IN THE MATTER between **KA**, 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 **Adelle Guigon**, Rental Officer, regarding a rental premises located within the **city of Yellowknife in the Northwest Territories;**

BETWEEN:

**KA**

Applicant/Tenant

-and-

**NF**

Respondent/Landlord

**REASONS FOR DECISION**

**Date of the Hearing:** **April 19, 2023**

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

**Appearances at Hearing:** **KA, the Applicant**
**LT, Tenants Association NWT, for the Applicant**
**JK, District Manager, for the Respondent**
**JR, District Director, for the Respondent**

**Date of Decision:** **June 5, 2023**

## REASONS FOR DECISION

An application to a rental officer made by KA as the Applicant/Tenant against NP as the Respondent/Landlord was filed by the Rental Office March 21, 2023. 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 email, deemed received March 25, 2023.

The Tenant alleged the Landlord had failed to provide and maintain the rental premises in a good state of repair and in compliance with safety standards required by law, had failed to adequately respond to calls for repairs in a timely manner, had failed to reasonably consider assignment of tenancy candidates, had failed to take reasonable measure to mitigate losses, improperly charged late payment penalties, and improperly charged for cleaning costs. An order was sought for compensation for losses suffered by the tenant, the return of a portion of the paid rent, credit for improperly applied late payment penalties, and the return of the cleaning costs.

A hearing was held April 19, 2023, by three-way teleconference. KA appeared as the Applicant/Tenant. LT, administrator of the Tenants Association NWT, appeared representing the Tenant. JK, District Manager, and JR, District Director, appeared representing the Respondent/Landlord. The hearing was adjourned pending the exchange of and reply to supplementary documents, after which this decision was made.

**Preliminary matter**

The application to a rental officer named NP as the Landlord. At the hearing, it was confirmed by the representatives for the Landlord that the proper operating name is NF. With the agreement of all parties, the application was amended accordingly and the style of cause going forward will be KA v. NF.

**Tenancy agreement**

The written tenancy agreement was not provided as part of the application, nor was it entered as evidence at the hearing. However, the parties agreed that a fixed-term tenancy agreement had been entered into commencing May 1, 2022, and ending April 30, 2023. The Tenant notified the Landlord on or about February 11, 2023, of her intention to vacate the rental premises March 10, 2023, at which time she did vacate the rental premises. I am satisfied a valid tenancy agreement was in place in accordance with the Act.

**Assignment of the tenancy**

In an effort to mitigate her losses for breaking the lease, the Tenant proactively listed her rental premises as available to rent for March 10th. Despite forwarding several interested parties to the Landlord to apply for the assignment, the Landlord was unable to secure a new tenant for occupancy until April 1st. The Tenant claimed that the Landlord failed to fulfil their obligation to mitigate their losses by not vetting prospective tenants in a timely manner to secure a new tenant for occupancy starting March 11th, and that the Landlord effectively refused to agree to an assignment of the tenancy agreement. As a result, the Tenant sought the return of her rent for the period of March 11th to 31st.

The Landlord disputed this claim, indicating that they were not aware of any applications being made specifically to take over the Tenant's lease, and that the termination date they were working with was for March 31st, not March 10th.

The sections of the Act speaking to tenants terminating tenancy agreements specifies that fixed-term tenancy agreements may be terminated by the tenant giving the landlord at least 30 days' advance written notice for the last day of the fixed-term. In this case, the earliest the tenant could terminate the tenancy would have been for April 30, 2023, and she would have had to have given the landlord written notice no later than March 31st.

If the tenancy agreement had been for a month-to-month period rather than a fixed-term period, then the tenant would have had to have given the landlord at least 30 days advance written notice to end the tenancy on the last day of the month. Meaning, if a tenant wanted to end their monthly tenancy agreement March 31st they would have to give written notice no later than March 1st.

There is provision in the Act for a tenant to assign their lease to another person to take over. The assignment must be agreed to in writing by the Tenant assigning the lease, the Tenant taking over the lease, and the Landlord. The Landlord cannot unreasonably refuse an assignment. This means that the Landlord has the right to vet the proposed assignee in the same manner they would any prospective tenant.

The only provision in the Act for a tenant to terminate a tenancy agreement in the middle of a month or earlier than the last day of a fixed-term tenancy agreement falls under section 50 of the Act, where it says that if a landlord and a tenant agree in writing to end the tenancy on a specified date, then the tenancy is ended on that date.

Where a tenant has not terminated the tenancy in accordance with the Act, the tenant remains liable for the rent for the remaining month(s) of the tenancy or until the Landlord secures a new tenant, whichever comes first.

