

IN THE MATTER between **LD and LM**, Applicants, and **JM**, 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 **Janice Laycock**, Rental Officer,

BETWEEN:

LD and LM

Applicants/Landlords

-and-

JM

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: March 29, 2022

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: LD, the Applicant
LM, the Applicant
JM, the Respondent
SS, representing the Respondent

Date of Decision: April 7, 2022

REASONS FOR DECISION

An application to a rental officer made by LD and LM as the Applicants/Landlords against JM and SS as the Respondents/Tenants was filed by the Rental Office December 7, 2021. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was deemed served on the Respondents by email on January 9, 2022.

The Applicants claimed the Respondents had abandoned the rental premises and during their tenancy had accumulated rental arrears, were responsible for damages to the rental premises, and had not paid utilities owing. An order was sought for payment of rental arrears, payment of expenses for repair of damages, and payment of utilities owing.

A hearing scheduled for January 12, 2022, was cancelled because proof of service of the documents on the Respondents was not provided at least five business days before the hearing. Once the proof of service was received the hearing was rescheduled to February 2, 2022. That hearing was cancelled at the request of the Respondent due to a death in the family. The hearing was rescheduled to March 16, 2022, and again cancelled at the request of the Respondent due to a conflict with their work schedule.

The hearing was rescheduled and held on March 29, 2022, by three-way teleconference. LD and LM appeared as the Applicants. JM and SS appeared as the Respondents.

I reserved my decision at the hearing as provided for under section 82 of the *Residential Tenancies Act* (the Act) to allow the Applicant an opportunity to provide further information to support their claim for expenses related to cleaning and payment of utilities. The Respondent was provided an opportunity to respond to this additional information. Additional information was provided by email to the Rental Office and the Respondent on March 30, 2022.

Preliminary matters

At the hearing it was clarified that although SS resided at the rental premises with JM, the tenancy agreement is with JM alone and not JM and SS as set out in the application. The application was amended to withdraw SS's name as a Respondent and the style of cause was amended accordingly.

Tenancy agreement

Evidence was provided establishing a tenancy agreement between LD and LM as the Landlord and JM as the Tenant for the period from October 1, 2020, to September 30, 2021.

In their application the Applicants had claimed the Respondent abandoned the rental premises. At the hearing the Respondent testified they told the Applicants in early September of their intention not to renew the tenancy agreement at the end of the fixed term and then vacated the rental premises on September 30, 2021.

As I explained at the hearing, under subsection 51(1) of the Act: “Where a tenancy agreement specifies a date for the termination of the tenancy agreement, the tenant may terminate the tenancy on the date specified in the agreement by giving the landlord a notice of termination not later than 30 days before the termination date.” Under subsection 55(1) this notice must be in writing, signed, identify the rental premises, and state the date on which the tenancy is to terminate.

Not only was the notice not in writing, it was given less than 30 days before the termination date and is therefore not in accordance with the Act. Further, under subsection 1(3) of the Act, a tenant is considered to have abandoned the rental premises where the tenancy has not been terminated in accordance with the Act, and (a) the landlord has reasonable grounds to believe the tenant has left or (b) the tenant does not ordinarily live in the rental premises, has not expressed a desire to resume living there, and has not paid sufficient rent.

I am satisfied that a valid tenancy agreement was in place in accordance with the Act and that this agreement was terminated on September 30, 2021, when the Respondent abandoned the rental premises.

Rental arrears

According to the tenancy agreement the rent was \$2,500 per month. At the hearing the Applicant testified that rent owing included:

- \$450 for August

The Applicant claimed \$450 remained owing on rent. The Respondent agreed with this amount. I find the Respondent owes \$450 in rent for August 2021.

- \$2,140 for September

In their application the Applicants had claimed \$1,940 but clarified at the hearing there was an error in their math and the amount claimed should be \$2,140. According to their testimony the Applicant agreed to reduce the rent paid for September to \$1500 and accept a work trade in lieu of the rest of the rent (\$1,000 - 25 hours at \$40/per hour). The Applicant testified the Respondent only did 9 hours work at \$40 per hour totalling \$360 and still owed \$2,140 for September's rent.

The Respondent argued their rent had been reduced to \$1,500 in September in light of the many issues with the condition of the rental premises and at any rate they had done more than 9 hours work in lieu of the remainder of the rent.

Copies of correspondence by cell phone provided by both parties, supports the Applicants' proposal to the Respondent that rent for September would be \$1,500 plus work in lieu. The Applicant testified that 9 hours of work had been completed by the Respondent, however, the Respondent and their spouse testified that more than 25 hours had been worked. Neither party provided documentation to support their claims.

