

IN THE MATTER between **LD and BD**, Applicants, and **DPM**, 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:

**LD and BD**

Applicants/Tenants

-and-

**DPM**

Respondent/Landlord

**REASONS FOR DECISION**

**Date of the Hearing:** March 31, 2021

**Place of the Hearing:** Yellowknife, Northwest Territories

**Appearances at Hearing:** LD, Applicant  
BD, Applicant  
KS, representing the Respondent

**Date of Decision:** April 12, 2021

### **REASONS FOR DECISION**

An application to a rental officer made by LD and BD as the Applicants/Tenants against DPM and KS as the Respondent/Landlord was filed by the Rental Office . 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 Respondent by email confirmed received March 15, 2021.

The Tenants alleged the Landlord had failed to provide the rental premises in a good state of repair and fit for habitation. An order was sought for the return of one month's rent, compensation for property storage fees, and compensation for postal box rental costs.

A hearing was held March 31, 2021, by three-way teleconference. LD and BD appeared as the Applicants. KS appeared representing the Respondent.

#### *Preliminary matter*

The application to a rental officer identified the Landlord as DPM/KS. The written tenancy agreement identified the Landlord only as DPM. KS confirmed at hearing that she is the owner of the company. The parties agreed at hearing to withdraw KS name as a Respondent/Landlord from the application. The style of cause going forward will be LD and BD v. DPM.

#### *Tenancy agreement*

The parties agreed and evidence was presented establishing a month-to-month residential tenancy agreement commencing November 1, 2020. The Tenants vacated the rental premises, ending the tenancy agreement December 24, 2020. I am satisfied a valid tenancy agreement was in place in accordance with the *Residential Tenancies Act* (the Act).

#### *Occupancy*

The parties entered into the tenancy agreement October 28, 2020, to commence November 1, 2020, with the understanding that the Tenants would not in fact take possession of the rental premises until mid-November. The Tenants accepted responsibility for the rent from November 1<sup>st</sup> and paid the full rent for November as agreed, as well as the security deposit and pet security deposit.

The Tenants notified the Landlord on November 18<sup>th</sup> that their arrival into Yellowknife had been delayed, and on November 23<sup>rd</sup> the Tenants notified the Landlord that they expected to arrive in Yellowknife on December 4<sup>th</sup> to fulfill their COVID-19 self-isolation period at the rental premises. The rent for December was paid on November 30<sup>th</sup>.

On December 6<sup>th</sup> the Tenants again notified the Landlord that their arrival had been delayed a few days and they were now expecting to arrive at the rental premises December 7<sup>th</sup>. The Tenants did arrive late in the evening on December 7<sup>th</sup>.

On December 9<sup>th</sup> the Tenants transferred to a NWT Protect self-isolation hotel and did not return to the rental premises until the morning of December 21<sup>st</sup>.

On December 22<sup>nd</sup> the Tenants decided to terminate the tenancy due to unresolved issues and notified the Landlord they would be returning possession of the premises to her on December 24<sup>th</sup>. An exit inspection was conducted on December 24<sup>th</sup> with all parties present and possession of the rental premises was returned to the Landlord.

#### *Condition of the rental premises*

Despite knowing that the Tenants would not be taking immediate occupancy of the rental premises, the Landlord did not monitor the rental premises to ensure no issues arose with the property. The Landlord first attended the premises after the Tenants notified them on November 18<sup>th</sup> that their arrival would be further delayed.

The Landlord discovered at that time that the bathtub drains were not draining and sent maintenance personnel to look into the issue. An access hole had to be cut into the wall in order to find that the pea pipe was frozen. The pipes were thawed and the wall was repaired, but the area was not cleaned of the resulting debris and the bathtub was not wiped down. No further monitoring was done of the rental premises, and the Landlord did not return to the rental premises until earlier in the day on December 7<sup>th</sup>.

When the Tenants arrived at the rental premises late in the evening on December 7<sup>th</sup> they noted that the laundry room, the stove top, and both bathtubs had not been adequately cleaned, and that there was a pervasive odour akin to cat urine, sewage, or propane. The Tenants immediately contacted the Landlord to report their concerns.

