

IN THE MATTER between **NTHC**, Applicant, and **CC**, 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:

NTHC

Applicant/Landlord

-and-

CC

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: May 18, 2022

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: PS, representing the Applicant
CC, the Respondent

Date of Decision: May 19, 2022

REASONS FOR DECISION

An application to a rental officer made by the YHA on behalf of the NTHC as the Applicant/Landlord against CC as the Respondent/Tenant was filed by the Rental Office March 2, 2022. 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 Respondent by email on March 31, 2022.

The Applicant alleged the Respondent, a former tenant, had failed to pay rent when due and had accumulated rental arrears, and was responsible for tenant damages. An order was sought for payment of rental arrears and tenant damages.

A hearing was held on April 20, 2022 by three-way teleconference. PS appeared on behalf of the Applicant. The Respondent, CC, also appeared. After hearing evidence and testimony from the parties, I adjourned the hearing to a later date so the Respondent and I could have time to review evidence provided by the Applicant on April 19, 2022, to allow the Applicant to provide information on the age of the kitchen counter-top, and the Respondent to provide evidence that the keys for the rental unit had been returned to the landlord on November 8, 2021.

The Applicant provided further information to the Rental Office on April 21, 2022, and the hearing proceeded by three-way teleconference on May 18, 2022. PS appeared on behalf of the Applicant. The Respondent, CC, appeared. I reserved my decision at this hearing in order to further consider the testimony and evidence.

Tenancy agreement

Evidence was provided establishing a residential tenancy agreement for subsidized public housing commencing on September 5, 2017 and continuing month to month. This tenancy was terminated on December 17, 2021, when the Applicant determined the rental premises had been abandoned.

At the hearing, the Respondent testified they had provided notice of their intention to terminate the tenancy on November 7, 2021 and their social worker had returned the keys to the Landlord on November 8, 2021. They had committed to provide a statement from the social worker attesting to this, but did not do so prior to resumption of the hearing on May 18, 2022.

The Applicant testified they had waited for the keys, but they were not returned, and repeated attempts to contact the Respondent to confirm their plans for the rental unit were unsuccessful. It wasn't until December 17th, 2021 that they were able to confirm the Respondent was not living in the unit and it had been abandoned.

I am satisfied a valid tenancy agreement was in place in accordance with the *Residential Tenancies Act* (the Act) and that tenancy was terminated on December 17, 2021 when the Applicant determined the Respondent had vacated the rental premises.

Previous order

Rental Officer Order #17258 issued June 16, 2021, ordered the Respondent to not disturb the landlord or other tenants' possession or enjoyment of the rental premises or residential complex and not breach this obligation again, and to comply with their obligation to not allow pets into the rental premises and not breach this obligation again.

Rental arrears

The lease balance statement provided as evidence represents the Landlord's accounting of the monthly rents and payments received against the Respondent's rent account. According to this statement, dated February 23, 2022, their rent was \$160 per month and after having a credit of \$114.28 on their rental account on June 17, 2021, and then not paying any rent for July, August, September, October, November and December 2021, they owed \$773.72.

At the hearing, the Respondent questioned why they had been charged rent for December 2021, as they had provided notice November 7, 2021. I explained that under subsection 52(1) of the Act, a tenant may terminate the tenancy on the last day of a period of the tenancy by giving the landlord a notice of termination (b) "in the case of a monthly tenancy, not later than 30 days before that date." In this case, notice was not provided 30 days before November 30, 2021, and as the landlord did not receive the keys back as promised, they were not clear what the Respondent's intentions were respecting the tenancy. The Respondent acknowledged that they owed rent for November and partial rent for December, 2021.

I am satisfied the lease balance statement accurately reflects the current status of the Respondent's rental account and after not paying rent from July to December 2021, I find they had accumulated rental arrears totalling \$773.72.

Tenant damages

According to the evidence and the testimony, it was agreed that in October 2021 while the Respondent was isolating at a hotel in Yellowknife under COVID-19 restrictions their rental unit was broken into. The RCMP notified the Respondent of the break-in and that there was vandalism. The Applicant was notified and attended the unit on October 15, 2021, verifying there was evidence of a recent break-in and vandalism at the unit. They also took photographs of the damages. According to the Applicant, when they did the inspection it was clear that some of the damages had happened prior to the break-in and it is primarily this damage they are claiming for.

At the hearing, the Respondent testified they had only returned to the rental premises to get their possessions but did not return to living there. They left town to seek counselling on November 7th, 2021 and did not return to town. They were told by their former neighbours that someone had broken into the unit in December and was living there.

