

IN THE MATTER between **RM and SM**, Landlords, and **DM**, Tenant.

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, regarding a rental
premises located within the **town of Norman Wells in the Northwest Territories**.

BETWEEN:

RM AND SM

Landlords

-and-

DM

Tenant

REASONS FOR DECISION

Date of the Hearing: October 15, 2022

Place of the Hearing: Yellowknife, NT via telephone conference call

Appearances at Hearing: RM, Landlord

SM, Landlord

DM, Tenant

Date of Decision: November 7, 2022

REASONS FOR DECISION

This matter is the subject of an application by the Landlords and an application by the Tenant. Both applications deal with the same tenancy agreement. Without objection from either party, both matters were heard at a common hearing.

The tenancy agreement between the parties was made for a two- month term commencing on July 1, 2021. The Tenant refused to sign the agreement but was permitted to take possession of the premises. Although the tenancy agreement names the premises as #12F, the parties agreed that the premises were one suite contained in a residential complex at 12F. At the end of the term, the Tenant remained in possession and the tenancy became monthly. Pursuant to sections 9(4) and 49(1) of the *Residential Tenancies Act*, I shall consider the tenancy agreement to be in writing and monthly.

9.(4) A tenancy agreement is deemed to be in writing where it has been signed by one party or his or her agent, given to the other party or his or her agent and the landlord permits the tenant to take occupancy of the rental premises.

49. (1) Where a tenancy agreement ends on a specific date, the landlord and tenant are deemed to renew the tenancy agreement on that date as a monthly tenancy with the same rights and obligations as existed under the former tenancy agreement, subject to any rent increase that complies with section 47.

The Landlords prepared another tenancy agreement on May 15, 2022 for a three-month term. This agreement was not signed by the Tenant and in my opinion has no effect, as the parties already had a valid monthly agreement.

A security deposit of \$1500 was paid on July 1, 2021. There was no check-in inspection completed at the commencement of the tenancy.

The Landlords filed an application on June 6, 2022 seeking termination of the tenancy agreement, alleging the Tenant had damaged the premises, and failed to maintain the premises in a state of ordinary cleanliness. The application also sought termination on the grounds that the landlord intended to use the premises as their own residence.

The Tenant vacated the premises on July 31, 2022 and filed an application on August 23, 2022 seeking the return of the retained security deposit and accrued interest. The Tenant also alleged that the Landlords had failed to provide an adequate supply of hot water during the last week of the tenancy.

Since the Tenant is no longer in possession, the grounds for terminating this tenancy are irrelevant. What remains to be determined is the disposition of the security deposit, damages pursuant to section 42 of the Act and disruption of a vital service.

Security Deposit

Section 15(1) of the *Residential Tenancies Act* obligates a landlord to conduct an inspection of the premises at the commencement of the tenancy agreement:

15. (1) *A landlord or his or her agent shall*

- (a) conduct an inspection of the condition and contents of rental premises at the beginning of a tenancy; and*
- (b) offer the tenant reasonable opportunities to participate in the inspection.*

There is a similar obligation at the end of a tenancy:

17.1. (1) *A landlord or his or her agent shall*

- (a) conduct an inspection of the condition and contents of rental premises vacated by a tenant at the end of a tenancy; and*
- (b) offer the tenant reasonable opportunities to participate in the inspection.*

Section 18(5) of the Act prohibits the retention of the security deposit if either inspection is not completed and a report provided to the tenant:

18.(5) *A landlord may not retain any amount of a security deposit or pet security deposit for repairs of damage to the rental premises if the landlord or his or her agent*

- (a) fails to complete an entry inspection report and an exit inspection report;*
or
- (b) fails, without a reasonable excuse accepted by a rental officer, to give a copy of each report to the tenant.*

There is no evidence to suggest that an inspection report was done at the commencement of the tenancy. Both parties agree that no inspection was done. Therefore, the Landlords are not entitled to retain the deposit.

Damages Pursuant to Section 42

Section 42 of the *Residential Tenancies Act* obligates a tenant to repair damages to the premises caused by their negligence or by persons they permit on the 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.

Among the remedies contained in section 42 is an order requiring the tenant to pay any reasonable expenses directly associated with the repair or action. The Landlords' application seeks remedy pursuant to section 42. Although the Landlords specifically sought termination, they could have also sought monetary damages. Their application specifically notes several areas of alleged damage, notably water damage on the bathroom floor and door and damage to the deck. In my opinion, it is not unreasonable to now consider damages pursuant to section 42.

The Tenant moved out of the premises on July 31, 2022. The Landlords engaged a contractor who took photographs of alleged damages and prepared an itemised estimate of repair costs totalling \$5,172 plus GST. The Landlords now seek an order for that amount.

Evidence of the Alleged Damages

The Landlords retained a contractor to inspect the premises and provide an estimate of repairs. A series of photographs and an itemised list of estimated repair costs was provided in evidence. The photographs are undated. The Landlords stated that the inspection was arranged for August 8, 2022 but it is not clear if the inspection took place or if the photographs were taken on that date. The Landlords were not present at the inspection and the contractor did not attend the hearing.

