

IN THE MATTER between **VS**, Applicant, and **JGMB AKA JM**, 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 **Janice Laycock**, Rental Officer;

BETWEEN:

VS

Applicant/Landlord

-and-

JGMB AKA JM

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: January 27, 2021

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: VS, Applicant
JM, Respondent

Date of Decision: February 5, 2021

REASONS FOR DECISION

An application to a rental officer made by VS as the Applicant/Landlord against JGMB AKA JM as the Respondent/Tenant 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 Hay River, Northwest Territories. The filed application along with an addendum was sent to the Respondent by email deemed served on November 7th, 2020.

At the hearing the Applicant claimed the Respondent had rental arrears, had not paid the utilities, had left the rental premises unclean because of COVID-19 exposure, and had caused damages from smoking. An order was sought for payment of rental arrears, payment of utilities arrears, and payment of costs to repair damages and clean the rental premises.

A hearing was originally scheduled for June 16, 2020. This hearing was cancelled as the filed application had not been served on the Respondent prior to the hearing. The Applicant asked for a postponement of the hearing until a later date. The hearing was rescheduled for December 2, 2020, and was rescheduled again for January 27, 2021, at the request of the Respondent. Both parties were provided notice of this hearing by email. The hearing proceeded by teleconference. Appearing at the hearing was the Applicant, VS, and the Respondent, JM.

I reserved my decision at the hearing in order to further consider the testimony and evidence provided and to review the relevant sections of the Act.

Tenancy agreement

At the hearing the Applicant testified that an oral agreement existed between herself and the Tenant for the rental of the premises beginning September 1, 2019, that rent was \$1,800 per month, and that the Respondent was also responsible for the payment of all utilities. In their testimony the Respondent confirmed that they had agreed to pay \$1,800 per month, but that it was their understanding that the rent included utilities. Both parties were firm in their understanding of the terms of the oral agreement.

In February of 2020, the Applicant sent a written tenancy agreement to the Respondent as the Respondent required a written agreement to apply for government assistance with their rent. This agreement, which was provided as evidence, had additional obligations including the obligation for the Respondent to pay all utilities.

The Respondent testified that they refused to sign the agreement because it contained a number of obligations that had not been agreed to at the start of the tenancy, including the requirement to pay utilities.

On May 2, 2020, the Respondent vacated the rental premises because the area was under an evacuation order due to possible flooding. They did not return to the rental premises and the tenancy agreement was terminated when the Applicant regained possession of the rental premises on May 4, 2020.

Under subsection 9(1) of the *Residential Tenancies Act*, “a tenancy agreement may be oral, written or implied.” I am satisfied that a valid tenancy agreement was in place for the rental of the unit and this tenancy was terminated in accordance with the Act on May 4, 2020.

Additional obligations

The Applicant provided as evidence a statement that they had prepared of the utilities they alleged the Respondent owed, including: sewer, water, power, propane, and heating fuel totalling \$4,288.50. As previously mentioned, in their evidence and in testimony at the hearing it is clear that the parties had a different understanding of the terms of the oral tenancy agreement. The Applicant believed that the Respondent would put the utilities in their name and would pay all utilities in addition to paying the rent. The Respondent believed that the utilities were included in the rent and because of this refused to pay the utilities during the tenancy.

Under subsection 45(1) of the *Residential Tenancies Act*, a tenant is required to comply with additional obligations that they have agreed to in a written tenancy agreement. In this case a written tenancy agreement documenting any additional obligations, including an obligation to pay utilities, does not exist.

Considering the testimony of the parties, and in the absence of a written tenancy agreement documenting the obligation to pay the utilities and the agreement of the Respondent to this, I cannot find that there was a breach under the Act. I deny the Applicant’s claim for payment of utilities.

Rental arrears

The Applicant provided as evidence a statement that they had prepared of the monthly rent charged and paid. At the hearing both parties agreed that the monthly rent was \$1,800 and at the end of April 2020 the Respondent had been charged \$14,400 (8 months x \$1,800) and had paid \$7,350.

In April 2020 the Respondent received assistance for rent under the Northwest Territories Housing Corporation's Homeless Assistance Fund of \$5,400. When that payment was applied against their arrears they owed an outstanding amount of \$1,650 in rent. The Respondent did not dispute this claim.

