

IN THE MATTER between **NTHC**, Applicant, and **TK**, 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 **Hal Logsdon**, Rental Officer,

BETWEEN:

NTHC

Applicant/Landlord

-and-

TK

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	November 30, 2021
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	PS, representing the Applicant TK, Respondent KB, representing the Respondent
<u>Date of Decision:</u>	January 2, 2022

REASONS FOR DECISION

A monthly tenancy agreement between the parties for Unit 108 commenced on April 10, 2018. A security deposit of \$1,625 was paid in full. A check-in inspection was completed by the parties on April 12, 2018, and a written report was signed by both parties. The premises are subsidized public housing.

On January 16, 2020, the Respondent was transferred to Unit HT06. A check-out inspection for Unit 108 was completed by the Applicant on February 5, 2020. The Respondent did not participate or sign the check-out inspection report. No statement of the security deposit was completed by the Applicant. Instead, the security deposit was transferred to Unit HT06, an itemized statement of estimated repair costs was prepared, and the estimated costs of repairs totalling \$7,990.29 were posted to the Respondent's lease balance statement. A credit of \$451.77 resulting from an overpayment of rent was applied against the costs of repairs, resulting in a remaining balance owing of \$7,538.52. The application was filed on March 31, 2021, seeking an order for payment of that remaining balance.

Since the application was filed, all assessed rent has been paid in full, \$524.20 has been charged for a damaged toilet at Unit HT06, and one payment of \$200 has been received for costs of damages. Applying the damage payment to the oldest debt results in a balance of repair costs for Unit 108 of \$7,338.52 and repair costs related to Unit HT06 of \$524.20, for a current balance owing for costs of repairs of \$7,862.72. The updated lease balance statement provided in evidence at the hearing reflects that balance \$7,862.72 as currently owing.

Since the application was filed, the Respondent has agreed to pay the Applicant the monthly rent plus an additional \$50 per month until the repair costs of \$7,862.72 have been paid in full. A written executed agreement between the parties was provided in evidence.

Preliminary matter

The Applicant sought an extension of the time for the making of the application and an order requiring the Respondent to pay repair costs of \$7,862.72.

Section 68 of the *Residential Tenancies Act* requires that applications be made in a timely manner:

68. (1) An application by a landlord or a tenant to a rental officer must be made within six months after the breach of an obligation under this Act or the tenancy agreement or the situation referred to in the application arose.

...

- (3) A rental officer may extend the time for the making of an application to the rental officer, whether or not the time for making the application to a rental officer has expired, where the rental officer is of the opinion that it would not be unfair to do so.*

Most of the alleged damages relate to Unit 108 and clearly occurred more than six months before the application was filed. However, the Respondent remained a tenant of the Applicant, occupying Unit HT106. In effect, the tenancy has been continuous since April 2018. The Applicant stated that difficulties with staffing and obtaining estimates from their housing partners during the COVID-19 pandemic made it difficult to meet the time restraints required by the Act.

Subsidized public housing is unique in that tenants are often transferred from one unit to another in order to make the best and most efficient use of the rental portfolio and public funding. Provided the parties to the tenancy agreement do not change and the terms and obligations within the agreement are the same, in my opinion, essentially the same tenancy agreement continues. In fact, the written tenancy agreement used by housing authorities and associations in the NWT is designed to accommodate transfers from one unit to another without requiring a new form.

In my opinion, it is not unfair to grant an extension of time pursuant to section 68(3) as the tenancy agreement has been continuous, albeit in another unit. While the delay is regrettable it is understandable given the circumstances. The COVID-19 pandemic has made it difficult to maintain a timely flow of business.