Based on the testimony and evidence provided I am satisfied the agreement between the parties for September's rent was \$1,500 plus work in lieu of rent. However, based on the evidence and testimony, there is a dispute concerning the amount of hours worked, with the Applicant testifying 9 hours worked and the Respondent testifying more than 25 hours were worked. Considering the lack of any documentation from either party I think it is fair to strike a balance between the testimonies (half way between 9 hours and 25 hours) and, therefore, I find the Respondent worked 17 hours at \$40 per hour for a total of \$680, and that the Respondent owes \$1,820 for rent in September 2021.

I find the Respondent has accumulated rental arrears for August and September 2021 totalling \$2,270.

Utilities

In addition to their monthly rent, under section 5 of the tenancy agreement between the parties, the Respondent agreed to pay half of the cost for utilities (power, water, and heating oil). The Applicants claimed the Respondent had failed to pay their share of the utilities for September 2021 and owed \$212 for heating fuel and \$225 for power and water. No receipts were provided prior to the hearing for these amounts.

At the hearing the Respondent agreed they were responsible for utilities but argued that the amounts were unfair as they were higher than usual because the Applicant was running a large fan to deal with humidity from a flood in the basement. I requested the Applicant provide utility bills for September 2021 as well as other months, and specifically September 2020, so that I could compare costs. This additional information was provided to the Rental Office and the Respondent on March 30, 2022.

- Power - \$135

In their explanation relating to this charge, the Applicant explained that they hadn't charged actual power costs for September 2021 but had estimated an average of \$270 per month for power bills with the Respondent's half being \$135. According to receipts from Northland Utilities, the power billed on September 13, 2021, was \$540.19 compared to the power billed in September 2020 was \$285.05. During 2021 the amount charged varied from \$535.90 in January to \$229.67 in May. I think that an average of \$270 is reasonable and is supported by the documentation.

- Water - \$77

The amount charged by the City of Yellowknife for water for September 2021 was \$154.75, and for September 2020 it was \$152.00. A charge of \$77 is therefore reasonable and is supported by documentation.

- Heating fuel - \$225

Matonabee Petroleum provided a breakdown for the last two heating seasons. September 2020 to June 2021 automatic payments each month were \$450 and starting in September 2021 the payments went to \$575. The Applicant explained they charged the Respondent based on last year's billing of \$450. I think that the charge of \$225 for fuel is reasonable and supported by the documentation.

In examining the additional information provided by the Applicant it is clear the charges for the heating fuel and power/water are reversed on the filed application. I find the amount owing by the Respondent for half of the heating fuel is \$225 and the amount owing for half the power and water is \$212, totalling \$437 for utilities.

Under the definition of "rent" in section 1 of the Act, amounts owing for utilities are considered as rent. I find the total owing for rental arrears is \$2,270 and for utilities arrears is \$437, for a total amount of rental arrears of \$2,707.

Compensation for lost rent

Under subsection 5(2) of the Act: “Where a tenant vacates a rental premises other than in accordance with the Act ... the landlord shall rent the rental premises again, as soon as practicable ... in order to mitigate the damages of the landlord.”

Under subsection 62(1) of the Act: “Where a tenant abandons a rental premises, the tenancy is terminated on the date the rental premises were abandoned but the tenant remains liable ... to compensate the landlord for loss of future rent that would have been payable under the tenancy agreement.” Under subsection 62(2) a rental officer may make an order requiring the tenant to pay compensation to the landlord.

At the hearing the Respondent testified the Landlord had occupied the rental premises after they vacated and as a result they should not be responsible for paying the rent of \$2,500 for October.

The Applicant testified they were able to resolve their own housing issues, they did not occupy the rental premises, they were not able to rent the rental premises until mid-November 2021, and they were only claiming rent for October 2021.

I believe the amount claimed by the Applicant as compensation for October 2021 is reasonable and is consistent with the tenancy agreement and the Act. I find the Respondent owes the Applicant a total of \$2,500 as compensation for lost rent.

Damages and cleaning

The Applicant testified and provided photographs documenting the condition of the rental premises when the Respondent vacated. They were not able to provide entry and exit inspection reports to verify their claims because they had not completed those reports. They also provided a quote from a contractor for the repair of damages, which had since been completed, totalling \$2,898.60, including GST, for the following:

- exterior door - provide and install exterior door and jamb; provide, install, and paint interior casing
- interior doors - remove existing doors; provide, install, and paint hollow-core interior bathroom door and bedroom door

At the hearing the Respondent admitted to damaging the bathroom door in order to assist their child in an emergency when the toilet was overflowing, but testified that the door jamb on the exterior door and the bedroom door were already damaged when they moved in and further damage to the doors was as a result of wear and tear.

