

IN THE MATTER between **DM**, Applicant, and **SJC**, 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:

DM

Applicant/Tenant

-and-

SJC

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: September 23, 2021

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: DM, Applicant
LJ, representing the Respondent

Date of Decision: September 29, 2021

REASONS FOR DECISION

An application to a rental officer made by DM as the Applicant/Tenant against LJ as the Respondent/Landlord was filed by the Rental Office August 20, 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 August 30, 2021. An addendum to the application was submitted and served on the Respondent by email deemed received September 10, 2021, pursuant to subsection 4(4) of the *Residential Tenancies Regulations* (the Regulations).

The Applicant alleged the Landlord had entered the rental premises without notice and had disturbed the Tenant's possession of the rental premises by withholding the mailbox keys, withdrawing Internet access, interfering with access to the laundry room, and altering the locks to the rental premises. The Applicant further alleged the Landlord had attempted to end the tenancy without adequate notice or justified reasons. An order was sought for compensation for losses suffered as a result of the alleged breaches.

A hearing was held September 23, 2021, by three-way teleconference. DM appeared as Applicant. LJ appeared as Respondent.

Preliminary matter

The application to a rental officer identified LJ as the Landlord. The written tenancy agreement was signed by LJ as the representative for the Landlord who was identified as SJC. DM agreed to the amendment of the application to properly identify the Landlord as SJC. The style of cause for this application going forward will be DM v. SJC.

Tenancy agreement

Evidence was presented establishing a residential tenancy agreement between the parties for one of two self-contained rental premises in a manufactured home. DM is the sole Applicant to this application, but her partner CO is a Joint Tenant to the tenancy with her.

The tenancy agreement began with early occupancy on January 29, 2021, for a fixed-term from February 1st to July 31st. The tenancy was automatically renewed as a month-to-month tenancy as of August 1, 2021, pursuant to subsection 49(1) of the *Residential Tenancies Act* (the Act). The rent was set out at \$2,000 per month including utilities.

I am satisfied a valid tenancy agreement is in place in accordance with the Act. It is noted that the second rental premises has been vacant and under renovation throughout the Tenants' occupancy of their rental premises.

Termination of the tenancy

Evidence was presented indicating that the Landlord had begun sending text messages and otherwise communicating to the Tenants in June that he expected the tenancy to end July 31st and the Tenants to vacate the premises. The Tenants did not agree to the termination of the tenancy and rather requested the renewal of the tenancy. The Landlord did not agree to renew the tenancy and continued to demand the Tenants vacate the rental premises.

The Act provides that a Landlord may only terminate a tenancy for cause and, unless the Tenant agrees in writing to the end the tenancy on a specific date, the Landlord must make an application to a rental officer for an order to terminate the tenancy. At no time did the Landlord take any actions in accordance with the Act to have the tenancy terminated for cause.

Entry

Under sections 26 and 27 of the Act, the Landlord has the right to enter the rental premises for specific reasons but must give the Tenant at least 24 hours advance written notice of his intention to enter. Written notice is not required where an emergency exists, the Tenant consents at the time of entry, or the Landlord believes the Tenant has vacated or abandoned the rental premises.

The Applicant claimed the Landlord had failed to give proper notice of his intention to enter on two occasions. The first occasion was in response to an issue with the WIFI that the Landlord had to attend to remedy. The WIFI router is located in a utility room located in the second rental premises, not the Tenants' rental premises, therefore no notice was required to the Tenants for the Landlord to access the WIFI router in that instance. The second occasion was later in August and although the Landlord did not give proper notice in accordance with the Act the Tenants did consent to the Landlord entering at the time that he attended.

I am not satisfied that there is a substantive breach by the Landlord of his obligation to notify the Tenants of his intention to enter the rental premises.

Mail keys

The claims regarding withholding the mail keys were not in fact addressed at the hearing. No finding was made in this regard.

Laundry room

Although the written tenancy agreement does not specifically say that laundry facilities are included in the rental premises, the Applicant testified that during the introductory walk through of the rental premises after signing the tenancy they were shown the laundry room, which is located on the second rental premises' side of a connecting door between the two units. The Tenants had access to and used the laundry room facilities throughout the tenancy without interruption until the Landlord boarded up the connecting door on August 31st.

The Landlord disputed that the laundry facilities were included in the Tenants' tenancy, citing the lack of reference to the laundry room in the written tenancy agreement and claiming that the connecting door had been kept locked. The Landlord suggested that the Tenants had been breaking into the second rental premises to access the laundry room. The Landlord insisted that the laundry room was not intended to be accessible by the Tenants and refused to allow any further access.

The Landlord was unable to provide evidence of tampering with the connecting door lock or hinges, or of any type of 'breaking in'. The Applicant again disputed the Landlord's claim, denying that the connecting door was ever locked, and reiterating that they had always had access to the laundry facilities.

Paragraph 30(1)(a) of the Act specifies that the Landlord shall provide and maintain the rental premises, the residential complex, and all services and facilities provided by the Landlord, whether or not included in a written tenancy agreement, in a good state of repair. Services and facilities are defined under subsection 1(1) of the Act as including laundry facilities.

I find it unlikely that access to the laundry facilities was not provided to the Tenants given the Tenants had been using the laundry facilities since they moved in and the Landlord did not dispute the Tenants' use of the laundry facilities until the Tenants refused to vacate the rental premises. I believe it is more likely than not that the Landlord boarded up the connecting door to the laundry facilities prohibiting the Tenants' access on August 31st in an effort to harass the Tenants into vacating the rental premises.

