

IN THE MATTER between **NTHC**, Applicant, and **SW**, 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-

**SW**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:** May 13, 2021

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

**Appearances at Hearing:** PS, representing the Applicant

**Date of Decision:** May 17, 2021

### **REASONS FOR DECISION**

An application to a rental officer made by YHA on behalf of the NTHC as the Applicant/Landlord against SW as the Respondent/Tenant was filed by the Rental Office March 31, 2021. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was personally served on the Respondent April 7, 2021.

The Applicant alleged the Respondent had repeatedly failed to pay the full amount of rent when due, had accumulated rental arrears, had repeatedly failed to comply with the obligation not to permit pets in the rental premises, had failed to comply with a rental officer order to comply with the obligation not to permit pets in the rental premises and not to breach that obligation again, had caused damages to the rental premises, had failed to keep the rental premises in an ordinary state of cleanliness, and had caused disturbances resulting from permitting pets in the rental premises and the uncleanliness of the rental premises. An order was sought for payment of the rental arrears, payment of future rent on time, payment of the costs for repairs and cleaning, compliance with the obligation not to permit pets in the rental premises, termination of the tenancy agreement, and eviction.

A hearing was held May 13, 2021, by three-way teleconference. PS appeared representing the Applicant. SW was personally served notice of the hearing April 7, 2021. The Respondent did not appear at the hearing, nor did anyone appear on the Respondent's behalf. The hearing proceeded in the Respondent's absence pursuant to subsection 80(2) of the *Residential Tenancies Act* (the Act).

#### *Tenancy agreement*

Evidence was presented establishing a residential tenancy agreement between the parties for subsidized public housing commencing June 25, 2012. The Respondent was transferred pursuant to section 3 of the written tenancy agreement from Unit 772 to Unit HT02 on June 19, 2020. I am satisfied a valid tenancy agreement is in place in accordance with the Act.

#### *Previous order*

Rental Officer Order #10-12613 was issued February 28, 2012, and ordered the Respondent to comply with her obligation not to permit pets in the rental premises and not to breach that obligation again.

*Extension to time for making application*

The Applicant requested an extension to the time for making the application as it relates to the claims for repairs and cleaning of Unit 772. As mentioned, the Respondent was transferred from Unit 772 to Unit HT02 on June 19, 2020. The Applicant was unable to conduct the exit inspection until July 20, 2020, due to the COVID-19 pandemic restrictions. For the same reasons, the painting and yard cleaning were unable to be scheduled until mid-September 2020, the flooring replacement was unable to be scheduled until late-September 2020, and the interior cleaning was unable to be scheduled until November 2020. As result of the accumulated delays, the calculation of the damages statement was not completed until March 19, 2021, at which time the Respondent was notified of the claims for the costs of repairs and cleaning of Unit 772. The application to a rental officer was filed shortly thereafter, on March 31, 2021.

Despite the nine months between the end of the tenancy at Unit 772 on June 19, 2020, and the filing of the application on March 31, 2021, there are only four months between the final repairs/cleaning and the filing of the application.

Section 68 of the Act requires that an application to a rental officer be made within six months of the situation arising, but also gives discretion to the Rental Officer to grant an extension to the time for making the application where it would not be unfair to do so. Given the pandemic delays and the Respondent being notified of the claims before the application was filed, I am satisfied that the three-month delay in making the application is not unreasonable and in my opinion it is not unfair to grant the extension.

*Rental arrears*

The lease balance statement entered into evidence represents the Landlord's accounting of monthly rents and payments received against the Respondent's rent account as of March 23, 2021. At the hearing, the Applicant confirmed that the rents for April and May had become due, and that a payment of \$500 had been received on April 14, 2021. The lease balance statement was adjusted accordingly. All rents have been subsidized and are currently assessed at \$365 per month. Either insufficient payments or no payments were made in 10 of the last 12 months of the tenancy.

The Applicant's representative testified that the Respondent has been promising to get a job and start paying her arrears, but does not follow through on that promise. Several partial payments of \$80 were reported as having been made by Income Support on behalf of the Respondent's adult daughter who lives with her.

I am satisfied the adjusted lease balance statement accurately reflects the current status of the Respondent's rent account. I find the Respondent has repeatedly failed to pay rent and has accumulated rental arrears in the amount of \$3,042.50. That amount represents approximately nine months' subsidized rent.

#### *Pets and uncleanliness*

The Applicant had received numerous complaints from neighbouring tenants of a strong odour of cat urine and garbage coming from the Respondent's rental premises. On June 10, 2019, the Applicant issued a notice to the Respondent reminding her that pets are not allowed at the rental premises or residential complex and warning her to remove any pets she was currently keeping or permitting at the premises. On July 2, 2019, the Respondent signed an affirmation that she had removed the cats and dogs from the rental premises on June 29, 2019.

Further complaints were received regarding the odours emanating from the Respondent's rental premises. An inspection was conducted in early October 2019 which observed the presence of a cat and confirmed an excessive cat urine odour coming from the premises, as well as extensive hoarding and uncleanliness throughout the premises creating a health and safety issue. Photographs taken at the time corroborate these findings. The Respondent was required to clean the premises by October 21, 2019.

