

IN THE MATTER between **NTHC**, Applicant, and **MK**, 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:

NTHC

Applicant/Landlord

-and-

MK

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: April 21, 2021

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: LP, representing the Applicant
MK, Respondent

Date of Decision: April 21, 2021

REASONS FOR DECISION

An application to a rental officer made by THA on behalf of the NTHC as the Applicant/Landlord against MK as the Respondent/Tenant was filed by the Rental Office March 5, 2021. The application was made regarding a residential tenancy agreement for a rental premises located in Tuktoyaktuk, Northwest Territories. The filed application was sent to the Respondent by registered mail deemed served April 8, 2021.

The Applicant alleged the Respondent had repeatedly failed to pay rent, had accumulated rental arrears, had caused damages to the rental premises, and had failed to pay costs of repairs in a timely manner. An order was sought for payment of the rental arrears, payment of the costs for repairs, termination of the tenancy agreement, and eviction.

A hearing was held April 21, 2021, by three-way teleconference. LP appeared representing the Applicant. MK appeared late to the hearing as the Respondent.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement between them for subsidized public housing commencing November 1, 2012. I am satisfied a valid tenancy agreement is in place in accordance with the *Residential Tenancies Act* (the Act).

Rental arrears

The lease balance statement and lease ledger entered into evidence represent the Landlord's accounting of monthly subsidized rents and payments received against the Respondent's rent account since June 1, 2019. All rents have been subsidized and are currently assessed at \$70 per month.

According to these documents, there was a balance forward as of May 31, 2019, of \$160.92 and a charge for repairs from August 16, 2019, for \$44.32, against which a payment received August 30, 2019, for \$500 recorded as being for "Tenant Damage Payment" was applied leaving a "TD Pay" credit balance of \$294.76. That "TD Pay" credit balance was applied against the rent.

Between June 1, 2019, and April 20, 2021, 23 months' subsidized rent was charged totalling \$1,610. Payments received and recorded as being "Reg Pay" specifically recognized as being for rent payments during the referenced period total \$1,700 plus the referenced "TD Pay" credit balance of \$294.76 equals \$1,994.76 in payments to be applied against the rent. The calculation of subtracting the rent payments of \$1,994.76 from the rents charged of \$1,610 leaves a rent credit of \$384.76. The only rent charge that appears to have been paid late is the one for June 2019, which was not paid until July 30, 2019.

I am not satisfied the Respondent has repeatedly failed to pay rent. In fact, I find that the Respondent has effectively paid her subsidized rent in full and in advance of when it's due. The Applicant's request for an order that the Respondent pay rental arrears is denied because there are no rental arrears to pay.

Repairs

No work orders were provided in support of six work orders referenced in the lease ledger invoiced between November 19, 2019, and November 13, 2020, for a total amount of \$655.84. There was an additional work order referenced in the lease balance statement invoiced February 9, 2021, for an amount of \$561.28 which was not included in the original application and for which the work order itself was not provided. Because there was no evidence explaining any of those seven charges, none of them were considered as part of this application.

Exterior door

A work order was provided documenting a call from the Respondent on November 11, 2020, reporting that the exterior door to the rental premises had been kicked in. Maintenance personnel attended the premises and effected repairs, including replacing the broken backset and adjusting the door knob.

The Respondent disputed this claim, testifying that she had spent the night elsewhere and returned home the next morning to find her door had been kicked in. She immediately reported it to the Applicant.

The Applicant had no evidence to contradict the Respondent's testimony, but claimed the costs claimed were for the call-out itself rather than for the repairs to the door.

Subsection 42(1) of the Act holds the tenant responsible for repairing damages caused by "the wilful or negligent conduct of the tenant or persons who are permitted on the premises by the tenant."

Subsection 42(3) provides remedies for breaches under subsection 42(1), including (c) requiring the tenant to compensate the landlord for loss suffered *as a direct result of the breach*, (d) authorizing any repair or other action that is to be taken by the landlord to remedy the effects of *the tenant's breach*, and (e) requiring the tenant to pay any reasonable expenses directly associated with the repair or action.

The damages to the exterior door were not caused by the Respondent's wilful or negligent conduct, nor of any persons who were permitted on the premises by the Respondent. The Respondent confirmed that she lives alone, and that she had not told anyone they could go to her premises while she was not there. The Respondent doesn't know who kicked her door in as she was not there when it happened.

Therefore, the Tenant did not breach her obligation under subsection 42(1) of the Act and cannot be held responsible for either the costs of repairs or the costs of the call-out to repair the damages. Those costs in this case would effectively be a cost of doing business as a landlord. The Landlord might have been able to get restitution through the Courts from the person who caused the damages if that person were identifiable.

I am not satisfied the Respondent is responsible for the damages to the exterior door. The Applicant's claim of \$177.28 for the call-out and/or repairs are denied.

Undisputed claims

The following four work orders provided as evidence of repairs and/or call-outs were not disputed by the Respondent, who acknowledged the associated debts and accepted responsibility for them:

14 Nov 2020 - exterior door wouldn't close due to the Tenant failing to clear up ice and snow that had built up – charged for after-hours call-out	\$177.28
01 Dec 2020 - door knob to exterior door replaced without either the Landlord's or the Tenant's consent by Tenant's son-in-law while he and her daughter were staying at the premises; maintenance personnel confirmed the door knob was suitable and cut new keys for both the Tenant and the Landlord - charged for day-time call-out and cutting keys	\$88.64
05 Feb 2021 - complaint of no heat to the premises; maintenance attended, inspected radiators and autovents and confirmed all in good working order and heating sufficiently - charged for inspection and call-out	\$384.00
07 Feb 2021 - complaint of no heat to the premises; maintenance attended and confirmed that the heat was working fine and that the Tenant had the window open allowing cold drafts into the premises - charged for after-hours call-out	\$177.28
Total Charges	\$827.20

There were two payments for "TD Pay" recorded in the lease ledger and lease balance statement: one on August 24, 2020, for \$70 and one on March 8, 2021 for \$500. The total of \$570 and the rent credit of \$384.76 applied against the allowed and undisputed costs for repairs and call-outs of \$827.20 leaves a remaining rent credit balance of \$127.56.

To be clear, I am not issuing an order that the Landlord pay the rent credit back to the Tenant. There are still the unsubstantiated work orders reflected in the lease ledger that the Landlord and Tenant should discuss; if the Tenant accepts responsibility for those older work orders then the Tenant can direct the Landlord to apply the rent credit against those costs. Otherwise, the Tenant could direct the Landlord to apply the rent credit towards future rent, or to retain the credit for future use if necessary.

Termination of the tenancy agreement and eviction

I am not satisfied termination of the tenancy agreement and eviction are justified.

Orders

An order will issue requiring the Respondent not to cause any further damages to the rental premises, and requiring the Respondent not to disturb the Applicant with any further unnecessary call-outs.

Adelle Guigon
Rental Officer