

IN THE MATTER between **ST**, Applicant, and **TH**, 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, regarding a  
rental premises located within the **city of Yellowknife in the Northwest Territories;;**

BETWEEN:

**ST**

Applicant/Tenant

-and-

**TH**

Respondent/Landlord

**REASONS FOR DECISION**

**Date of the Hearing:** May 11, 2022, and July 6, 2022

**Place of the Hearing:** Yellowknife, Northwest Territories

**Appearances at Hearing:** ST, the Applicant/Tenant  
TH, the Respondent/Landlord

**Date of Decision:** July 22, 2022

### **REASONS FOR DECISION**

An application to a rental officer made by ST as the Applicant/Tenant against TH as the Respondent/Landlord was filed by the Rental Office January 28, 2022. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was served on the Respondent by registered mail signed for March 22, 2022.

The Tenant alleged the Landlord had failed to return the security deposit in accordance with the *Residential Tenancies Act* (the Act) and had improperly dealt with abandoned personal property. The Tenant further disputed the Landlord's reasons for retaining the security deposit.

A hearing originally scheduled for March 3, 2022, was cancelled due to the unsuccessful service of documents on the Landlord within the legislated timelines. The hearing subsequently rescheduled to April 27, 2022, was postponed at the Landlord's request for medical reasons. The rescheduled hearing was commenced on May 11, 2022, by three-way teleconference and concluded on July 6, 2022, by three-way teleconference. ST appeared at both hearings as the Applicant/Tenant. TH appeared at both hearings as the Respondent/Landlord.

#### *Tenancy agreement*

The parties agreed that a residential tenancy agreement had been entered to commence February 1, 2020, with early occupancy granted to the Tenant on January 19, 2020. The parties agreed that the tenancy ended October 31, 2021, after the Tenant gave written notice on October 9, 2021, that she did not intend to return to the premises. I am satisfied a valid tenancy agreement was in place in accordance with the Act.

#### *Security deposits*

The parties agreed that a security deposit of \$1,200 had been paid by the Tenant. The parties also agreed that a pet security deposit had been paid by the Tenant, but they did not agree on the value of the pet security deposit. The Landlord claimed the pet security deposit was \$200. The Tenant claimed the pet security deposit was \$400. Neither party could prove how much the Tenant paid for the pet security deposit. I determined to split the difference and consider a \$300 pet security deposit. The accumulated interest on the total security deposits of \$1,500 amounts to \$0.84.

The parties agreed that an entry inspection was conducted and that a report of that inspection was written at the time. The Tenant denied receiving a copy of the written entry inspection report. Although the Landlord could not remember whether or not the Tenant took the written entry inspection report, she did recall having a copy available for the Tenant. The entry inspection report was entered into evidence and does not include the Tenant's signature. However, it was clear throughout the hearings that neither party was very organized with their paperwork. An example of this is that they both agreed there was a written tenancy agreement and that both of them had a copy of it, but neither of them could locate it. It seems more likely than not that the Tenant did receive a copy of the entry inspection report.

The Tenant claimed that the Landlord failed to comply with her obligations respecting the processing of the security deposits because she failed to either return the security deposits or provide an itemized statement of account for why she was retaining any part of it within the required 10 days of the Tenant vacating the rental premises. The Landlord provided the itemized statement of account to the Tenant by email on November 10, 2021.

The Tenant had left the community to care for her ailing mother in mid-September 2021 with the intention at that time to return to the premises and to her employment with the Landlord. To clarify: although the Tenant was employed by the Landlord, the tenancy agreement was not provided as a benefit of employment. Circumstances arose which caused the Tenant to decide not to return to Yellowknife, and as such she gave the Landlord notice, further indicating that she would attempt to arrange for a friend to retrieve her belongings and clean the premises before October 31<sup>st</sup>. Clearly the tenancy did not end on October 9<sup>th</sup> as possession of the premises was not returned to the Landlord until October 31<sup>st</sup>.

Consequently, the Tenant's claim that the Landlord did not comply with her obligation to notify the Tenant of the reasons for retaining the security deposit within 10 days of vacating the premises is unfounded. The Tenant's application for the return of her security deposit is denied.

#### *Repairs and cleaning*

The Tenant also disputed the reasons that the Landlord retained the security deposit, which opened the door for the Landlord to provide evidence substantiating her claims for costs of repairs and cleaning. Although the Landlord had not intended to pursue costs greater than the value of the security deposit, she provided the necessary evidence to consider those claims.

The entry and exit inspection reports, emails, invoices, receipts, and two sets of photographs of the premises were entered into evidence. The first set of photographs were taken November 2, 2021, and show the condition of the premises as it was left by the Tenant. The second set of photographs were taken April 2, 2022, show the condition of the premises after repairs were completed and additional renovations and upgrades were done. The parties agreed and the entry inspection report confirms, that the premises was brand new when the tenancy started, albeit not finished to the same degree that it currently is.