Damages

Section 42 of the *Residential Tenancies Act* sets out provisions regarding damages to rental premises:

- 42. (1) A tenant shall repair damage to the rental premises and the residential complex caused by the wilful or negligent conduct of the tenant or persons who are permitted on the premises by the tenant.*
- (2) Ordinary wear and tear of rental premises does not constitute damage to the premises.*
- (3) Where, on the application of a landlord, a rental officer determines that a tenant has breached the obligation imposed by this section, the rental officer may make an order*
- (a) requiring the tenant to comply with the tenant's obligation;*
 - (b) prohibiting the tenant from doing any further damage;*
 - (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;*
- (e) requiring the tenant to pay any reasonable expenses directly associated with the repair or action; or*
- (f) terminating the tenancy on the date specified in the order and ordering the tenant to vacate the rental premises on that date.*

Repair costs - Unit HT06

The Applicant alleged that the toilet had been damaged due to negligent use by the Respondent and provided an invoice and work order for the repair work in the amount of \$524.20. The Respondent did not dispute the allegation. I find the repairs were made necessary due to the tenant's negligence and not normal wear and tear. I find the repair costs well documented, reasonable, and directly related to repair of the damages.

Repair costs - Unit 108

The Applicant provided the estimated list of repairs, the inspection reports, a lease balance statement, and photographs of the premises in evidence.

Unlike Unit HT06, which is owned by the Applicant, Unit 108 is owned by another party and commercially leased to the Applicant who, in turn, rents the premises to tenants as subsidized public housing. As outlined above, an estimated, itemized statement of repair was produced by the Applicant and the balance was posted to the tenant's lease balance statement. The statement is clearly an estimate as all costs are expressed in whole numbers. The Applicant was instructed to provide a detail of the actual costs. In my opinion, this is a reasonable requirement in order to ensure that compensation matches the actual economic loss, the costs incurred were reasonable, and the work was actually done.

Following the hearing, the Applicant stated that the repairs to Unit 108 were undertaken jointly by the Owner and the Applicant, the Owner providing most of the material and the Applicant providing most of the labour. The Applicant submitted a work order outlining the work and materials provided by the Applicant and an invoice from the owner for some materials and cleaning. Surprisingly, the sum of the two documents is exactly the sum indicated on the estimated, itemized statement. Also surprising is the owner's invoice showing all whole numbers for each item except a bedroom door. Presumably, the \$238.81 door cost was required to achieve the exact balance between the documents and the estimate.

There are also charges on both documents for the same item. Both list cleaning costs and the cost to supply paint. There are also repair costs for items which are not noted as damaged on the check-out inspection report or were noted as damaged at the commencement of the tenancy. There are a number of repairs outlined on the estimated itemized statement that are not documented on either the Applicant's work order or the Owner's invoice. I also note that the Applicant's work order indicates that the work undertaken by them was done in March 2020 while the Owner's invoice is dated December 7, 2021. The Applicant stated that it was not unusual for the Owner to send an invoice 12 to 24 months after the work was done.

The Applicant also provided a tenancy agreement with the next tenant and the check-in inspection report for that tenancy. These documents indicate that Unit 108 was re-rented on July 24, 2020, and that the premises were in excellent condition. However, the check-in inspection was not signed by the new tenant.

As previously noted, the Respondent has entered into a payment plan for the entire balance allegedly owing, including the full costs of repair to Unit 108. At the hearing, the Respondent disputed the charges related to the patching and painting required to repair numerous holes in walls.

The following repair items appear on either the Applicant's work order or on the Owner's invoice:

Cleaning

Both the inspection report and the photographic evidence support the need for cleaning. The cost of \$472.50 is reasonable, and a work order and invoice adequately support the amount charged. The same cost set out on the Owner's invoice is a duplication and is denied.

Patch/Paint

The photographic evidence and the inspection report show numerous holes in the drywall. The Respondent has agreed to pay all of the expenses, including the wall repairs, in monthly installments. A series of emails between the Applicant and the Respondent between January 22 and February 4, 2020, indicate that the Applicant repeatedly tried to set a date for a check-out inspection. Each time the Respondent contacted the Applicant asking for a later date due to either sickness or because she had more clean-up to do. February 5, 2020, was finally set for the inspection but the Respondent failed to appear.

The Respondent testified at the hearing that she had vacated the apartment on January 17, 2020, and had not returned. Disputing the wall damages, she stated that she believed that a person/persons may have entered the apartment, possibly through an open window, and damaged the walls.