On December 17, 2022, the Applicant determined the rental premises had been abandoned, on December 21, 2021 they attended the unit to assess the damages, and returned again on January 17, 2022 to complete the exit inspection.

A copy of the entry and exit inspection reports were provided as evidence; as well as copies of the photographs taken on October 15, 2021; December 21, 2021; January 17, 2022; and February 7th and 10th; as well as a statement detailing the costs for repair of damages dated February 23, 2022; Work Orders 325065 (Vandalism) and TD323315 interior painting, patch and paint walls; the Landlord's notes documenting the events; as well as a copy of the invoices for cleaning and moving. After the hearing on April 20, 2022, the Applicant also provided information on the age of the kitchen cabinets and a copy of the work order documenting this work in 2014.

In reviewing the evidence and testimony of the parties, it was challenging to assess responsibility for the damages - were the damages more than likely historical (had taken place before the reports of vandalism) and as such were the responsibility of the Respondent, or were the damages as a result of the vandalism in October or December 2021, or might the damages have taken place while the Respondent still had possession of the rental premises (between October 15 and November 7, 2021).

The Applicant repeatedly testified that they were not charging the Respondent for clear vandalism to the unit, but only for those damages that they had assessed as historical, based on the appearance of the damages - that they were not recent.

The photographs provided as evidence and the inspection reports were very helpful in my assessment. They show further damages to the unit after the October inspection in keeping with the Respondent's testimony that the unit was further vandalized in December.

Prior to the end of the tenancy, there was a charge on the lease balance statement of \$76.23 for a lock change requested by the Respondent in August 2021. The Respondent did not challenge this charge and I find for the Applicant on this claim.

After the Respondent vacated the rental premises and according to the Applicant's statement dated February 23, 2022, the following expenses totalling \$5,560.93 (including Administration fee 10% and GST 5%) for repair of damages were claimed:

- **\$1,225.96 Cleaning** - \$ 655.96 remove items left by tenant to dump (Best Movers), \$450 full unit cleaning (Brisas Cleaning), \$120 Landlord's staff to sweep up glass and debris. At the hearing, the Respondent agreed they were responsible for the costs for removing items to the dump and cleaning, but questioned the charge for sweeping up glass as the glass was as a result of the vandalism. The Applicant testified that in order to begin work and other cleaning, the glass and other debris left by the tenant had to be swept up by staff. I see that it would be difficult to only sweep up the glass. Based on the evidence and testimony, I am satisfied the costs for cleaning and removing items to the dump are the reasonable and the responsibility of the Respondent and I find they owe **\$1,225.96**.
- **\$1,823.70 - Painting entire unit, patching holes, removing stickers and drawings**
 - ✓ \$668.70 - painting - pro-rated at 5 years, total estimate is \$4,460 divided by 60 months (five years) = \$74.30 x 9 months remaining on five year period = \$668.70.
 - ✓ \$858.00 - patch holes - \$264 patch hole in stairwell and hallway, \$264 patch holes in master bedroom, \$264 patch holes in bedroom #2, \$66 patch hole behind door and in closet in bedroom #3.
 - ✓ \$297.00 - remove stickers and cover drawings - \$165 remove stickers/posters on door and drawings on the walls to master bedroom, \$132 remove stickers and drawings on wall bedroom #3.

At the hearing on April 20, 2022, the Respondent claimed they were not responsible for any of the holes in the walls, but their children had put stickers up and drawn on the walls. At the hearing on May 18, 2022, the Respondent acknowledged that they and their children were responsible for some of the holes in the walls of the bedrooms, some of which were caused when a door was opened and not protected by a door stop. They also testified the children had damaged an area in the bedroom closet that was covered by a plastic plate by removing the plate and picking at the drywall, but denied being responsible for other holes in the hallway/stairway.

Based on the testimony and evidence, I am satisfied the Respondent is responsible for the damages to the walls in the bedrooms and despite the Respondents denials, they are more than likely responsible for the other holes in the hallway/stairway. Looking at the photos of the damages in the bedrooms, it is difficult to believe there were not also damages in these other areas caused by the Respondent or their guests. Considering the damages shown in the photographs, I believe the costs claimed by the Applicant are reasonable and find the Respondent responsible for expenses related to these repairs totalling **\$1,823.70**.

- **\$320 - Replacing oven door** - The Applicant testified and provided evidence that the oven door was broken and needed to be replaced. The Respondent testified the oven door was not working properly, it was coming apart and they had previously reported this to the Landlord. Eventually they said the glass came out of the door and they put the glass unit in the storage room. When the hearing resumed, the Applicant testified that they had checked their maintenance records and could find no report of a complaint from the Applicant for this work.

