

IN THE MATTER between **AGR**, Applicant, and **NF**, 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, regarding a
rental premises located within the **city of Yellowknife in the Northwest Territories**.

BETWEEN:

AGR

Applicant/Tenant

-and-

NF

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: November 2, 2022

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: AGR, the Applicant
HC, KC and JK, representing the Respondent

Date of Decision: November 3, 2022

REASONS FOR DECISION

An application to a rental officer made by AGR as the Applicant/Tenant against NCHYRF as the Respondent/Landlord was filed by the Rental Office September 15, 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 on September 16, 2022.

The Applicant alleged the Respondent had failed to maintain the rental premises in a good state of repair and fit for habitation during their tenancy. An order was sought for compensation for the full period of the Applicant's tenancy.

A hearing was held by three-way teleconference on November 2, 2022. AGR appeared as the Applicant. HC, KC, and JK appeared for the Respondent.

At the hearing, I reserved my decision to consider the evidence and pending receipt of further information regarding a request to transfer rental units received from the Applicant's son on April 8, 2022. This information was provided to the Rental Office and the Applicant on November 2, 2022.

Preliminary matter

At the hearing, I noted the Respondent is no longer known as NCHYRF, they are now known as NF. The style of cause is amended accordingly.

Tenancy agreement

A copy of the tenancy agreement was provided, establishing a residential tenancy agreement between the parties for the period March 1, 2021 to April 30, 2022, and continuing month to month. The rent is \$1,740 per month.

Landlord's obligations - maintain rental premises in a good state of repair

The Applicant alleged that the property was full of mould, members of the family have health issues, and despite notifying the Respondent of the issues on various occasions no action was taken to fix the problem and sought a full refund of their rent paid. The Applicant provided as evidence:

- recent photos showing water and mould damage in various areas in the rental premises;
- an email dated February 4, 2022 to the landlord saying they had contacted the office on many occasions about the leakage of two windows in the bedrooms, and roof leakage in one bedroom ceiling and that the apartment had become unlivable and they were seeking a new place to move to.
- copy of the landlord's maintenance record, noting the tenant had called April 19 - "Unit leaking, bathroom and bedrooms ceiling, tenant and family have stated that there is a lot of mold in the rooms, asking if there is anything we can do to clean the mold? L [maintenance person] to go over this week".

At the hearing, the Applicant testified that when they moved into the rental premises in March 2021, the unit was in very good condition, but when winter came, the problems started with water leaking and mould. They also testified that although the unit was okay in the summer, they are starting to have water leakage and mould problems again as shown in the photos provided with the application. I asked how this affected them and their use of the rental unit. The Applicant reported that there is the smell of mould, despite attempts to clean it, and members of the family are getting sick, including a family member who has asthma.

The representatives for the Respondent testified that L, their maintenance person, inspected the rental premises after the complaint was made April 19, 2022, and confirmed that there was condensation and significant amounts of mould in the unit. The following week, the Applicant was called and informed that they would need to move out of the rental premises to allow extensive repairs to be carried out. At that time, they offered to transfer the Applicant to another comparable rental unit, but the Applicant refused.

They also testified that they made further offers to move the Applicant in the summer of 2022 and tried to convince them of the importance of moving out so repairs could be made, expressing concern to the Applicant about the health impacts on their family. The Applicant was out of town, and the Applicant's son acting on his behalf, requested a larger apartment at the same rent and when that was not forthcoming, he refused the move.

At the hearing, I asked the Respondent if they would usually provide some assistance to a tenant who was required to move because of maintenance issues. The Respondent said that they would provide support for moving costs with a local moving company and could do that in this situation. The Applicant stated that they are now willing to move to a comparable apartment and there was some discussion about a unit that would be available soon and steps to be taken to make that happen.

At the hearing, I said this seemed like a reasonable solution to the Applicant's situation and would reserve my decision in order to review the evidence and testimony and consider if any compensation was due to the Applicant for their loss of enjoyment of the rental premises.