On August 25, 2022, the Landlords advised that the contractor was out of the country and would not be able to complete the estimate until August 31, 2022. Both the estimate and the photographs were provided to the Tenant on September 5, 2022 and the estimate was dated August 31, 2022.

The Tenant also provided photographs of the premises and testified they had been taken when he vacated. The photographs are in jpg format and all files dated August 1, 2022.

The two sets of photographs are remarkably different. For example, The Landlords' photographs depict a suite which was left in less than satisfactory state of cleanliness. There appears to be grime on the bead board and trim. In contrast, the Tenant's photographs show a suite that is reasonably clean. The Tenant's photograph of the alleged damaged cabinet shows that the joints are somewhat separated and coming apart. The Landlords' photographs indicate significantly more joint separation. The difference in the two sets of photographs raises questions regarding the condition of the premises at the end of the tenancy.

Since there is no check-in inspection report, it is difficult to determine the condition of the premises at the commencement of the tenancy. However, both parties acknowledge that although the residential complex was undergoing extensive renovation, the suite occupied by the Tenant had been newly renovated, was substantially complete, and not subject to further construction during the tenancy.

Findings

Bathroom

The Landlords allege that the flooring, door and baseboards in the bathroom were damaged by excessive water caused by the Tenant's negligent use of the bath/shower. The Landlords originally referred to the alleged water damage in their application of June 6, 2022 stating that the bathroom door had swelled due to water damage. The door has a large stain along the bottom edge and has been removed. The Landlords expressed their concern that water had seeped under the vinyl plank flooring causing damage to the subfloor. A photograph of the door, provided with the application shows the brown stain on the door.

In a notice to vacate, dated April 21, 2022, the Landlords again referred to the alleged water damage in the bathroom stating that the door was removed because it would not close because "the floor was puffed up". The Landlord testified that they had entered the premises to assist with a cable installation and found the bathroom rug completely soaked with water.

The contractor's photographs indicate a section of bathroom baseboard where the paint appears blistered. Another photograph shows a section of floor by the tub where a plank of flooring has been removed, and showing stains on the subfloor. Similar staining of the subfloor at the other end of the tub is shown in another photograph. The photograph notes that "laminat placed once subfloor dries." I understand this to mean that the subfloor was found to be wet and will be left to dry before the vinyl plank flooring is reinstalled.

Two other photographs taken by the contractor show the flooring in an adjoining closet which is different from the bathroom and appears to be a painted finish. One photograph shows the closet with the flooring removed, exposing the subfloor which appears to be much older than the subfloor in the bathroom. Although stained, there is no evidence that it was wet when the finish floor was removed.

The Landlords sought relief of \$290 to replace the bathroom door, \$1,068 to repair the floor and baseboards, including the adjoining closet.

The Tenant denied causing any water damage to the bathroom door, flooring or baseboards. He testified that it was normal for some bath or shower water to escape the tub and end up on the floor. He stated that only small amounts of water had been on the floor which was promptly cleaned up. He suggested that perhaps vinyl plank flooring was not an appropriate material for a bathroom floor. The Tenant suggested that the bathroom door was perhaps improperly hung, causing it to stick.

Weighing the evidence before me, I find that the bathroom floor has been repeatedly flooded with bath or shower water due to the negligent use by the Tenant. Vinyl plank flooring is recommended for bathroom installations and is very water resistant. It can be damaged by excessive exposure to water but in this case, I find no evidence that the flooring itself was damaged. However, standing water has seeped through joints at the wall and tub intersections causing moisture to affect the subfloor, which was found to be wet at the inspection.

In my opinion, this infiltration could only be the result of allowing a significant volume of water to sit on the flooring for a period of time.

In my opinion, it is reasonable to remove the bathroom finish floor, allow the subfloor to dry and reinstall the vinyl plank flooring. I find reasonable costs to repair the floor to be \$675. This compensation does not include costs to replace the closet floor or all of the baseboards. I do not find sufficient evidence to conclude that all of the baseboards were damaged. It appears that only a small section by the tub has been damaged. I do not find sufficient evidence to conclude that the closet floor was damaged by the Tenant. There is no evidence that the closet subfloor was found to be wet at the inspection. If recent water damage to the closet floor has occurred, I would expect the closet door to be damaged as well as the main bathroom door. It was not.

I find the bathroom door was damaged by excessive water. I find the cost of replacement and installation of \$290 to be reasonable.

Kitchen Area

Walls in the suite, including the kitchen area are finished with drywall and painted beadboard wainscotting. Beadboard with trim is also installed as counter top backsplash in the kitchen area. The Landlords' photographic evidence shows considerable dirt and grim on a section of this backsplash which also contains two light switches and a duplex GFI plug. The note on the photograph indicates that the grease and oil cannot be painted over and that there are burn marks on the GFI receptacle. The Landlords seek costs to replace the beadboard, trim and GFI receptacle. The Landlords sought compensation of \$1,514 to replace the beadboard, trim and GFI receptacle. The Tenant denied causing any damage to the area and referred to the photographs he provided in evidence.

