

IN THE MATTER between **RI**, Applicant, and **#AL and GB and DB**, Respondents.

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:

**RI**

Applicant/Tenant

-and-

**#AL and GB and DB**

Respondents/Landlords

**REASONS FOR DECISION**

**Date of the Hearing:** December 7, 2022

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

**Appearances at Hearing:** KH, representing the Applicant/Tenant  
DB, representing the Respondents/Landlords

**Date of Decision:** December 7, 2022

### **REASONS FOR DECISION**

An application to a rental officer made by RI as the Applicant/Tenant against #AL, GB, and DB as the Respondents/Landlords was filed by the Rental Office October 31, 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 Respondents by email confirmed received November 16, 2022, and by courier signed for November 17, 2022.

The Tenant alleged the Landlord had failed to return the security deposit in accordance with the *Residential Tenancies Act* (the Act). An order was sought for the return of the security deposit.

A hearing was held December 7, 2022, by three-way teleconference. KH appeared representing the Applicant/Tenant. DB appeared representing the Respondents/Landlords.

#### **Tenancy agreement**

Evidence was presented establishing a residential tenancy agreement between the parties commencing February 1, 2019. The Tenant gave the Landlord written notice July 28, 2022, to end the tenancy September 30, 2022. The Tenant vacated the rental premises by September 30<sup>th</sup> and returned the keys to the Landlord's property manager October 3<sup>rd</sup> after repeated unsuccessful attempts to arrange an exit inspection. I am satisfied a valid tenancy agreement was in place and that it was terminated by the Tenant in accordance with the Act.

#### **Security deposit**

The Tenant paid a security deposit of \$2,500 on February 1, 2019. An entry inspection was conducted and a report produced on February 1, 2019, a copy of which was provided to the Tenant.

The Landlord acknowledged that an exit inspection was not conducted at the end of the tenancy. They explained that the rental premises is a unit on the second floor of a condo corporation building, and that in late September the boiler in the unit above the rental premises exploded causing significant damages and flooding impacting the rental premises. Due to the extent of the damages and safety risk they imposed, the condo corporation immediately secured both premises from being accessed by any parties other than the construction workers and inspectors. As a result, the Landlord was unable to enter the rental premises to conduct the exit inspection, and given the damages they would have been hard pressed to assess what damages were caused during the tenancy and what damages were caused by the flooding.

The Landlord also acknowledged that they did not give the Tenant written notice of their intention to retain the security deposit, nor is there evidence to suggest the Landlord even notified the Tenant that there had been a flood in the rental premises. The Landlord believes the Tenant had already vacated the rental premises by the time the flooding occurred. The Landlord felt it was unfair to expect them to return the security deposit before the condo corporation's repairs were completed and before the Landlord could even access the premises themselves, particularly when the Tenant could make their own claim with the insurance company.

The Landlord was also of the opinion that the tenancy was not over because they do not have possession of the premises. However, they failed to recognize that they do not have possession of the premises because of the condo corporation's actions, not because of the Tenant's actions. The Tenant ended the tenancy in accordance with the Act effective September 30, 2022, and vacated the premises on or before that date.

While the Tenant may very well have vacated the rental premises before the end of September, they continued to accept responsibility for the tenancy up to the termination date of September 30<sup>th</sup>. Additionally, the Tenant provided evidence of repeated efforts to engage with the Landlord to prepare for the end of the tenancy and schedule the exit inspection, none of which were responded to by the Landlord. The provided emails indicate that there had been no communication from the Landlord since before September 8<sup>th</sup>.

The flooding originated in the neighbouring unit and, therefore, the damages to the rental premises resulting from the flooding cannot be held against the Tenant. If the exit inspection cannot be conducted, regardless of it being through no fault of either the Landlord or the Tenant, then the Landlord is not entitled to retain the security deposit against costs of repairs. Particularly given at this point the Landlord cannot identify what, if any, damages existed before the flood that the Tenant would be liable for. Once the Landlord is able to access the premises and assess for damages that are outside the scope of the flooding repairs then they can approach the Tenant with a detailed invoice for costs. If the Landlord and Tenant at that point remain in dispute about the costs being claimed for repairs by the Landlord, then the Landlord may make their own application to a rental officer for those claims and they will be heard.

Subsection 17.1(1) of the Act says that the Landlord *shall* conduct an exit inspection and offer the Tenant reasonable opportunities to participate in the inspection. The Landlord was unable to comply with this requirement through no apparent fault of his own, but he also did not even notify the Tenant that he wouldn't be able to. The Landlord's inability to conduct the exit inspection was also not the fault of the Tenant.

Subsection 18(3) of the Act says that the Landlord *shall* return the security deposit and an itemized statement of account to the Tenant within 10 days after the Tenant vacates the rental premises. The Landlord did not comply with this requirement either.

Subsection 18(4) of the Act does provide for the Landlord to retain the security deposit against costs for repairs of damages caused by the Tenant or persons permitted on the premises by the Tenant, but subsection 18(5) revokes that provision where either the entry or exit inspections have not been conducted and reported as required.

Subsection 18(7) of the Act provides that if the Landlord intends to withhold any part of the security deposit they *shall* notify the Tenant in writing of that intention, including providing an itemized statement of account for the security deposit and a final itemized statement of account for repairs. There are further provisions under subsections 18(9) and 18(10) where the Landlord is unable to determine the correct amount of the costs for repairs within 10 days they *shall* include in the 10-day notice an estimate for the costs of repairs and provide a final itemized statement for the costs of repairs within 30 or 45 days of the day the tenant vacated the premises. The Landlord did not provide the Tenant with the required written notice of intention to withhold the security deposit at all, let alone within 10 days or with an estimate of costs, or an explanation of why they could not even provide an estimate of costs.

Despite the Landlord being unable to fulfill their obligations respecting the inspection of the premises through no fault of their own, they were still required to return the security deposit to the Tenant as a result. The Landlord's failure to notify the Tenant, as required, that they intended to retain the security deposit is a further breach of their obligations respecting the management of the security deposit.

I find the Landlord has failed to comply with their obligation to return the security deposit as required. An order will issue that the Landlord return the security deposit to the Tenant, including interest, in the total amount of \$2,502.83.

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Adelle Guigon  
Rental Officer