

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

**LC**

Respondent/Tenant

**REASONS FOR DECISION**

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

**Place of the Hearing:** Yellowknife

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

**Date of Decision:** May 18, 2021

### **REASONS FOR DECISION**

An application to a rental officer made by YHA on behalf of the NTHC as the Applicant/Landlord against LC 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 served on the Respondent by registered mail delivered April 8, 2021.

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

A hearing was held May 13, 2021, by three-way teleconference. PS appeared representing the Applicant. LC was served notice of the hearing by registered mail delivered April 8, 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 November 26, 2002. The Respondent was transferred in accordance with section 3 of the written tenancy agreement from Unit BD5441 to Unit RR301 on August 13, 2020. I am satisfied a valid tenancy agreement is in place in accordance with the Act.

#### *Previous orders*

Rental Officer Order #10-7043 issued September 13, 2002, ordered the Respondent to pay rental arrears of \$2,021.16, and to pay costs of repairs of \$618.77. That order appears to have been satisfied.

Rental Officer Order #10-13144 issued November 18, 2012, ordered the Respondent to pay rental arrears of \$3,160. That order appears to have been satisfied.

#### *Extension of time for making application*

The Applicant requested an extension to the time for making the application as it relates to the claims for repairs at Unit BD5441. As mentioned, the Respondent was transferred from Unit BD5441 to Unit RR301 on August 13, 2020. The exit inspection at Unit BD5441 was conducted on

August 12, 2020. Photographs of the condition of BD5441 were taken August 18, 2020. The damages statement was completed March 18, 2021, at which time the Respondent was notified of the claims for the costs of repairs at Unit BD5441. The application to a rental officer was filed shortly thereafter, on March 31, 2021.

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 inherent pandemic delays and the Respondent being notified of the claims before the application was filed, I am satisfied that the one-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's representative testified that the rents for April and May had become due and that a payment of \$365 had been received April 14, 2021. The lease balance statements was adjusted accordingly. All rents have been subsidized and are currently assessed at \$365 per month. No payments have been received in 12 of the last 18 months of the tenancy.

The Respondent had entered into a last chance agreement on October 6, 2020, in which she acknowledged the rental arrears at the time of \$3,650 and agreed to pay \$650 within five days and \$200 per month thereafter in addition to the monthly subsidized rent. The Respondent did not comply with this agreement.

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 \$3,365. That amount represents approximately 10 months' subsidized rent.

#### *Repairs*

All claimed repairs are regarding damages found at the Respondent's prior occupancy at Unit BD5441 which ended August 12, 2021. The entry and exit inspection reports, photographs, and the damages statement were provided in support of the following claims:

Patching holes in walls	\$300.00
Replacing two sealed windows	\$795.24
Replacing three closet doors	\$250.00
Replacing one broken light cover	\$25.00
Repairing one kitchen drawer cover	\$25.00
Replacing two sets of cabinet door hinges	\$100.00
Repairing one radiator cover	\$80.00
Replacing refrigerator (prorated)	\$400.00
Sub-total	\$1,975.24
Admin Fees 10%	\$197.52
GST 5%	\$108.64
<b>Total</b>	<b>\$2,281.40</b>

All except two of the claims were made out and allowed at hearing.

#### Sealed windows

Two claims of \$397.62 each were made to replace a broken window in the main floor bedroom and the upstairs bedroom. The claim for the main floor bedroom window was subsequently withdrawn by the Applicant, acknowledging that the window was not broken by the Respondent.

With respect to the upstairs bedroom window, the entry inspection report documents that the “right side window won’t open”. The exit inspection report documents that the “bedroom window broken”. The photograph taken at the exit inspection shows that the left window pane was cracked in a meandering pattern. There was no information available to establish whether the window had been repaired or replaced during the 18 years of this tenancy. The Applicant’s representative had no evidence to suggest the Respondent had reported the cracked window.

The nature of the crack in the window is not the type that would be created by an impact; rather, it is the type that could be created by the seal failing or by a manufacturing defect or by shifting or other pressure being applied to the window. Given the apparent age of the window and the pre-existing issue with the right pane, it is not inconceivable that the left pane cracked through no fault of the Respondent.

I am not satisfied the Respondent caused the damage to the upstairs bedroom window. The Applicant’s claim for costs of replacing the upstairs bedroom window is denied.

### Refrigerator

The Applicant claimed \$400 as a prorated amount to replace the refrigerator. The entry inspection report documented that the fridge was dented and the “shelf bar” was bent. The exit inspection report documented that the freezer door bars were missing. The photographs taken at the exit inspection showed dents in the freezer door, missing freezer door shelf bars, a bent lower shelf bar in the fridge door, and that the fridge had not been emptied of food or cleaned.

None of the referenced damages or uncleanliness are of such a degree as to render the refrigerator inoperable or useless. The missing freezer door shelf bars are minor damage and replaceable. Additionally, the fridge is at least 18 years old given that it is the same fridge as was provided at the beginning of the tenancy. It is not inconceivable that the freezer shelf bars could have broken through the course of normal wear and tear. The average useful life of refrigerators is 15 years, so even if there was justification in replacing the refrigerator due to the Respondent’s negligence there would be no value left to charge the Respondent for, other than perhaps the labour to remove the old appliance and install the new appliance.

In this case, I am not satisfied the Respondent is responsible for causing damages to the refrigerator so extensive as to justify replacing the refrigerator. In my opinion, the refrigerator was due for replacement given its age, not due to the Respondent’s negligent actions. The Applicant’s claim of \$400 for costs to replace the refrigerator is denied.

The remaining costs for repairs at Unit BD5441 are as follows:

Patching holes in walls	\$300.00
Replacing three closet doors	\$250.00
Replacing one broken light cover	\$25.00
Repairing one kitchen drawer cover	\$25.00
Replacing two sets of cabinet door hinges	\$100.00
Repairing one radiator cover	\$80.00
Sub-total	\$780.00
Admin Fees 10%	\$78.00
GST 5%	\$42.90
<b>Total</b>	<b>\$900.90</b>

I am satisfied the Respondent is responsible for the damages referenced above. I find the Respondent liable to the Applicant for costs of repairs in the amount of \$900.90.

*Termination of the tenancy agreement and eviction*

In light of the Respondent's repeated failure to pay the rent and the substantial amount of subsidized rental arrears that have accumulated, I am satisfied termination of the tenancy agreement and eviction are justified. Given the Respondent's recent efforts to pay the subsidized rent, and by agreement with the Applicant's representative, the termination and eviction orders will be conditional on the payment of the rental arrears in full and the payment of future rent on time.

*Orders*

An order will issue:

- requiring the Respondent to pay rental arrears in the amount of \$3,365 (p. 41(4)(a));
- requiring the Respondent to pay future rent on time (p. 41(4)(b));
- requiring the Respondent to pay costs of repairs in the amount of \$900.90 (p. 42(3)(e));
- terminating the tenancy agreement August 31, 2021, unless the rental arrears are paid in full and the monthly subsidized rents for June, July, and August are paid on time (p. 41(4)(c), ss. 83(2)); and
- evicting the Respondent from Unit RR301 September 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