A follow-up inspection was conducted on October 21<sup>st</sup> and 22<sup>nd</sup> which found no substantive change to the premises. The excessive cat urine remained, as did the extensive accumulation of household items, garbage, and recycling, and the corresponding uncleanliness. Piling of those items continued to create a health and safety hazard. Photographs taken at that time again corroborated these findings. The Respondent had been given until November 18, 2019, to clean the premises.

I am given to understand that the issues with the extensive uncleanliness and pet odours are part of the reason the Respondent was transferred out of Unit 772 and into Unit HT02. The exit inspection and photographs taken July 20, 2020, establish the extremely poor condition of Unit 772. The cat urine odour was so extensive that it was found to have been absorbed and caused damage not only to the flooring and underlay, but also to the plywood sub-flooring.

Within three months of occupying Unit HT02 the Applicant started receiving complaints again from the Respondent's neighbours of the strong odour of garbage and cat urine coming from the unit, and the observation of pets at the Respondent's premises. The neighbouring tenants were upset not only about the odours but also by the notion that they were not permitted to have pets but the new tenant in the neighbourhood apparently was. This was clearly a misconception of the neighbouring tenants, but also an indication to the Applicant that the Respondent had not changed their behaviour with their move and was still wilfully failing to comply with their obligations respecting the pet prohibition and maintaining ordinary cleanliness.

The Applicant conducted an inspection of Unit HT02 on September 25, 2020, during which the deplorable condition of the premises and the odour of cat litter was confirmed. The Respondent admitted at that time to having pets in the premises again. A warning notice was issued September 28, 2020.

Another inspection was conducted on March 25, 2021, during which photographs were taken. The inspector documented the continued uncleanliness, hoarding, and increased cat urine odour with no apparent difference to that which was left behind at Unit 772. A 30-day notice to terminate the tenancy agreement was issued due to the substantial uncleanliness creating a health and safety hazard. The Respondent was given until May 4, 2021, to get rid of the pets and clean the premises.

At hearing, the Applicant's representative testified that he understood from the maintenance manager who conducted the inspection follow-up inspection on May 5, 2021, that while some cleaning had been done there was very little change and the strong odour of cat urine remained. The maintenance manager had not yet uploaded the photographs he took of Unit HT02. The Applicant's representative contacted the Respondent May 12, 2021, by to talk about the results of the inspection. After that call, the Respondent unintentionally mentioned by text message that the cat was still there and would have to be put out in the freezing rain.

Being satisfied with the testimony and evidence presented establishing the Respondent's repeated pattern of permitting pets into the premises, and establishing the Respondent's repeated failure to maintain the ordinary cleanliness of the rental premises, I find the Respondent has repeatedly and unreasonably failed to comply with her obligation not to permit pets in the rental premises and with her obligation to maintain the ordinary cleanliness of the rental premises.

### *Repairs and cleaning*

The Applicant claimed costs associated with repairing and cleaning Unit 772 as follows:

Removal and disposal of items left in yard	\$120.00
Cleaning throughout	\$450.00
Repair patches and holes in walls	\$480.00
Replace flooring and underlay throughout	\$11,238.64
Replace and install window trim and baseboard	\$200.00
Sub-total	\$12,488.64
Admin Fees 10%	\$1,248.86
GST 5%	\$686.88
<b>Total</b>	<b>\$14,424.38</b>

Photographs and testimony substantiate all of the referenced damages as being caused by the Respondent's wilful or negligent conduct. Two items of concern were discussed with respect to the costs claimed for them.

#### Cleaning

The Applicant claimed a flat rate of \$450 for cleaning the rental premises, but provided an invoice from a cleaning service for \$300 plus GST. I requested an explanation for the additional claim and agreed to reserve my decision on this until the Applicant's representative could speak with the maintenance foreman who prepared the damages statement. The maintenance foreman explained by email that the additional costs were for the time spent to "coordinate the cleaning crew, cut and deliver keys, pick up the keys when the cleaning is complete." To my mind it is those type of administrative costs that are meant to be covered by the 10 percent admin fee. As such, the difference between the flat rate and the invoiced cleaning costs is denied, but the invoiced cleaning costs of \$300 are allowed.

#### Flooring replacement

The amount claimed of \$11,238.64 is the total invoiced amount including GST for materials and labour to replace the linoleum flooring, underlay, and sub-flooring throughout Unit 772 due to the pervasive damage caused by the cat urine. By claiming the total price including the GST in the damages statement the Applicant has effectively calculated GST twice on the flooring. This error will be corrected in my assessment of allowed costs.

I have no issue with allowing 100 percent of the invoiced costs for replacement of the plywood sub-flooring given this is not an item that would usually be encompassed by depreciation calculations and takes a substantial amount of negligence to affect. I find the Respondent liable to the Applicant for the costs of replacing the plywood sub-flooring in the amount of \$4,316.30, not including GST.