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In this case, although it was certainly implied at the hearing, no evidence was presented establishing that the Tenant gave written notice to the Landlord of her intention to vacate. And no evidence was presented establishing that the Landlord agreed with the Tenant in writing to terminate the tenancy on March 10th. While I can accept that it is more likely than not that the Tenant did notify the Landlord by email that she would be vacating the rental premises on March 10th, and I can accept that it is more likely than not that the Landlord *acknowledged* the Tenant's notice, I cannot accept on a balance of probabilities that the Landlord *agreed in writing* to terminate the tenancy on March 10th. The Tenant in this case would have been liable for the rent for both March and April, except that the Landlord was able to secure a new tenant for April 1st. As a result, the Tenant was only held liable for the March rent, which had already been paid in full.

Further, while it does seem likely that at least some of the interested parties who responded to the Tenant's advertisement applied to the Landlord for accommodation, I cannot be satisfied that the Landlord was made aware that those parties were specifically applying to rent the Tenant's premises, nor can I be satisfied that the Landlord did not adequately vet prospective tenants. No evidence was presented to establish that an assignment agreement was entered into and/or provided with an application for accommodation to the Landlord. It seems more likely than not that the Landlord did vet applicants to rent premises and it seems more likely than not that the applicants who passed the vetting process were either not interested in the Tenant's premises or were not available to commence their tenancy in the middle of the month.

I am not satisfied that the Landlord failed to comply with their obligation to mitigate their losses upon the early termination of the tenancy by the Tenant. I am also not satisfied that the Landlord refused to agree to an assignment of the tenancy agreement given an assignment application was not brought to them for consideration. The Tenant's application for the return of a portion of March's rent is denied.

**Late payment penalties**

The lease ledger entered into evidence represents the Landlord's accounting of monthly rents and payments received against the Tenant's rent account. This includes any late payment penalties the Landlord charged as a result of rent payments being received after the first of the month.

The Tenant disputed that she was liable for most of the late payment penalties that were charged. She provided statements supporting her claim that she had paid her rent through the Landlord's payment portal on or before the due date which are appearing on the Landlord's ledger as being processed a few days later. The Tenant maintains that she should not be penalized for processing delays which are out of her control. I agree.

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The Landlord's representatives acknowledged that their payment portal does not register the payment in their accounting system until it is processed through the bank, and that their accounting system automatically generates the late payment penalties based on when the payments are received in their account. The Landlord's representative agreed to withdraw all the late payment penalties from the Tenant's ledger, which amounts to a total of $72.

However, an updated lease ledger printed April 20, 2023, only reflected a reversal of $30. Given the Landlord's agreement to withdraw all the late payment penalties charged, an order will issue for the Landlord to return the remaining balance of $42 to the Tenant.

**Laundry room access**

The tenancy agreement included access to "coin-op" laundry room facilities in the residential complex. The Tenant claimed that throughout her tenancy the laundry room would always have water pooled on the floor creating a safety hazard for which she was not inclined to use the facilities. She also claimed that the appliances themselves were not kept clean. As a consequence, the Tenant was not comfortable using the laundry room in the building and ended up doing her laundry either at friends' places or at the laundromat. The Tenant claimed an estimated value of $50 per month as compensation for not being able to use the laundry room.

The Landlord's representatives acknowledged that there was a problem with the drain pipes which took some time to identify the cause and has yet to be fully resolved. They conceded that the problem did often result in water pooling in the laundry room, but not that it happened all the time. They also disputed that the appliances were not cleaned as they have a contractor who regularly attends to clean and maintain them.

The Tenant did provide 22 photographs of the laundry room taken between August and March, most of which show the water pooled at the entrance to the laundry room. The photographs also show that at some of those times the floors required cleaning and the garbage bin required emptying, but none of the photographs show the condition of the interior of the appliances.

I am not satisfied that the appliances themselves were not kept clean and useable. However, I am satisfied that the pooling of the water at the entrance to the laundry room repeatedly created a safety hazard. For that reason I find the Tenant is entitled to some compensation for the disruption in her possession and enjoyment of the residential complex which caused her to do her laundry elsewhere. I am not satisfied that a flat, arbitrary rate of $50 per month is reasonable. I am prepared to grant compensation based on the costs of doing one load of laundry per week at the laundromat, being $3.50 each for the washer and dryer. The calculation results in $7 times 40 weeks for a total of $280.

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**Heat**

The Tenant claimed the landlord failed to comply with their obligation to provide heat to the rental premises and to effect repairs to the heating system in a timely manner, and claimed compensation for the disruption in a value equivalent to one week's hotel stay.