As stated previously, the Landlords' photographs depict the area as unclean while the Tenant's photographs show the area as being in reasonably clean condition. The Landlords have no direct knowledge of the condition of the premises on July 31, 2022 and the contractor who took the photos was not at the hearing. There was no reasonable explanation for the difference in the evidence. The Landlords' evidence must, on the balance of probabilities, outweigh the evidence of the Tenant. In my opinion, it does not and the requested compensation for the beadboard, trim, and painting are denied.

The Landlords alleged that the laminate counter top had lifted due to excessive water and sought compensation of \$929 for costs to replace the counter top. A photograph of the sink and surrounding counter top was provided in evidence. A photograph of the same area was provided by the Tenant. Lifting of the laminate is not apparent in either photograph but there may be some around the lip of the stainless steel sink, which is top-mounted.

Water around a kitchen sink is commonplace. Any laminate designed for kitchen counters will be highly resistant to surface water, provided proper installation of the sink has been done. Lifting can only occur if the laminate is not properly glued to the substrate or the kitchen sink has not been properly caulked and clamped. In my opinion, if there is any lift of this counter top, it is not the fault of the Tenant. The request for compensation is denied.

The Landlords alleged that the Tenant had damaged two cabinet doors in the kitchen area and sought compensation of \$426 to replace and install new doors. A photograph of one door indicates that the joints have separated in several places causing the rails, stiles and panel to come apart. A photograph of the cabinet was also provided by the Tenant indicating the same damage but not as advanced. A photograph of the cabinet door directly under the sink indicated stains on the top edge of the door, described as water staining.

The Tenant acknowledged the damage but stated they had used the cabinets normally and the door had simply come apart with normal use. The Tenant suggested that the cabinets were perhaps improperly assembled.

The cabinet doors are of typical construction. The rails and stiles are butt joined with two dowels. Presumably they are glued together. There is no evidence of mechanical damage. None of the dowels appear to be broken. Joinery of this type will frequently loosen over time or in dry environments under normal use.

In my opinion, neither of these doors was damaged by improper nor negligent use by the Tenant. The door which has come apart certainly does not warrant replacement. It can easily be re-glued. If the door under the sink was stained by water, it likely originated from the sink lip as the top edge is concealed when the door is shut. As outlined above, in my opinion, any leakage from the sink lip is not the result of the Tenant's negligence or misuse.

Other Alleged Damages

The Landlords alleged that the Tenant had spattered grease from the outdoor grill on the deck and sought compensation of \$280 to sand and repaint the deck. Photos of the deck show some spatters and other marks both near the grill and in other areas. The Tenant stated that the deck required refinishing in any case. The Landlords acknowledged that they planned to refinish the deck. I note that the Tenant is not the sole user of the deck or the grill. I find the grease spatters to be trivial and do not warrant refinishing of the deck given that it will soon be refinished as part of the general renovation of the residential complex. The Landlord's request for compensation is denied.

The Landlords alleged that one dresser drawer knob was missing and sought compensation of \$30 to replace the knob. As there was no inspection report to determine if the knob was present at the commencement of the tenancy, the request for compensation is denied.

The Landlords alleged that the Tenant took the grill propane tank at the end of the tenancy agreement and sought compensation of \$115 to replace the tank. The Tenant acknowledged he had the tank and would return it to the Landlords. In my opinion, it is reasonable to order the Tenant to pay the Landlords compensation of \$115 unless the propane tank is returned to the Landlords.

Cleaning

The Landlords alleged that the Tenant had left the premises in an unclean condition and sought compensation for cleaning of \$400. I have outlined the difference in the photographic evidence previously and the reasons I assign more weight to the Tenant's evidence. In my opinion, the Tenant's photographic evidence indicates a reasonably clean suite and I assign more weight to that evidence than that provided by the landlord. The Landlord's request for relief is denied.

Vital Services

The Tenant alleged that the Landlords had shut off the hot water to the premises from July 24 to July 31, 2022. The Tenant did not specify the relief they sought for the alleged breach. The Landlords denied shutting off the hot water.

The Landlords testified that they had notified the Tenant on July 24, 2022 that one hot water tank and circulating pump would be turned off but the remaining tank would continue to supply hot water but not as quickly. There was no evidence as to the resultant hot water temperature or volume. There is no evidence that the Tenant contacted the Landlords to report the problem. I do not find sufficient evidence to find a breach of section 33.

Summary of Compensation and Order

I find the Landlords in breach of their obligations pursuant to section 18 of the *Residential Tenancies Act*. I find the security deposit and accrued interest to be \$1500.16. I find the Tenant in breach of their obligations pursuant to section 42. I find reasonable compensation to be \$965. An order shall issue requiring the Landlords to return the security deposit and accrued interest less the compensation for repairs of damages in the amount of \$535.16.

The order shall also require the Tenant to pay the Landlords additional compensation of \$115 for the missing propane tank unless the tank is returned to the Landlords.

Security deposit	\$1,500.00
Interest	0.16
Bathroom door repair	(290.00)
Bathroom floor repair	(475.00)
Bathroom floor repair	<u>(200.00)</u>
Due to Tenant	\$ 535.16

Hal Logsdon
Rental Officer