On December 8<sup>th</sup> the Tenants consulted an Environmental Health Officer about the odour out of concern for whether it could be detrimental to their health to remain at the rental premises. Given the risk that the odour could be either sewage or a propane leak, the Environmental Health Officer recommended that the Tenants fulfill their self-isolation period at another location and made arrangements for them to stay at a Protect NWT self-isolation hotel. The Tenants notified the Landlord of this and moved to the hotel on December 9<sup>th</sup>. The Tenants made arrangements with a responsible party to monitor the rental premises on a daily basis.

On December 9<sup>th</sup> the Landlord made calls: to Superior Propane to inspect the propane tank and identify whether the odour could be a propane leak; to their plumber to identify whether the odour could be sewage-related; to Central Mechanical Systems to service the furnace; and to various cleaning services to arrange for the premises to be cleaned.

#### Superior Propane

Despite the Landlord's claim that they called Superior Propane for an emergency call out, Superior Propane did not attend the premises until December 15<sup>th</sup> and subsequently charged their standard rate for general services. Their invoice does not provide detail as to what was observed or done during the inspection. The Landlord testified that she attended with Superior Propane and let them into the rental premises. Superior Propane did not find any concerns with the exterior propane tanks, and while they noted an odour they were not able to confirm whether it was propane. They told the Landlord the plastic vent covers being used could be contributing to the odour and suggested replacing them, which the Landlord did.

#### Cleaning

A house cleaner was not available until December 20<sup>th</sup> or 21<sup>st</sup>. The Landlord chose to book the cleaner for the afternoon of December 21<sup>st</sup> despite knowing the Tenants would be returning to the premises that same day. The Tenants were present when the house cleaner arrived. The house cleaner stayed for about one hour doing some cleaning, but then told the Tenants she was reacting to the propane odour, developed a headache, and left the premises. The house cleaner did not report these things to the Landlord.

#### Yellowknife Fire Department

When the Tenants returned to the premises on December 21<sup>st</sup> and noted the odour remained they contacted the Yellowknife Fire Department (YFD) regarding a possible propane leak. YFD personnel attended and did an inspection. Their monitoring devices did not detect propane in the air, but the personnel did confirm the presence of a distinctive odour that smelled like sewage. They recommended contacting a plumber to inspect the pipes.

### Freeze-up

The Tenants notified the Landlord December 21<sup>st</sup> that the pipes had frozen again. The Landlord arranged for Pick's Steam to thaw the pipes. When asked by the Tenants, Pick's Steam would not commit or investigate into what the source of the odour was, but did confirm that it was unlikely to be sewer gas because that should only happen when the pea traps are dry or when the sewage truck over-pumps.

The plumber attended the premises the evening of December 21<sup>st</sup>, after the pipes were thawed. The Tenants were present when the plumber attended to whom the plumber acknowledged the odour as being strongest near the front door and that it smelled to him like propane. The plumber returned the next day to inspect the pipes under the house, and subsequently reported to the Landlord that the pipes were not adequately or properly insulated which would be a significant contributing factor to the repeated freeze-ups. The plumber returned in January to effect the necessary repairs.

### Central Mechanical Services

Central Mechanical Services (CMS) had been scheduled to service the furnace on December 23<sup>rd</sup>. The Tenants were contacted and provided access to the rental premises for the CMS technician. The technician confirmed the odour as propane, and that he would need assistance to determine the source. The Tenants were not required to be present for the service and left. In the course of their inspection and service, the technician confirmed to the Landlord that the discharge line was in fact leaking propane. The leak was repaired. The Tenants acknowledged that when they returned to the premises later that evening the propane odour had noticeably improved but the sewage odour remained. The Landlord reported that the new Tenants who took possession in January have reported a musty smell but no propane or sewer smells. No information was provided to establish when the furnace was last serviced.

### *Findings*

I am satisfied that the Landlord failed to provide the rental premises in an ordinary state of cleanliness. The Landlord acknowledged that the stove top and the laundry room had not been adequately cleaned at the beginning of the tenancy, and that the uncleanliness in the bathrooms was consequential to repairing the freeze-up that occurred in November. The Landlord had an entire month to have those things cleaned before the Tenants actually took possession.

