File #17391

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

IL

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing:	**February 6, 2022**
Place of the Hearing:	**Yellowknife, Northwest Territories**
Appearances at Hearing:	**PS, representing the Applicant** **IL, the Respondent**
Date of Decision:	**February 24, 2022**

REASONS FOR DECISION

This application was filed on September 28, 2021, and a hearing was held on January 11, 2022. The Applicant alleged that the Respondent had failed to pay rent and had damaged the premises. An order was issued at that hearing requiring the Respondent to report the household income while the matters concerning alleged non-payment of rent and damages were adjourned *sine die*.

Another hearing date was scheduled and held February 6, 2022, and both parties attended. The Applicant stated that the Respondent had complied with the previous order and the rent had been re-assessed and adjusted retroactively resulting in a rent credit balance of $1,750.72. The Applicant withdrew their request for an order to pay rent arrears.

The parties entered into a six-month term tenancy agreement for the premises at 5457 - 52nd Street in Yellowknife commencing on June 1, 2015. The tenancy was renewed on a monthly basis on expiry. The premises were leased by the Applicant and rented to the Respondent as subsidized public housing. On November 27, 2021, the Respondent was moved, at the Applicant's expense, to 1467 Gitzel Street because the Applicant's lease for the 52nd Street unit had expired and was not being renewed. The Applicant amended the tenancy agreement to show the Gitzel Street unit as the rental premises and carried over the security deposit and accrued interest.

After moving out, the Respondent repeatedly sought additional time to enter and clean the 52nd Street premises before the final inspection was conducted. After several delays, the Applicant took possession of the premises on January 18, 2021 and conducted a check-out inspection. The Respondent did not attend the check-out inspection.

The Applicant alleged that the Respondent had failed to repair damages to the 52nd Street premises. The Applicant sought an order requiring the Respondent to pay the costs to repair the alleged damages.

Time limit for the making of application

Section 68 of the *Residential Tenancies Act* (the Act) sets out a time limit for the making of an application.

> 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.
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> (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.

Unless damages are noted during a routine inspection during the term of a tenancy, a landlord is usually unaware of damages until the tenant has given up possession and a final check-out inspection is done. The evidence in this matter suggests that the Applicant became aware of the alleged damage to the premises on January 18, 2021, when the check-out inspection was done. The Applicant provided a notice to the Respondent on August 17, 2021, with the check-out inspection report stating that they were awaiting final costs for the repairs to the 52nd Street premises. Included was an itemized estimate of the repair costs. The total estimated costs were $4,635 plus GST and a 10% service charge for a total of $5,353.43. There is no evidence that the Respondent was previously provided with the check-out inspection or any cost estimate.

The Applicant provided another notice to the Respondent on September 14, 2021, stating that they were continuing to determine the final costs of repair for the 52nd Street premises and suggesting that the Respondent contact the Program Officer to begin a repayment plan. Another copy of the estimate was included.

The Applicant provided another notice to the Respondent on September 21, 2021, with an itemized statement of the repair costs for the 52nd Street premises. The repair costs were $11,100 plus GST and a 10% service charge for a total of $12,820.50. That amount was posted to the lease balance statement on September 21, 2021. The repair costs included a number of items which were not included on the previous estimate.

The Applicant provided another notice to the Respondent on November 22, 2021, with a revised itemized statement of repair costs for the 52nd Street premises. The repair costs were $5,560 plus GST and a 10% service charge for a total of $6.421.80. A lease balance statement with the revised repair amount was also provided.

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The Applicant stated that the repairs were completed by the building owner. An invoice, dated January 12, 2022, for repairs as noted was provided by the Applicant in evidence. The attached itemized statement totalled $5,560 plus GST for a total of $5,838.

The Applicant stated that the owner's operational problems caused the delay with the determination and billing of repair costs.

Clearly, this application, filed nine months after the breach became known to the Applicant, fails to comply with the time limitation set out in the Act. I find no reason why the Applicant, having inspected the premises, could not have determined what repairs were in breach of section 42, assigned reasonable repair estimates, and served an estimated itemized list of repairs on the Respondent within weeks of reclaiming possession of the premises. This could have been achieved without any assistance from the owner and would have permitted the Applicant to make a timely application if the Respondent failed to address the repair costs.

The Act was intended to provide landlords and tenants with an expeditious process to resolve disputes. Where time limitations are set out in the Act, there are usually provisions to permit an extension of time if circumstances warrant an exception and where it is not unfair to either party. Such a provision is contained in section 68(3). However, I cannot find the inaction of the owner warrants a delay of eight months for the production of an estimated cost for repairs. Given the condition of the premises, which were not badly damaged, I find no reason why the repairs could not have been promptly completed and an application filed well within the six-month time limitation. I find no reason to extend the time limitation.

While I realize that the lease relationship between the owner and the Applicant may be a factor in this matter, this is not an area where I have any jurisdiction. Their relationship is a commercial one and is not subject to the Act.

Accordingly, the Applicant's request for relief for alleged repair costs is denied.

Although the rent is no longer in arrears, the rent account was in arrears when the application was filed. An order shall issue requiring the Respondent to pay future rent on time.

Hal Logsdon
Rental Officer