

IN THE MATTER between **TP and CC**, Applicants, and **CR and RR**, 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 **Hal Logsdon**, Rental Officer,

BETWEEN:

TP and CC

Applicants/Landlords

-and-

CR and RR

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: March 16, 2021

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: TP, Applicant/Landlord

Date of Decision: March 25, 2021

REASONS FOR DECISION

The Respondents were served with notices of attendance sent by email on February 1, 2021, and deemed served. The Respondents failed to appear at the hearing and the hearing was held in their absence.

The original term tenancy agreement between the parties commenced on November 1, 2016. It was replaced by a second term agreement on its expiry and then renewed as a monthly agreement. The Applicants hold a security deposit of \$1,650.

The Applicants provided a copy of a *Notice of Termination* in evidence, pursuant to paragraph 54(1)(g), dated August 18, 2020, seeking vacant possession on August 31, 2020. The application was filed on September 9, 2020, seeking termination, eviction and monetary relief for the repair of damages. On September 15, 2020, the Respondents served notice on the Applicants that they intended to vacate on September 30, 2020, and asked for a final inspection on that date.

The Applicant confirmed the Respondents had vacated the premises but was unsure of the date they surrendered possession. Judging from the application date, the date of the notice to terminate served by the Respondents, and the date of the check-out inspection report provided, it is reasonable to assume the Respondents vacated on or about September 30, 2020.

The Applicants alleged that the Respondents had failed to repair damages to the rental premises and had failed to leave the premises in a state of ordinary cleanliness. The Applicants sought an order requiring the Respondents to pay for repair and cleaning expenses less the retained security deposit and interest. The Applicants also sought compensation for loss of rent they would have received had they been able to rent the premises immediately after the Respondents gave up possession. As well, the Applicants sought compensation for electricity, water, and gas they paid for October 2020. The relief sought is summarized as follows:

Security deposit and interest	(\$1,650.83)
Repairs, cleaning and replacements	6,021.30
Lost rent, utilities	<u>3,669.14</u>
Total relief sought	<u>\$8,039.61</u>

The parties conducted a check-in inspection and signed a completed report on October 16, 2016. The premises were in good condition. Another inspection was completed on May 1, 2017, when the new term agreement commenced. That inspection noted broken fireplace glass, some kitchen cabinet damage, and a broken hall light fixture. The final check-out inspection was dated October 3, 2020, and noted numerous damages. All three inspections were signed by the Tenant(s).

Photographs of the premises taken at the end of the tenancy, an itemized list of repairs, and invoices for repair costs were provided in evidence by the Applicants.

Repair and cleaning costs

After a review of the inspection reports, photographs and associated invoices, I find the following repair and cleaning costs to be reasonable and the responsibility of the Respondents:

Toilet blockage and bathroom floor damage - \$602.37 (The material cost of window insulation is denied.)

Fireplace door repair - \$476.71

Cleaning - \$450 (reduced to 2 persons, 1.5 days, \$20/hour. Relief requested is unreasonable given the evidence.)

Door frame repair - \$168.19 (The cupboard base charge is denied.)

Carpet cleaning - \$415.22

Replace furnace elbow - \$14.60

General repairs as per itemized list - \$2,432.11

Replacement of bar stools - Relief denied. There was no inventory of furnishings nor were any furnishings included on any of the inspection reports.

I find reasonable repair and cleaning costs to be \$4,559.20.

Lost rent and utilities

The Applicants stated that they had a prospective tenant ready to take possession as soon as the premises became available. They claimed that they had lost one and a half months rent (\$2,475) due to the fact the repairs made immediate occupancy impossible. Compensation for this reason could be considered pursuant to section 42(3)(c) of the Act. Alternatively, compensation for lost rent can be considered pursuant to section 62(2) of the Act.

- 42.** (1) *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.*
- (2) *Ordinary wear and tear of rental premises does not constitute damage to the premises.*
- (3) *Where, on the application of a landlord, a rental officer determines that a tenant has breached the obligation imposed by this section, the rental officer may make an order*
- (a) requiring the tenant to comply with the tenant's obligation;*
 - (b) prohibiting the tenant from doing any further damage;*
 - (c) requiring the tenant to compensate the landlord for loss suffered as a direct result of the breach.*
- 62.** (1) *Where a tenant abandons a rental premises, the tenancy agreement is terminated on the date the rental premises were abandoned but the tenant remains liable, subject to section 5, to compensate the landlord for loss of future rent that would have been payable under the tenancy agreement.*
- (2) *Where, on the application of a landlord, a rental officer determines that a tenant has abandoned a rental premises, the rental officer may make an order requiring the tenant to pay to the landlord the compensation for which the tenant is liable by reason of subsection (1).*

In my opinion compensation for lost rent is not reasonable under either of these provisions. A landlord is obligated to mitigate loss. In my opinion, it is not reasonable for a landlord to expect rental premises to always be immediately available to re-rent after a tenant vacates. This tenancy agreement was in place for almost four years. A reasonable landlord would assume that some maintenance or minor repairs would be necessary before the premises were ready for the next tenant.

Repairs, if necessary, must be undertaken in a timely manner in order to warrant compensation for lost rent. The repairs and cleaning required after the termination of this tenancy should not have taken one and a half months. The length of time claimed by the landlord to clean is, in itself, unreasonable. The purchase of materials and pace of labour was over a longer period of time than was necessary. Although the repairs were necessary during a period of the COVID-19 pandemic, that is not the fault of the tenants.

Section 62(2) does not apply as the Applicants had a prospective tenant. The loss of rent was not the direct result of unsuccessful attempts to find a new renter. The request for an order for lost rent is denied.

The Respondents' responsibility to pay for utilities only extends to the term of the tenancy which ended on or about September 30, 2020. The utilities for October were consumed by the Applicants and accrued after the term of the tenancy agreement. The request for relief for the October utilities is denied.

The Respondents have incorrectly calculated the security deposit interest. I find the interest to be \$3.23. Deducting the retained security deposit and interest from the repair and cleaning costs, I find an amount due to the Applicants for repairs and cleaning costs of \$2,905.97, calculated as follows:

Security deposit	(\$1,650.00)
Interest	(3.23)
Repairs and cleaning	<u>2,905.97</u>
Amount due Applicants	<u><u>\$2,905.97</u></u>

An order shall issue requiring the Respondents to pay the Applicants repair and cleaning costs of \$2,905.97.

Hal Logsdon
Rental Officer