I am satisfied the Landlord failed to maintain the rental premises in a habitable state and in compliance with health and safety standards required by law. The Landlord did not exercise their due diligence to identify the nature of the odour and whether it created a health and safety risk.

Subsection 30(6) of the Act requires the Landlord to remedy the effects of a substantial breach within 10 days of being notified of the breach. Because a gas leak creates a substantial health and safety risk, a complaint of an unidentified odour suspected to be a gas of some sort should be presumed to be a gas leak until confirmed otherwise. This means the onus is on the Landlord to take immediate steps to confirm whether the odour is a gas leak, even if it means paying technicians a premium rate for an emergency service.

Given that ultimately it was confirmed to be a propane leak in the furnace, it seems more likely than not that the leak started at least some time in November given the Tenants noticed it as soon as they entered the rental premises in early December. Furnaces require annual maintenance service, which the Landlord is obligated to have done in compliance with subsection 30(1) of the Act. Perhaps if the furnace service had been scheduled to occur earlier in the winter season and, in this case, while the premises was unoccupied the propane leak could have been identified and repaired before it could interfere with the Tenants possession of the rental premises.

#### *Remedies*

The Tenants have requested compensation for the rent they paid for December in the amount of \$2,000, storage costs for their property from December 21<sup>st</sup> to January 31<sup>st</sup> in the amount of \$263.18, and postal box rental fees in the amount of \$81.90.

#### December rent

The Tenants had intended to fulfill their self-isolation period at the rental premises upon their arrival in the community, that being since December 7<sup>th</sup>. The propane leak effectively negated that possibility given it was presumed to be unsafe for them to reside at the rental premises. The Tenants subsequent early termination of the tenancy agreement effective December 24<sup>th</sup> was given prior to the confirmation and resolution of the propane leak. The Tenants chose not to remain given the identified issues, some of which remained unresolved, despite not having alternate accommodations. In my opinion, given the Tenants' enjoyment and possession of the rental premises was directly interfered with as a result of the propane leak and the delay in resolving the propane leak, I find the Tenants are entitled to compensation for the rent paid for the period from December 7<sup>th</sup> to 31<sup>st</sup> in the amount of \$1,578.

#### Storage costs

The Tenants property was scheduled to arrive in the community and be delivered to the rental premises on December 21<sup>st</sup>. The Tenants had arranged for the moving company to deliver their property on December 22<sup>nd</sup>, but when they realized they would not be keeping occupancy of the rental premises they had to arrange for their property to be stored at a storage facility until they could secure alternate accommodations. The Tenants were unable to find adequate housing until February 1, 2021. The Tenants claimed the storage facility costs as compensation for something they would not have otherwise had to pay if they had been able to stay at the rental premises. I am satisfied this claim is not unreasonable, and I find the Landlord liable to the Tenants for storage costs in the amount of \$263.18.

#### Postal box rental

The rental premises included direct postal service to the neighbourhood superbox. The Tenants had already provided change of address notices to those who required it, and had been receiving and were expecting mail to be delivered to the rental premises. When they returned possession of the premises to the Landlord they also were required to return the superbox mail keys. Because the Tenants did not yet have alternate accommodations to redirect their mail to, they had to rent a postal box at the Post Office. The Tenants would not have had to rent the postal box if they had been able to continue residing at the rental premises. According to the Canada Post website, mail forwarding services are not provided for delivery of personal mail to hotels, which is where the Tenants were staying until February 1<sup>st</sup>. I am satisfied this claim is not unreasonable, and I find the Landlord liable to the Tenants for postal box rental costs in the amount of \$81.90.

#### *Order*

An order will issue requiring the Landlord to compensate the Tenants for losses suffered as a direct result of the Landlord's failure to provide and maintain the rental premises in an good state of repair, fit for habitation, and in compliance with health and safety standards required by law in the total amount of \$1,923.08.

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Adelle Guigon  
Rental Officer