The lack of an entry inspection report makes it difficult to assess the Applicant's claims. The photographs show damages to two interior doors and checking in the painted finish on an interior jamb, but no other specific damages. Other than the bathroom door, the Respondent claims that there were damages to the doors when they moved in, they didn't close properly, and this contributed to the condition when they vacated the unit.

Based on the evidence provided and the testimony of the parties, I am not satisfied that the Respondent is responsible for the damages claimed by the Applicant, other than the damage to the bathroom door.

As the quote from the contractor is not broken down by item I could not extract the costs for this work specifically. However, based on my research the cost for a pre-hung hollow-core door in Yellowknife is about \$230. Labour to remove the old door, and paint and install the new door, is estimated to be about 2 hours at the contractor's rate of \$80 per hour. The total cost for labour of \$160, materials of \$230, and GST of \$19.50 is \$409.50.

The Applicants claimed \$500 for interior cleaning and smoke damage, as well as \$300 to remove garbage and abandoned property to the dump. They provided photographs documenting the condition of the unit when the Respondent vacated the rental premises. They testified they had not completed an inventory of abandoned property as they believed the items had no value.

At the hearing the Respondent testified they had to leave the rental premises in a hurry on September 30, 2021, because they needed to get to Edmonton for employment and had heard the border was going to close due to new COVID-19 restrictions. This meant they did not have time to do a proper cleaning or deal with their possessions. They testified most of their possessions had been provided by the Landlord, were of no real value, and they were not concerned about leaving the property behind and it being disposed of. They argued that the rental premises were not clean when they moved in and they should not be responsible for full cleaning on their departure.

At the hearing I explained that under subsection 45(2) of the Act, tenants are responsible for maintaining the rental premises in a state of ordinary cleanliness. This means that despite the condition of the rental unit at the beginning of the tenancy, the Respondent was responsible for the cleanliness of the rental premises when they vacated.

In regards to the abandoned property, under paragraph 64(2)(b) of the Act, if a landlord has good reason to believe personal property is worthless then they may dispose of the item. The items were either the Applicants' property or believed by the Respondent to be worthless, so I am satisfied that the Applicants were justified in disposing of the property.

At the hearing the Applicants testified that it took them about 10 hours and 4 trips to the dump at \$15 per trip in dump fees to clear the garbage and possessions out of the rental premises. After the hearing the Applicants also provided to the Rental Office a receipt for \$362.50 from the cleaner documenting 14.5 hours at \$25 per hour to clean the rental premises after the Respondents moved out.

Based on the testimony and photographs provided as evidence I am satisfied that the rental premises required cleaning after the Respondents vacated and there were a number of items left in the rental premises that needed to be removed. I believe that a charge of \$300 for removing the garbage and abandoned property is reasonable.

The Applicants have claimed costs for cleaning totalling \$500 but provided a receipt for only \$362.50 without explaining the difference between the two amounts. I find the Respondent responsible for the costs to remove abandoned property and garbage in the amount of \$300 and the costs to clean the rental premises in the amount of \$362.50 for a total amount of \$662.50. I find the total costs for repair of damages and cleaning is \$1,072.

Security deposit

In their statement dated October 3, 2021, and provided as evidence, the Applicant has applied the security deposit of \$2,500 against the amounts owing by the Respondent. Under subsection 18(4) of the Act a security deposit may be retained by the Landlord for arrears of rent owing and for repair of damages. The Landlord may not retain any amount of a security deposit for repair of damages if the landlord fails to complete entry or exit inspection reports or to give a copy of the entry or exit inspection reports to the Tenant.

In this case, as no inspection reports were completed, the security deposit can only be applied against the rental arrears. The rental arrears, including utilities is \$2,707. Once the security deposit with interest of \$2,500.59 is applied against the rental arrears, the Respondent has a remaining balance owing of \$206.41.

Order

An order will issue:

- requiring the Respondent to pay rental arrears in the amount \$206.41 (p. 41(4)(a));
- requiring the Respondent to pay compensation for loss of future rent totalling \$2,500 (ss. 62(2)); and
- requiring the Respondent to pay costs related to the repair of damages and cleaning totalling \$1,072 (p. 42(3)(e), p. 45(4)(d)).

Janice Laycock
Rental Officer