On February 4th, one day before the inspection, the Respondent sent an email to the Applicant asking if they had reported an open bedroom window to the Owner. The Respondent acknowledged that it had been reported to the Owner. It is not clear why the Owner was to be contacted or why neither the Applicant nor the Respondent saw fit to visit the unit or report the incident to police.

There was no evidence of any forceful entry through a bedroom window or any other acts of vandalism (e.g. writing on the walls, discharge of fire extinguisher, broken glass). There was little, if any, broken drywall debris on the floor where the walls had been damaged. The opening windows in the unit have a secure locking mechanism and would be very difficult to open from the outside, if locked, without damaging the window. A responsible tenant would not leave a window open, ajar, or unlocked when they were not at home in January or February.

In my opinion, on a balance of probabilities, the wall damage was likely done by the Respondent or persons they permitted on the premises, or it was committed by unknown persons who gained access through a window which was negligently left ajar and unlocked by the Respondent. In either case, I find the Respondent liable for the wall repair costs.

The costs of the wall repair are adequately set out in the work order and invoices provided by the Applicant, the total being \$1,975.04. The cost of paint shown on the Owner's invoice is a duplication and is therefore denied. I find the cost of \$1,975.04 to be reasonable.

Replacement of Blinds and Blind Slats

Both the inspection report and the photographic evidence indicate that two blinds and several vertical blind slats were missing or damaged. The cost of replacement is indicated on the Owner's invoice as \$250. In my opinion, this cost is reasonable and the repairs were made necessary due to the negligence of the Respondent.

Replacement of Bedroom Door

The photographic evidence indicates a broken bedroom door. However the check-in inspection notes that the door was damaged at the commencement of the tenancy. The cost of \$238.81 set out on the Owner's invoice is denied.

Replacement of Screens

The check-out inspection report does not indicate any missing screens. The requested compensation of \$100 is denied.

Replacement of Cabinets

The check-in inspection report indicates damage to the cabinet trim and water damage to the cabinet under the sink. The check-out inspection does not indicate any new damage to the cabinets. The photographic evidence does not indicate any new damage. The requested compensation of \$1,400 shown on the Owner's invoice is denied.

Repair/Replace Cabinet Doors

There is no noted damage to the cabinet doors on the check-out inspection report. Some minor damage to two drawers was noted but no itemized cost for repair was submitted. The photographic evidence suggests some minor damage to the two drawers and several missing pulls on cabinet doors. The relief of \$1,848 sought by the Applicant is denied. In my opinion, the minor damage caused by the Respondent can be repaired for \$150.

Replacement of Kitchen Counter

There is damage to the counter noted on the check-in inspection report. No additional damage is noted on the check-out inspection. The photographic evidence does not indicate any new damage. The Applicant's request for relief of \$661.50 is denied.

There are a number of smaller repairs that were outlined on the previous estimate for which no additional documentation was provided. Those items have not been considered.

I find the Respondent in breach of their obligation to repair damages to unit 108 and I find the following compensation to the Applicant to be reasonable and directly related to the repair of the damages:

Cleaning of Unit 108	\$ 472.50
Patch and paint wall damage	1,975.04
Blinds and slats	250.00
Kitchen cabinet door repair	150.00
Administration fees of 10%	284.75
GST of 5%	<u>156.61</u>
Total	<u><u>\$3,288.90</u></u>

I find an amount owing to the Applicant for costs of repairs to Unit HT06 of \$524.20 and to Unit 108 of \$3,288.90, totalling \$3,813.10. After deducting the \$451.77 rent credit and the \$200 payment, the remaining balance owing for costs of repairs is \$3,161.33.

Order

An order shall issue requiring the Respondent to pay the Applicant the remaining balance of costs for repairs in the amount of \$3,161.33. The repair costs shall be paid in monthly installments of at least \$50 each month, payable on or before the last day of the month until the repair costs are paid in full. The first payment shall be due in January 2022.

Hal Logsdon
Rental Officer