In this case the Respondent is not denying the damages to the stove, but has characterized this as a maintenance issue they reported to the landlord. The absence of a record of this report is in itself not proof that this was not a maintenance issue. Even if the Respondent had reported the issues with the door, the end result may have been to replace the door. I am not convinced that the damage to the door is the responsibility of the Respondent and deny the Applicants claim.

- **\$1,015 - Replacing kitchen counter-top** - The Applicant testified the counter-top was damaged and had to be replaced. Photos were taken in February 2022 showing nicks, including a large gouge in the counter-top and water damage to the portion of the counter at the kitchen sink. The Applicant said the main reason for replacing the counter-top was because of the damage to the finish, not the water damage. The entry inspection report notes "few nicks", the exit inspection report notes it was "dirty" and condition was "U" or unclean.

At the hearing, the Respondent testified that when the window was broken by vandalism, the landlord only put up a piece of plywood, and this didn't keep out water, they continually had to mop up water around the sink. The Applicant reiterated that the counter-top was identified for replacement because of the damages to the finish, not the water damage.

I looked at research by the Rental Office on the useful life of a counter-top, which is fifteen years. According to the Applicant, the counter-top was new in October 31, 2014. This means the remaining life of the counter-top was about 7 years and 10 months - replacement cost \$1,015 divided by 180 months (15 years) = \$5.64 x 94 (7 years 10 months) = pro-rated replacement cost of \$530.16.

Based on the evidence and testimony, I believe the counter-top was already damaged when the Respondent moved into the rental premises, it was described as having a "few nicks", and that they caused further damage, such as the large gouge shown in the photographs, but are not responsible for the water damage. Despite the Applicant's testimony that the water damage was not a factor in their decision to replace the counter-top, their decision to include a photo showing the water damage as part of their evidence, suggests to me that this damage was also important. Considering all of this, I think it fair that the Applicant and the Respondent share the pro-rated cost for replacement of the counter-top estimated to be \$530.16.

I believe the Respondent is partially responsible for damages to the counter-top and find they owe **\$265.08** as their portion of the cost for replacement.

- **\$240 - replacing missing door hardware-** The Applicant claimed that all of the lock sets for the bedroom doors were missing and the bathroom lock set and latch was badly damaged. This is consistent with the exit inspection and the photographs taken at move-out. The Respondent testified the lock sets were in place when they left the unit and could have been removed or damaged (in the case of the bathroom) by the vandals, after they vacated the rental premises. The Applicant testified that they believed the Respondent was responsible, as they didn't think vandals would take the hardware. In this case, I have to rely on the testimony of the Respondent that the hardware was in place and working when they vacated the unit. I deny the Applicant's claim.

- **\$190 - misc** - The Applicant also claimed costs to replace 6 broken receptacle covers, vent grill and sink stopper. The Respondent testified the grill cover was cheap, but didn't otherwise challenge these charges. I am satisfied the Respondent is responsible for these charges and I find they owe \$190.

Claimed	Approved
\$1,225.96	\$1,225.96
\$1,823.70	\$1,823.70
\$ 320.00	\$ 0
\$1,015.00	\$ 265.08
\$ 240.00	\$ 0
<u>\$ 190.00</u>	<u>\$ 190.00</u>
\$4,814.66	\$3,504.74
\$ 481.47 (Admin 10%)	\$ 350.47 (Admin 10%)
<u>\$ 264.81 (GST 5%)</u>	<u>\$ 192.76 (GST 5 %)</u>
\$5,560.93	\$4,047.97
<u>\$ 76.23 lock change</u>	<u>\$ 76.23 lock change (includes admin and GST)</u>
\$5,637.16	\$4,124.20

Based on the evidence and testimony of the parties, I find the Respondent responsible for expenses related to repair of tenant damages and cleaning totalling \$4,124.20.

Security deposit

According to the Applicant's statement dated February 23, 2022, the Respondent paid a security deposit of \$1,625 and earned interest during their tenancy of \$2.82. When the rental arrears of \$773.72 are deducted from the security deposit, no rental arrear are owing and \$854.10 remaining of the security deposit. When this amount is deducted from the expenses for the repair of damages and cleaning of \$4,124.20, the Respondent owes a total of \$3,270.10.

Order

An order will issue requiring the Respondent to pay to the Applicant expenses related to repair of damages and cleaning totalling \$3,270.10 (p. 42(3)(e)).

Janice Laycock
Rental Officer