

IN THE MATTER between **RN and BJ**, Applicants, and **YKDPM**, 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:

RN and BJ

Applicants/Tenants

-and-

YKDPM

Respondent/Landlord

REASONS FOR DECISION

<u>Date of the Hearing:</u>	October 18, 2022
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	RN, the Applicant BJ, the Applicant JE, representing the Respondent
<u>Date of Decision:</u>	November 4, 2022

REASONS FOR DECISION

An application to a rental officer made by RN and BJ as the Applicants/Tenants against YKDPM as the Respondent/Landlord was filed by the Rental Office August 10, 2022. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was personally served on the Respondent August 31, 2022.

The Tenants alleged the Landlord had failed to repair damages to the heating supply system in a timely manner. An order was sought for compensation for demonstrable monetary losses suffered as a result of the Landlord's breach.

A hearing was held October 18, 2022, by three-way teleconference. RN and BJ appeared as the Applicants. JE appeared representing the Respondent.

Tenancy agreement

The parties agreed that a written tenancy agreement had been entered into between them for a tenancy that began February 1, 2016, at a monthly rent of \$2,100 plus utilities. The monthly rent was increased, in accordance with the *Residential Tenancies Act*, to \$2,400 plus utilities as of April 1, 2022. I am satisfied a valid tenancy agreement is in place in accordance with the Act.

Repairs

The rental premises is an apartment in a multi-unit residential complex. Heat is provided throughout the residential complex by an in-floor heating system. In April 2022, while a contractor was installing new transition strips in the flooring to the Tenant's premises, the contractor accidentally drilled a hole into the in-floor heating pipe causing a leak. A heating contractor was immediately called in to assess and mitigate the damage. He confirmed the leak and to prevent the heating fluid from flooding the flooring he shut the zone off for the rental premises. Doing so meant the Tenants would not have heat delivered directly to their premises, but the heating contractor assured the Tenants their unit would benefit somewhat from the radiant heat coming from the neighbouring units and common areas given the in-floor heating system extended throughout the entire building. The Tenants were provided with electric heaters to accommodate the lack of direct heat to the rental premises and to supplement the radiant heat.

Unfortunately, due to the age of the in-floor heating system, the original manufacturer no longer being in business, and the Landlord's contractor experiencing staffing issues, the contractor's efforts to resource replacement parts to repair the damaged pipe were hindered for a lengthy period of time. In September, the contractor finally recommended that the Landlord "lift" the concrete flooring sufficiently to get a look at the pipes so as to measure them for adequate alternative replacement parts. This was done in mid-September, with the contractor initially attending on the 19th and completing the repair by the 23rd.

In effect, the heating system was non functioning from April 13th to September 23rd. However, it was acknowledged by all parties that the heating system would have been turned off entirely for the summer months, usually from about June 15th to September 1st.

When the Tenants made this application in August, it was in a pre-emptive effort to ensure they would not be left in an unheated premises when the cold months started. Up until that point, the Applicants felt they were not being effectively communicated with by the Landlord as to the anticipated repair time.

At the hearing, the Landlord acknowledged their obligation to effect the required repairs and accepted responsibility for them. The Landlord confirmed that they had committed early on to compensate the Tenants for the increased electricity costs resulting from having to use the electric heaters, and were just waiting on the September electricity bill to calculate the total increased costs compared to the 2021 period. At the hearing, the Landlord also offered to compensate the Tenants for the disruption of their possession and enjoyment of the premises resulting from the non functioning heating system in the amount of \$1,000.

Rather than accepting the Landlord's offer, the Tenants opted to accept the Rental Officer's calculation of adequate compensation for the period without heat. I agreed to assess for an abatement of rent from April 15th to June 15th, and I agreed to consider an abatement of rent for September dependent on a review of actual temperatures and their likely impact on the Tenants' comfort in the rental premises. I also agreed to calculate the difference in electricity costs for the period from April 15th to June 15th and the period from September 1st to 23rd.

The Tenants were tasked with providing their electricity bills for April to September 2021 and 2022, as well as any additional communications they might have to clarify the efforts to obtain updates from the Landlord on the status of the repairs. The Landlord was tasked with providing, if possible, communications from her contractors to verify the process and progress of the research and repairs.

At the hearing, the Landlord further identified that due to an accounting error in late 2021 the Tenants currently carried rental arrears of \$57.30. The Tenants have been paying their rent with automatic charges against their credit card. The Landlord had granted the Tenants a credit for storage fees in October 2021 which was given by processing the credit card payment for less than the value of the rent for that month. Unfortunately that reduced amount was processed for two or three of the following months before it was caught, resulting in the rent technically not having been paid in full for those months. The arrears of \$57.30 have been carried on the rent account since then.

It was clarified at the hearing that regardless of where the error originated, ultimately, it is the Tenants' responsibility to ensure the rent is getting paid in full when due. The Tenants did not dispute their liability for the claimed rental arrears. It was agreed to deduct the \$57.30 from the total amount of compensation I decide to grant from this hearing.

Determinations

The requested documents were received and reviewed by me. I also referenced the actual temperatures in Yellowknife for the month of September on The Weather Network website. The average daytime temperature from September 1st to September 23rd was 15 degrees, while the average nighttime temperature for the same period was 6 degrees. Accounting for the heat provided by the electric heaters supplementing the radiant heat from the rest of the building, I determined that it would not be unreasonable to assess an abatement of rent for the seven days where the daytime temperate was less than 13 degrees. An abatement of rent of 15 percent to account for the disruption to the Tenants' possession and enjoyment of the rental premises will be assessed for half of April, all of May, half of June, and seven days in September, calculated as follows:

April - half month	\$1,200.00
May - full month	\$2,400.00
June - half month	\$1,200.00
September - 7 days	\$560.00
Total	\$5,360.00
15% Abatement	\$804.00

The electricity bills were provided for several months, but my focus remained on the months specifically affected by the non functioning heating system, that being April, May, June, and September. The damage occurred on April 13th which is the date the Tenants began relying on the electrical heaters to supplement the radiant heat from the building. The heating system would have been turned off for the summer season on or about June 15th and then turned back on about September 1st. The Landlord agreed to compensate the Tenant for electricity usage over the average used, compared to 2021. I am satisfied the Tenant is entitled to the prorated difference for the cost of electricity for the half month of April, the full month of May, the half month of June, and three-quarters of the month of September. The September portion is representative of the period before the heating system was repaired. Compensation for the increased electricity costs are calculated as follows:

Month	Full 2021	Full 2022	Difference	Prorated Difference
April - 50%	\$120.57	\$190.79	\$70.22	\$35.11
May - 100%	\$107.05	\$189.46	\$82.41	\$82.41
June - 50%	\$112.98	\$103.35	(\$9.63)	(\$4.82)
September - 75%	\$79.68	\$159.33	\$79.65	\$59.74
Totals	\$2,441.28	\$2,664.93	\$241.91	\$182.08

I find the Landlord liable to the Tenant for demonstrable monetary losses suffered as a direct result of failing to repair the heating system to the rental premises within a reasonable period of time in the amounts of \$182.08 for increased electricity usage and \$804 for a rent abatement. After deducting the rental arrears of \$57.30, an order will issue requiring the Landlord to pay compensation to the Tenants in the total amount of \$919.14.

Adelle Guigon
Rental Officer