On November 17, 2022, the Tenant submitted an urgent maintenance request because the main heating system in the rental premises was not working. The Tenant claimed that the maintenance worker attended, but had to come back three or four times over the course of a week before the heating system finally worked. She relied on the work history of the maintenance request to support her claim for the length of time it took to effect the repairs, which reported that the maintenance request was created November 17th and resolved November 21st. The Tenant claimed that she was not offered an alternate source of heat for the interim, but acknowledged that there was some heat coming from the bathroom radiator. The Tenant claimed that she was not offered alternate temporary accommodations, but she also continued to reside at the rental premises.

The Landlord explained that the dates referenced in the maintenance request work history reflected the dates the information was entered, not the dates the work was completed. The Landlord provided written statements from the maintenance personnel who responded to the work order indicating their recollection was that the maintenance staff attended the premises the night of November 17th and with the guidance of the chief engineer proceeded to change the zone valve. Both personnel returned the following morning to conduct further maintenance and ensured the heating system was working properly. The maintenance personnel were not required to return to the premises afterward, and did not receive any further calls for service. It was also noted by the maintenance personnel that they had upwards of 13 calls that week for heating system services, which may explain why the resolution was not entered into the work history until November 21st.

I am satisfied that the Landlord responded to the call for service in a prompt and timely manner, and resolve the heating issue within 24 hours of being notified there was a problem. I am not satisfied the premises was rendered uninhabitable, particularly given there was some heat coming from the bathroom radiator, the Tenant did not request additional heat sources, and the Tenant remained in occupancy of the rental premises. I am not satisfied that the resulting discomfort to the Tenant constitutes a substantial breach of the Landlord's responsibilities so as to justify compensation. The Tenant's claim for compensation is denied.

**Cleaning**

When the Tenant vacated the rental premises, an exit inspection was conducted with the Landlord. The Landlord acknowledged and documented that overall the premises was left in good condition, with some light cleaning required. The items requiring cleaning included the window sills, the bottom drawer of and behind the stove, and behind the fridge. The inspector estimated the light cleaning costs at the time at $80, which the Tenant accepted at the time and subsequently paid $78.93 against.

The Tenant is now disputing their liability for the light cleaning claiming that it did not exceed the ordinary cleanliness threshold established under the Act, and further disputed the value of such light cleaning as approaching the $80 charged.

The Act does establish that the Tenant is responsible for maintaining the ordinary cleanliness of the rental premises during their tenancy, and must return the premises to the Landlord at the end of the tenancy in that condition. Jurisprudence has established that ordinary cleanliness includes – particularly at the end of the tenancy: the wiping of walls, window sills, and baseboards; sweeping, mopping, and vacuuming; cleaning in, around, beneath, and behind all appliances; and cleaning all cupboards, closets, drawers, etcetera.

I am satisfied that the Respondent adequately cleaned the majority of the rental premises. I am satisfied that the identified outstanding items were the only outliers to meeting the ordinary cleanliness threshold. These were relatively minor issues that would have taken all of 10 to 15 minutes to remedy. As a result, I agree with the Tenant that the claim of $80 to effect that minor cleaning is unreasonable. I am prepared to grant the Landlord's costs at $40 plus GST, which totals $42. Deducting that amount from the $78.93 the Tenant already paid will result in an order for the Landlord to reimburse the Tenant $36.93.

**Additional claims**

The Tenant further made claims for compensation for moving expenses and for her security deposit and one month's rent at her new premises. These claims were made on the basis that the only reason she broke her lease was because she was unsatisfied with the condition of the rental premises and residential complex, and with the Landlord's response times to requests for service, and that as a result the tenancy agreement was frustrated. In effect, the Tenant was making a claim for pain and suffering.

However, I am not satisfied that the Landlord breached any of their obligations. In fact, in my opinion, their efforts to identify and resolve issues at the rental premises and residential complex have been reasonably timely. The only outstanding recurring matter appears to be with the drain pipe in the laundry room, which has been identified and targeted for repair.

The tenancy agreement was not "frustrated" because at no time was the premises rendered uninhabitable or unavailable for human occupancy.

Additionally, the Act does not provide for compensation for pain and suffering. It only provides for demonstrable monetary losses suffered as a direct result of a breach.

As such, the Tenant's claims for moving expenses, security deposit costs, and one month's rent are denied.

**Orders**

An order will issue requiring the Landlord to reimburse the Tenant the total amount of $358.93.

Adelle Guigon
Rental Officer