant damages and the security deposit, and to confirm the date the new tenants moved into the rental premises. This information was provided on October 28, 2020, after the hearing concluded.

Tenancy agreement

Evidence was presented establishing a tenancy agreement between the parties for the period from September 1, 2019, to August 31, 2020. According to the evidence and testimony of the Applicant, on January 7, 2020, the Respondents notified the Applicant that they wanted to vacate the rental premises and were willing to find someone to take over the lease. The Respondents agreed to pay rent until the end of February 2020. The Respondents testified that they vacated the rental premises at the end of January 2020 but continued to check the rental premises regularly until they turned possession over to the Applicant's agent on February 11, 2020. The Respondents did not pay any rent for February 2020.

Under section 22 of the *Residential Tenancies Act* (the Act), a tenant may transfer their right to occupy the rental premises to another person by assignment where they do not intend to return, and by sublet if they intend to return. Under subsection 22(2), "An assignment or subletting is not valid unless the landlord has given written consent, which must not be unreasonably withheld."

As the Respondents did not plan to return to the rental premises an assignment would have been appropriate. However, the parties did not proceed by written consent for termination of the tenancy, as provided for under section 50 of the Act, or by assignment; rather the parties testified that they proceeded on an informal basis and both tried to find a new tenant as soon as possible. In February 2020 a new tenant was found that was satisfactory to the Applicant. An exit inspection was carried out by the Applicant's agent with the Respondents on February 11, 2020, and the new tenant moved into the rental premises on February 12, 2020.

I am satisfied that a valid tenancy agreement was in place and that agreement was not terminated in accordance with the Act, but was terminated when the Respondents vacated the rental premises on February 11, 2020.

Rental arrears

The Applicant has claimed rent for February totalling \$1,150 (half a month's rent). At the hearing the Respondents testified they had found a suitable tenant earlier who could have occupied the rental unit on February 1, 2020, however the Applicant did not act quickly enough and that person rented a unit elsewhere. They argued that they should not have to pay any rent for February because it was the inaction of the Applicant that resulted in the unit not being rented until later in February.

The Applicant testified that they needed to find a tenant that they were comfortable with and that took more time. Also, the Applicant was only seeking rent for half of February even though the Respondents had previously agreed to pay rent for the whole month.

As the tenancy agreement was not terminated in accordance with the Act, under section 62 of the Act a tenant remains liable to compensate the landlord for loss of future rent that would have been payable under the tenancy agreement. Subsection 5(2) of the Act requires the landlord to mitigate their losses by re-renting the premises as soon as practicable.

During the hearing compensation for lost rent was discussed, however considering that the new tenant took possession of the rental premises on February 12, 2020 – the day after the Respondents turned over possession – I find that no amount is owed for compensation of lost rent, but rent is owed for the first 11 days of February. I find that the Respondents owe rent totalling \$831.82 for the period from February 1, 2020, to February 11, 2020 (11 days at \$75.62 per day based on the monthly rent of \$2,300).

Tenant damages

In their application, the Applicant claimed the following damages:

- damage to the storm door, amount to be determined;
- frozen kitchen sink - thaw \$207.90 and repair \$432.19; and
- broken kitchen window \$362.28.

The Applicant provided as evidence the entry and exit inspection reports, as well as receipts for materials and work related to the window and the frozen pipe.

Damages to the storm door

The exit inspection report had a short note that the chain on the door was missing, and later in their August 27, 2020, email the Applicant claimed that the hinges would need repair. At the time of the hearing the Applicant had not had the storm door repaired and was not able to provide an estimate of the costs to repair the door. According to the Applicant the Respondents had reported that the door was damaged when the wind caught it and broke the chain. As the Applicant was not able to provide an estimate of the work required to repair the door, and the damages were most likely as a result of an accident and not as a result of negligence, the Applicant agreed to drop their claim for damages to the storm door.

Frozen kitchen sink

At the hearing the Applicant testified and provide evidence that on February 17th the new tenant reported that the kitchen sink was plugged and they hadn't been able to use it. The Applicant called in plumbers who found that the line from the sink was frozen and needed to be thawed out and repaired. Receipts were provided for thawing the frozen pipes (\$207.90) and repairing the plumbing (\$432.19).

The Respondents challenged this claim, testifying that they had checked the unit repeatedly after they moved out, including running the water in the taps. On February 11, 2020, they conducted an exit inspection with the Applicant's agent and in the course of that inspection ran the water throughout the rental premises; no problems were found. The exit inspection report does not include any mention of problems with the plumbing.

I am not satisfied that the Respondents were responsible for the freeze-up to the kitchen sink. The Respondents have testified that the plumbing was working at the exit inspection, the exit inspection report does not include any mention of plumbing problems, and the problem was not reported by the new tenant until February 17, 2020, which is six days after the Respondents vacated the premises. It is entirely possible that the lines froze after the new tenant took possession. For these reasons the Applicant's claim for expenses related to this work is denied.

Broken kitchen window

The broken window is mentioned in the exit inspection report and the Applicant also provided as evidence a copy of the receipt for the materials and work. At the hearing the Respondents testified that they were responsible for the broken window and were willing to cover the costs to replace it. Based on their testimony and the evidence I am satisfied that the Respondents are responsible for the cost to replace the window in the amount of \$362.28.

Utilities

The Applicant had claimed \$215.59 to pay the cost of the outstanding City of Yellowknife utilities bill. At the hearing the Applicant dropped this claim as it had been recently paid by the Respondents.

Security deposit

According to the testimony and evidence of the Applicant, the Respondents paid a security deposit of \$1,000 on August 20, 2019. The Applicant had not returned the security deposit at the end of the tenancy because they had applied this amount to the tenant damages.

Under subsection 18(5) of the Act a Landlord may retain part or all of the security deposit for rental arrears and for tenant damages if an entry and exit inspection was carried out. However, under subsection 18(7) a Landlord who intends to withhold all or a portion of a security deposit must provide written notice to the Tenant within 10 days after the Tenant vacates the rental premises detailing the security deposit, any arrears, and any repairs being claimed. An email was finally provided to the Respondents on August 27, 2020, six months later, containing some of these details and claiming the whole security deposit. The email did not include, as required under the Act, a calculation of the interest earned on the security deposit.

Based on the Act and Regulations, the interest earned on the security deposit is \$0.24. Once the security deposit with interest of \$1,000.24 is applied against the rental arrears of \$831.82 and costs for repairs of damages of \$362.28, a total of \$193.86 is still owed to the Landlord for the costs of repairs.

Orders

An order will be issued requiring the Respondents to pay the costs for repairs of damages totalling \$193.82 (p. 42(3)(e)).

Janice Laycock
Rental Officer