#### Cleaning

There was no dispute that the Tenant had not returned to the premises to clean it before the end of her tenancy or that she had left several items behind for which an inventory of abandoned personal property was provided. The parties agreed that the Tenant had given written permission for the Landlord to dispose of or donate the items that remained in the rental premises. The Landlord claimed \$100 to remove the personal property and \$284.85 to clean the premises, which the Landlord did herself.

I am satisfied the Tenant left the rental premises in an unclean condition and that the amounts claimed for cleaning costs are reasonable. I find the Tenant liable to the Landlord for cleaning costs in the total amount of \$384.85.

#### Drywall damage

During the course of the tenancy the Tenant had agreed to dog-sit dogs in her rental premises that were under the Landlord's care through her dog care business. The Landlord's business compensated the Tenant for the dog-sitting. As previously mentioned, the rental premises was not provided as a benefit of employment. The Tenant was not required either as part of the tenancy or as part of her employment contract to agree to dog-sit the dogs. Regardless of the circumstances under which the Tenant was caring for the dogs, she was responsible for their behaviour and any consequential damages to the premises.

The photographs support the description provided in the exit inspection report of large, deep scrapes in two walls requiring repair. Although the Tenant disagreed that she should be liable for the costs of repairs, she did acknowledge that the drywall damage was caused by the dogs that were in her care. The Landlord provided an invoice from a construction company for the costs to repair the drywall by plastering, sanding, and priming those areas amounting to \$225. The Landlord testified that she did the final repainting of both walls and claimed \$247.50 for that labour and \$88.95 for the paint, which a receipt was provided for.

I am satisfied that the damages to the wall were caused by the dogs permitted in the premises by the Tenant, and consequently I am satisfied the Tenant is responsible for the damages. I find the Tenant liable to the Landlord for the costs of repairing the drywall in the total amount of \$561.45.

#### Bathroom and kitchen counters

Both the bathroom and kitchen counters are made of stained hardwood, and the kitchen counter was sealed with a food-grade beeswax sealant. The Landlord acknowledged that the beeswax sealant requires maintenance or re-application bi-annually, and that the kitchen counter was last re-sealed in May 2021.

The Landlord provided photographs supporting her claims that the Tenant had caused damages to both counters. The bathroom counter had been stained an orange colour from some type of product used by the Tenant, and the kitchen counter had set-in ring marks presumably from either hot cups or a small pot. The Landlord claimed that repairing the counters required extensive sanding to remove the stains and marks, and then re-staining to replace the stain that had been sanded off. The Landlord had also claimed costs associated with re-applying the beeswax sealant on the kitchen counters, but that cost was denied because the kitchen counter was already due for that maintenance at the end of the tenancy.

The bathroom counter is a small piece that was attached to the wall with L-hinges. It had to be removed from the wall to do the required sanding and then reinstalled. The Landlord provided an invoice from a construction company in the amount of \$262.50 for the removal and reinstallation of the bathroom counter and sanding of both the bathroom and kitchen counters to remove the stains and marks. The Landlord testified that she did the re-staining of both counters and claimed costs for labour of \$82.50 and costs for materials of \$36.98.

I am satisfied that the Tenant is responsible for the damages caused to the bathroom and kitchen counters. I am further satisfied that the costs claimed to repair the damages are reasonable. I find the Tenant liable to the Landlord for the costs of repairing the bathroom and kitchen counters in the total amount of \$208.73.

### Shelving under the kitchen sink

Built-in shelving made of unfinished pine was provided under the kitchen sink. Additional shelving was provided on the wall above the kitchen counter. The Landlord provided photographs in support of the claims of grease and stains on the lower shelves and on the drywall both above and below the kitchen counters as documented in the exit inspection report.

The Landlord provided an invoice from a construction company for \$150 to remove and reinstall the shelves on the wall above the kitchen counters, and dismantle and reinstall the shelves below the kitchen sink, in order to remove the oil and grease from the drywall and shelves. The Landlord provided a receipt for the cost of the degreaser in the amount of \$34.99.

I am satisfied the Tenant failed to maintain the ordinary cleanliness of the kitchen walls and lower shelves, and that the costs claimed to clean those things are reasonable. I find the Tenant liable to the Landlord for additional cleaning costs in the amount of \$184.99.

### Sleeping pad

The rental premises is what is known as a “tiny house” not terribly dissimilar to a bachelor pad. It is essentially the living area and the bathroom, with the bed placed on a raised wood cubicle along one wall in the living area.

