

IN THE MATTER between **MC and TC**, Applicants, and **NCHYRF**, 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:

MC and TC

Applicants/Tenants

-and-

NCHYRF

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: July 14, 2021, and August 18, 2021

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: MC, Applicant
TC, Applicant
RP, representing the Respondent

Date of Decision: August 18, 2021

REASONS FOR DECISION

An application to a rental officer made by MC and TC as the Applicants/Tenants against NCHYRF as the Respondent/Landlord was filed by the Rental Office April 30, 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 May 7, 2021.

The Tenants alleged the Landlord had failed to adequately respond to or repair leaks in the ceiling of the rental premises. An order was sought for the Landlord to repair the leak and consequential damages, and for the Landlord to compensate the Tenants for the period until the repairs are completed.

A hearing was scheduled for June 9, 2021, which was postponed by the Rental Officer due to circumstances beyond the Rental Officer's control. The hearing was re-scheduled and held July 14, 2021, by three-way teleconference. MC and TC appeared as the Applicants. RP appeared representing the Respondent.

The hearing was adjourned by agreement to August 18, 2021, to give the Landlord an opportunity to follow through on completing repairs to the premises and to attempt to negotiate a settlement directly with the Tenants. The hearing continued on August 18, 2021, by three-way teleconference, which all three parties attended.

Tenancy agreement

Evidence was presented establishing a residential tenancy agreement commencing February 1, 2016. I am satisfied a valid tenancy agreement is in place in accordance with the *Residential Tenancies Act* (the Act).

Damages

Subsection 30(1) of the Act requires the Landlord to maintain the rental premises and residential complex in a good state of repair and fit for habitation during the tenancy.

Subsection 34(1) of the Act requires the Landlord not to disturb the Tenants' possession or enjoyment of the rental premises or residential complex.

The Tenants' rental premises is an apartment on the top floor of a multi-unit residential complex. The Tenants' testified that since the first winter they were in occupancy of the rental premises that the ceiling in their bathroom has leaked water from the fan. The Tenants notified the Landlord when it first occurred and the Landlord investigated the problem. They discovered the attic was not

venting properly, so when snow and ice would build up it would melt through the ceiling into the Tenants' bathroom. The Landlord at the time recognized the issue could not be fixed during the winter and made regular efforts to mitigate the problem by shovelling snow from the roof and spreading an absorbent sand-like material in the attic.

The roof and venting problem were not fixed during any of the subsequent summer seasons. The leaks recurred every winter, but the Landlord continued to manage the issue with shovelling and spreading absorbent material. The Tenants confirmed that this seemed to work for the most part and the leaks in the first few years were relatively minor, until the winter of 2020-2021.

This past winter the leaking was excessive. In December 2020, despite preferring their current rental premises otherwise, the Tenants requested a transfer to a livable premises. That request went unanswered. By January and February 2021 the leaks were occurring not only in the bathroom but also from the light fixtures, two fire alarms, and the ceiling in the entrance, bedroom, hallway, dining room, and living room. The bathroom ceiling began falling in due to the moisture it had been collecting over time. The Landlord's maintenance personnel did respond each time they were called, but very little was done to mitigate the problem or repair the damages. The fire alarms were removed out of concern for the electrical exposure to the water but were not reinstalled.

The Landlord's representative did not dispute any of the Tenants' claims. He acknowledged the problem with the ceiling leaking and that it had been happening for years. The Landlord's representative explained that there was some confusion in the transition which occurred when a change of Landlord took effect in November 2020, but did not offer the resulting gaps in service as an excuse. He accepted full responsibility on behalf of the Landlord for the condition of the premises, the failure to repair the damages, and the resulting disturbance to the Tenants' possession and enjoyment of the rental premises.

The Landlord's representative committed to having the fire alarms reinstalled immediately, which it was later confirmed was done. The Landlord's representative promised that the residential complex was at the top of the work crew's list to effect the necessary repairs, and was agreeable to providing alternate temporary accommodations if the Tenants wished. The Landlord's representative also agreed to discuss reasonable compensation for the Tenants, including moving costs if the temporary transfer was accepted.

The parties agreed at the July 14th hearing to adjourn the hearing to August 18th. The intent was to give the Landlord the opportunity to effect the necessary repairs to the rental premises and residential complex, and to work with the Tenant to consider appropriate compensation.

Although no further discussions were had between the Landlord's representative and the Tenants between hearing dates, substantive repairs were completed. The Landlord's representative clarified that the roof had been repaired in the spring, having been gutted and re-insulated, so there should not be a recurrence of the leaking next winter. The fire alarms were reinstalled as promised shortly after the July 14th hearing. The damages in the Tenants' bathroom were repaired by August 10th, but the damages in the bedroom, dining room, and living room have not been repaired yet. The Tenants identified the appearance of mold in the bedroom, stains along the seam in the dining room which have started to bubble, and at least two stains in the living room which have bubbled and cracked. These have been reported to the maintenance personnel, who also took photographs. The Landlord's representative committed to consulting with the maintenance team and ensuring the remaining repairs were done as soon as possible.

I am satisfied the Landlord failed to comply with their obligation to maintain the rental premises and residential complex in a good state of repair and fit for habitation. During the first four years of the tenancy the effects of the damages were negligible on the Tenants' enjoyment of the premises, but the Landlord still had more than ample opportunity to prevent recurring or more substantive damages. The damages and disruption that occurred this last winter are the direct consequence of the Landlord's failure to comply with their obligation.

I am satisfied that, given the damages and disruption the Tenants have experienced, the Tenants are entitled to an abatement of rent for the period during which the extensive leaking and damages occurred until all repairs are completed. The Tenants requested a transfer in December 2020, after the leaking started again, and the worst of the damages – that being the roof and the ceiling in the bathroom – were repaired in August 2021. The remaining repairs are for somewhat less invasive damages and I would expect them to be completed in full by the end of September. In my opinion, the Tenants are entitled to an abatement of rent of 25 percent for the nine months from December 2020 to August 2021 and 10 percent for September. The monthly rent was established at \$1,377 per month. The total compensation granted to the Tenants is calculated as follows:

$$\text{Rent } \$1,377 \times 25\% = \$344.25 \times 9 \text{ months} = \$3,098.25$$

$$\text{Rent } \$1,377 \times 10\% = \$137.70 \times 1 \text{ month} = \$137.70$$

$$\text{Total} = \$3,098.25 + \$137.70 = \$3,235.95$$

At the hearing the Landlord's representative asked the Tenants if they would prefer a cheque or to apply the credit to their rent account. The Tenants agreed to apply the credit to their rent account. Both parties acknowledged the rent account statement is available to the Tenants on line any time they want to check it, and that the Tenant should keep an eye on the balance so that they know when to start making payments again.

Orders

An order will issue:

- requiring the Landlord to comply with their obligation to maintain the rental premises and residential complex in a good state of repair and fit for habitation (p. 30(4)(a)); and
- requiring the Landlord to compensate the Tenants for losses suffered as a direct result of the Landlord's failure to maintain the rental premises and residential complex in a good state of repair and the consequential disruption to the Tenants' enjoyment of the rental premises in the amount of \$3,235.95 (p. 30(4)(d), p. 34(2)(c)).

Adelle Guigon
Rental Officer