The Landlord's interference with the Tenants' access to the laundry facilities constitutes not only a breach of paragraph 30(1)(a) of the Act but also a breach of subsection 34(1) of the Act as the Landlord's actions disturbed the Tenants' possession and enjoyment of the rental premises and residential complex. As a result of the Landlord's breach, the Tenants were forced to start doing their laundry at the laundromat, incurring expenses for cab fare and laundry detergents that the Tenants would otherwise not have had to pay.

The Applicant did provide proof of cab fares and costs of laundry detergents, but I believe it more appropriate to compensate the Applicant based on an abatement of rent for the reduction in services provided as part of the rental premises. To my mind, the laundry facilities would represent approximately 5 percent of the value of the rent. As such, I find the Landlord liable to the Applicant for a 5 percent abatement of the rent for September in the amount of \$100.

Internet

Although the written tenancy agreement does not specifically say that Internet access is included in the rental premises, the Applicant testified that when the Tenants moved in and were shown the premises the Landlord provided them with an envelope containing the WIFI name and password so that they could access the Internet. The Tenants had notified the Landlord at the end of July that the WIFI had stopped working and the Landlord attended to reset the system. The Landlord attempted to claim \$250 for the Internet account from the Tenants to continue providing access, but the Tenants disputed their liability for additional costs as it was their understanding that Internet was included in the rent. The Landlord subsequently cancelled the Internet account entirely on August 31st.

The Landlord disputed that Internet access was provided as part of the tenancy citing the lack of specific reference in the written tenancy agreement, and claimed not to recall providing the Tenants with the access information.

Paragraph 30(1)(a) of the Act specifies that the Landlord shall provide and maintain the rental premises, the residential complex, and all services and facilities provided by the Landlord, whether or not included in a written tenancy agreement, in a good state of repair.

I find it unlikely that access to the Internet was not provided to the Tenants as part of the tenancy given the Tenants clearly had access to and were using the Internet since moving in. The Tenants could not have done so if the Landlord had not provided the WIFI name and password to them. The Landlord did not dispute the Tenants' use of the Internet until the Tenants refused to vacate the rental premises. Similarly to the laundry facilities, I believe it is more likely than not that the Landlord cancelled the Internet account on August 31st in an effort to harass the Tenants into vacating the rental premises. The Landlord's interference with the Tenants' Internet access constitutes a breach of paragraph 30(1)(a) and paragraph 34(1) of the Act.

As a result of the Landlord's breach the Tenants suffered a reduction in services as well as a disturbance of their enjoyment of the rental premises, and the Applicant is entitled to compensation in the form of an abatement of rent equivalent to half the value of the Internet package. My finding of half the value of the Internet package is based on the premise that the Internet would have been available to the entire residential complex which is comprised of two rental premises, despite the second premises currently being vacant. In a text message to the Tenants sent July 28th the Landlord identified the value of the Internet package as \$250. I find the Landlord liable to the Applicant for an abatement of rent for September in the amount of \$125.

Alteration of locks

The deadlocks on the exterior door to the Tenants' rental premises are secured electronically through a coded number pad and monitored through a SmartHome WIFI-enabled system. There is no physical key for this lock. A code is set through the SmartHome system for the occupants to use to unlock the door. The door codes automatically expire after a period of time whenever the SmartHome device loses power or is otherwise disconnected from the Internet. The door codes must be reset through the SmartHome device whenever this happens, as was the case when the WIFI failed at the end of July.

When the Landlord disconnected the Internet account on August 31st he did not change the locks to the rental premises to accommodate the interruption to the security system. As a result, the Tenants' door code expired rendering the Tenants unable to secure the premises without locking themselves out.

The Landlord refused to reconnect the Internet or reset the door codes or provide a key to the Tenants, opting instead to attend the premises to unlock the door as needed until he could obtain a keyed lock at his convenience. The Tenants recognized the significant inconvenience the Landlord's actions would have on them and, not having faith that the Landlord would take immediate action to ensure their safety and security, they purchased and installed a keyed lock themselves. The Applicant is seeking compensation for the cost of the keyed lock.

Subsection 25(1) of the Act prohibits either the Landlord or the Tenant from altering or causing to be altered the locking system on any door giving entry to the rental premises except by mutual consent. By knowingly interfering with the locking system to the Tenants' rental premises when purposely disconnecting the Internet without the Tenants' consent, the Landlord breached their obligation under subsection 25(1). In doing so, the Landlord also again breached their obligation under subsection 34(1) to not disturb the Tenants' possession or enjoyment of the rental premises.

Consequently, I am satisfied the Tenants' actions to replace the coded door lock with a keyed door lock was appropriate in the circumstances and that the Applicant's claim for compensation for the costs of the keyed door lock is reasonable. The Applicant did provide the receipt for the purchase of the keyed door lock. I find the Landlord liable to the Applicant for the costs of the keyed door lock in the amount of \$47.45.

Orders

An order will issue:

requiring the Landlord to comply with his obligation not to disturb the Tenants' possession or enjoyment of the rental premises or residential complex and not to breach that obligation again (p. 34(2)((a)), p. 34(2)(b)); and

requiring the Landlord to compensate the Applicant for losses suffered as a direct result of altering the locks to the rental premises, withdrawing Internet access, and interfering with access to the laundry room in the total amount of \$272.45 (p. 25(3)(c), p. 30(4)(d)).

Adelle Guigon
Rental Officer