The Landlord provided photographs supporting the condition of the sleeping pad documented in the exit inspection report. They showed that not only had the Tenant failed to dust and clean beside and behind the mattress, but she also stored a dish used as an ashtray under the back corner of the mattress. The combination of dirt, dust, and residual ashes could not be completely removed from the light-coloured wood base and baseboards, causing unpleasant staining. In order to remedy this effect the Landlord had to apply a dark stain to the entire wood base and baseboards to camouflage the staining. The alternative remedy would have been the more expensive option of replacing the wood base and baseboards entirely.

The Landlord repaired the sleeping pad herself, claiming \$192.50 for the labour and \$54.37 for the materials.

I am satisfied the Tenant is responsible for the damages caused to the sleeping pad, and I am satisfied the Landlord’s solution to remedy the effects was reasonable. I find the Tenant liable to the Landlord for the costs of repairing the sleeping pad in the total amount of \$246.87.

### Plywood flooring

The parties agreed that during the tenancy the Tenant had caused a small fire to smoulder on the floor of the front entrance area of the rental premises. The floors during the tenancy consisted of painted plywood sheeting, and the front entrance area measures approximately the equivalent of one 4-by-8 foot sheet of plywood. The fire caused damage to approximately 1 square foot of that area.

The Landlord provided emails from a construction company confirming costs for removal of the flooring and insulation below it in the amount of \$400 and costs for installing new plywood sheeting in the amount of \$597. A receipt was also provided for the cost of the sheet of plywood in the amount of \$112.99.

It was determined that while the Tenant is responsible for the damages to the plywood flooring she is not responsible for the insulation. Additionally, the Tenant's liability should be proportional to the area that was damaged. To my mind the damaged area effectively constitutes about a quarter of the entire space that required replacement of the plywood sheeting. The plywood sheeting would not have needed to be removed had the Tenant not caused the damage, so I do find the Tenant liable for the entire costs of removing the plywood sheeting, which in my opinion reflects approximately 75 percent of the \$400 charged by the construction company, or \$300. I find the Tenant liable for 25 percent of the costs to replace and reinstall the plywood sheet, amounting to \$149.25 for the labour and \$28.25 for the material.

I am satisfied the Tenant is responsible for damaging the front entrance area flooring. I find the Tenant liable to the Landlord for the proportional costs of repairing the front entrance area flooring in the total amount of \$477.50.

### Plugged drain

During the inspection and subsequent repairs and cleaning, the Landlord discovered that the drainage system was plugged. An invoice was provided from a construction company for \$75 to clear the drain, documenting finding a needle, large pieces of food debris, plastic, and a rubber ring.

The Tenant clarified that the needle was likely a sewing needle, and explained the food debris as coming from having to wash her dishes in the shower due to problems with the kitchen plumbing. Regardless of the circumstances, the Tenant is responsible for their own actions, including mitigating any damages that might occur.

I am satisfied the Tenant is responsible for causing the blocked drain and I am satisfied the costs claimed to clear that blockage are reasonable. I find the Tenant liable to the Landlord for the costs of clearing the drain in the total amount of \$75.

#### *Lost future rent*

In her security deposit statement, the Landlord claimed lost rent for November 2021 against the Tenant. Paragraph 52(1)(b) of the Act requires the Tenant in a month-to-month tenancy agreement to give the Landlord at least 30 days' advance written notice to terminate the tenancy on the last day of any given month. In this case, the Tenant gave 22 days' written notice on October 9, 2021, to terminate the tenancy October 31, 2021. As a result of only 22 days' notice being given, the Tenant would effectively remain responsible for the rent either until November 30<sup>th</sup> or until the premises is re-rented, whichever comes first.

In effect, the Tenant abandoned the rental premises when possession was returned to the landlord on October 31<sup>st</sup>. Subsection 62(1) of the Act sets out the Tenant's liability for lost future rent where the Tenant abandons the rental premises. Subsection 5(2) of the Act requires the Landlord in this situation to mitigate their losses by re-renting the premises as soon as practicable and at a reasonable rent.

Evidence was presented establishing that after receiving the Tenant's notice the Landlord published the premises as available to rent. The Landlord's efforts were unsuccessful, partly due to the short notice but largely due to the condition of the premises and the work that was required to return it to a rentable condition.

I am satisfied the Landlord fulfilled their obligations under subsection 5(2) of the Act. I am satisfied the Tenant is responsible for the rent for November. I find the Tenant liable to the Landlord for lost future rent in the amount of \$1,200.



*Orders*

An order will issue:

- requiring the tenant to pay to the Landlord the costs of repairs and cleaning totalling \$2,312.64, less the security deposits of \$1,500.84, for a remaining balance owing of \$811.80 (p. 42(3)(e), p. 45(4)(d)); and
- requiring the tenant to pay to the Landlord compensation for lost future rent in the amount of \$1,200 (p. 62(2)).

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Adelle Guigon  
Rental Officer