Under subsection 30(1) of the *Residential Tenancies Act* (the Act), a landlord shall (a) provide and maintain the rental premises in a good state of repair and fit for habitation during the tenancy and (b) ensure that the rental premises comply with all health, safety and maintenance standards required by law. Under subsection 30(5) of the Act, a tenant is required to give notice of any substantial breach of the landlord's obligation under subsection 30(1), and under subsection 30(6), a landlord shall, within 10 days, remedy the breach. Further, under paragraph 30(4)(d) of the Act, on application by the tenant, a rental officer may make an order requiring the landlord to compensate the tenant for loss that has been or will be suffered as a direct result of the breach.

Based on the evidence and testimony of the parties I understand the following occurred:

- March 1, 2021 - the Applicant commenced their tenancy, the apartment was in good condition and there were no problems. As it got colder (sometime in fall early winter of 2021) problems started with water and mould. Applicant was not sure of dates.
- January 3, 2022 - the Respondent's first record of a report from the Applicant of the issues with the rental premises;
- February 4, 2022 - email from the Applicant to Respondent raising issues with the rental premises and mentioning past complaints;
- April 8, 2022 - Respondent received application to transfer rental units from Applicant's son;
- April 19, 2022 - Applicant called to report issues with water and mould;
- April 22, 2022 (later in the week exact date not known) - Respondent's maintenance staff visited the rental premises.
- April 25-29, 2022 (next week, exact date not know) - Respondent contacted Applicant by phone, reported that they needed vacant possession of the rental premises to carry out the repairs and offered to transfer the Applicant to a comparable rental unit.
- July 2022 - Respondent again contacted Applicant to offer transfer to a comparable rental unit.

Based on the evidence and testimony, the Respondent was informed by the Applicant that there were issues with water and mould in the rental unit on January 3, 2022, but did not take action until after the Applicant's call on April 19, 2022, when the maintenance staff inspected the unit and the offer was made to transfer the Respondents.

Although it appears that the Applicant was taking action to try to find a unit to move into (transfer request April 8, 2022), I don't think this is relevant, as it was still the Respondent's responsibility to investigate and remedy the breach within 10 days. The Respondent was not able to provide evidence or testify to any action to investigate the water and mould issue raised on January 3, 2022 until the maintenance staff did their investigation in April 2022.

At the hearing, there was some disagreement in testimony about the suitability of the rental premises that the Respondent offered to the Applicant. The Applicant testified that a row-house was offered which was bigger and more expensive. They turned down this offer because they couldn't afford it. The Respondent testified, in addition to the row house, a comparable apartment was also offered.

Despite the differing testimonies, I am convinced that an offer was made and that there was a willingness on the part of the Respondent to negotiate an acceptable alternative rental premises with the Applicant. The Applicant could have taken steps to work with his landlord to secure a comparable rental unit to transfer to, but chose not to.

Based on the evidence and testimony, I am satisfied that the Respondent has breached their obligation under the Act and compensation is justified. I think it is fair to compensate the Applicant for their loss of the full use of the rental premises for the period January 13, 2022 to April 30, 2022. This period begins 10 days after the initial report of the water and mould issues and ends at the end of a rental period, when the Applicant had the option of moving to another rental unit.

The Applicant reported that the issues were primarily in the two bedrooms and they had to deal with the smell of the mould, attempting to clean the mould, and felt that it had impacted their health. As the water and mould issues were mainly in the two bedrooms, I think compensation of loss of use of 1/3 of the rental premises during the period from January 13, 2022 to April 30, 2022 is fair. Based on monthly rent of \$1,740, their rent during this period was \$6,286.45 (January (19 days) \$1,066.45, February \$1,740, March \$1,740, April \$1,740). One third of this amount is \$2,095.48. I find the Respondent responsible for compensating the Applicant \$2,095.48 for the loss of full use of the rental premises.

Orders

An order will issue requiring the Respondent to pay the Applicant \$2,095.48 as compensation for loss of full use of the rental premises as a direct result of failing to maintain the rental premises in a good state of repair and fit for habitation (p. 30(4)(d)).

Janice Laycock
Rental Officer