With respect to the flooring and underlay, however, the average useful life should be taken into consideration. The average useful life of linoleum flooring is 10 years. The linoleum flooring is documented in the entry inspection report as new in June 2012, meaning that by the time the Respondent's occupancy at Unit 772 ended in June 2020 the Applicant had benefitted from 80 percent of the useful life of the product. Consequently, I am satisfied that because the flooring only required replacement at this time due to the Respondent's negligent conduct the Respondent is liable for 20 percent of the costs to replace the flooring and underlay. I find the Respondent liable to the Applicant for the costs of replacing the flooring and underlay in the amount of \$1,277.43, not including GST.

The adjusted allowed costs of repairs and cleaning are as follows:

Removal and disposal of items left in yard	\$120.00
Cleaning throughout	\$300.00
Repair patches and holes in walls	\$480.00
Replace flooring and underlay throughout	\$5,593.73
Replace and install window trim and baseboard	\$200.00
Sub-total	\$6,693.73
Admin Fees 10%	\$669.37
GST 5%	\$368.16
<b>Total</b>	<b>\$7,731.26</b>

*Termination of the tenancy agreement and eviction*

In light of the Respondent's repeated failure to pay the rent and the substantial amount of accumulated rental arrears, I am satisfied termination of the tenancy agreement and eviction are justified. The Respondent had entered into two last chance agreements regarding the rental arrears – one on September 29, 2020, and one on March 5, 2021 – in which she

committed to make monthly payments in addition to the rents to resolve the debt. Despite the Respondent's failure to comply with either of the last chance agreements, were this application only about the rental arrears I would be inclined towards issuing conditional termination and eviction orders.

In light of the Respondent's repeated and unreasonable failure to comply with the obligation not to permit pets in the rental premises or residential complex and the obligation to maintain the ordinary cleanliness of the rental premises, I am satisfied termination of the tenancy agreement and eviction are justified. The September 29, 2020, last chance agreement that the Respondent entered into also acknowledged responsibility for permitting pets in the rental premises and agreed not to have any pets in the unit or on the grounds. The Respondent again failed to comply with this last chance agreement.

At the hearing I had made a finding for unconditional termination of the tenancy agreement given the Applicant's testimony that there had been no apparent substantial effort to effectively clean the rental premises since the last notice given March 28, 2021. Along with the clarification email regarding the costs of repairs and cleaning, the Applicant forwarded the photographs taken by the maintenance manager during the May 5<sup>th</sup> inspection. In the email that accompanied those photographs, the maintenance manager said, "The unit looks like it's getting cleaned up. It still smells very strongly of cat urine." The photographs show that the work done by the Applicant to date has actually been quite substantive considering the condition it was in on March 25<sup>th</sup>. The premises still requires vacuuming, sweeping, and mopping, as well as other ordinary cleaning, but the household items, boxes, and garbage has been removed from the storage room, three bedrooms, and the kitchen.

I must have misunderstood the Applicant's representative at hearing because I did not get the impression from him at that time that so much had been accomplished by the Respondent. Contrary to my understanding at hearing, what has been done is a substantial improvement and speaks to the Respondent's capability to comply with her obligations. This is not to say that the Respondent has been willing or even trying to comply before now, nor does it necessarily support the idea that the Respondent will complete the necessary cleaning that remains to be done or maintain that cleanliness going forward. However, to my mind enough has been accomplished for me to change my mind about termination of the tenancy agreement, at least insofar as whether the termination order should be unconditional or conditional. Certainly the Respondent needs to be kept accountable for her actions and the resulting damages, and she needs to be kept motivated to continue complying.



As such, I am satisfied that the termination and eviction orders should be conditional over a short period on the rental arrears being paid in full, the rent for June being paid on time, no further pets being permitted in the premises, and the remainder of the cleaning being satisfactorily completed, including adequate elimination of the pet urine odour.

### *Orders*

An order will issue:

- requiring the Respondent to pay rental arrears in the amount of \$3,042.50 (p. 41(4)(a));
- requiring the Respondent to pay her future rent on time (p. 41(4)(b));
- requiring the Respondent to pay costs of repairs and cleaning in the amount of \$7,731.26 (p. 42(3)(e), p. 45(4)(d));
- requiring the Respondent to comply with her obligation not to permit pets in the rental premises or residential complex, and not to breach that obligation again (p. 45(4)(a), p. 45(4)(b));
- requiring the Respondent to comply with her obligation to maintain the ordinary cleanliness of the rental premises, and not to breach that obligation again (p. 45(4)(a), p. 45(4)(b));
- terminating the tenancy agreement June 30, 2021, unless:
  - (a) the rental arrears identified in paragraph 1 of this order are paid in full;
  - (b) the monthly subsidized rent for June is paid on time;
  - (c) no further pets are verified as having been permitted in the rental premises or residential complex; and
  - (d) the rental premises and residential complex have been returned to an ordinary state of cleanliness, including adequate elimination of pet urine odour (p. 41(4)(c), p. 45(4)(e), ss. 83(2)); and
- evicting the Respondent from the rental premises July 1, 2021, if the termination of the tenancy agreement becomes effective (p. 63(4)(a), ss. 83(2)).

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Adelle Guigon  
Rental Officer