In addition to the rent owing for the period from September 1, 2019, to April 30, 2020, the Applicant also claimed \$7,200 in compensation for lost rent during the months of May, June, July, and August 2020. Although they had regained possession of the rental premises after the Respondent vacated the rental premises in May 2020, the Applicant claimed that they could not use the premises because of a potential exposure to COVID-19, and until they secured the proper supplies to clean the unit properly, which they did in August, they could not use the premises.

At the hearing I explained to the Applicant that 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." There is nothing in the Act that would require the level of cleaning the Applicant described. If she chose to keep the unit vacant and to do a higher standard of cleaning that was her decision, and not the responsibility of the Tenant. Also, as the Applicant did not intend to rent out the rental premises but instead intended to use it for their family members, in my opinion they could not claim for lost rent.

Although I am denying any compensation for lost rent, as the unit was not vacated and returned to the Applicant's possession until May 4, 2020, I believe that the Applicant is entitled to pro-rated rent for the first four days of the month in the amount of \$236.72 ((((\$1,800 x 12 months) / 365 days) x 4 days).

According to the Applicant's testimony and evidence, the Respondent repeatedly did not pay their rent when due. At the hearing the Applicant asked that late payment penalties be considered. The Respondent testified that they had arranged with the Applicant to pay their rent in two payments monthly, one at the beginning and one in the middle of the month, and she shouldn't have to pay penalties. However, the Applicant testified that there was no such agreement and the rent was due at the beginning of the month. According to the statement provided by the Applicant, the Respondent was repeatedly late paying their rent and did not stick to the payment schedule they described at the hearing:

- September 2019 – payments: \$500 on the 6th; \$400 on the 9th; and \$900 on the 19th - total paid = \$1,800;
- October 2019 – payments: \$900 on the 16th and \$900 on the 30th - total paid = \$1,800;
- November 2019 - No rent paid in November;
- December 2019 - No rent paid in December;
- January 2020 – payments: \$900 on the 8th and \$900 on the 22nd - total paid = \$1,800;
- February 2020 – payments: \$650 on the 6th and \$650 on the 19th - total paid = \$1,300;
- March 2020 – payments: \$650 on the 5th - total paid = \$650;
- April 2020 – no rent paid in April, HAF payment made = \$5,400.

Under subsection 41(2) of the Act, “a tenant who pays his or her rent later than the dates specified in the tenancy agreement is liable for a penalty calculated in accordance with the regulations.” Under section 3 of the *Residential Tenancies Regulations*, the late payment penalty “... must not exceed \$5 plus \$1 for each day after the due date that the rent is late to a maximum of \$65.” Based on the dates that the rents were paid from September 2019 to April 2020, I calculate that \$263 is due for late payment penalties.

The Applicant testified and the Respondent agreed that no security deposit was paid. Amounts owing include \$1,650 for the April 2020 rent, \$236.72 for the May 1st to 4th pro-rated rent, and \$263 for the late payment penalties, the total of which is \$2,149.72.

I am satisfied that the statement provided by the Applicant represents the accounting of rent charges and payments received, and I find that the Respondent owes \$2,149.72 in rental arrears and late payment penalties.

Repairs and cleaning

The Applicant made a claim for repairs of damages and cleaning, and included in their evidence a quote of \$5,985 from Lakeshore Painting for patching and painting. At the hearing the Applicant testified that the damages were because the Respondent had smoked in the unit. The Respondent denied smoking in the unit and suggested that using the wood stove might have resulted in some residue on the walls. They also testified that they had to move out quickly because of the evacuation and didn't have a chance to return to the unit to do further cleaning. The Applicant did not provide an entry or exit inspection report.

At the hearing the Applicant also testified that they had incurred expenses associated with the additional cleaning, including steam cleaning that they had to do to the unit as a result of possible exposure to COVID-19. As mentioned previously it was explained to the Applicant that the tenant has a responsibility to keep the rental premises in a state of ordinary cleanliness and further cleaning undertaken four months later by the Applicant to ensure themselves that the rental premises was COVID free was not required under the Act, and would be at the expense of the Applicant. At the hearing the Applicant withdrew their claim for repairs and cleaning.

Orders

An order will be issued requiring the Respondent to pay rent owing in the amount of \$2,149.72 (p. 41(4)(a)).

Janice Laycock
Rental Officer