

IN THE MATTER between **HNT**, Applicant, and **BM**, 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:

HNT

Applicant/Landlord

-and-

BM

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: July 18, 2023

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: PS, representing the Applicant

Date of Decision: July 20, 2023

REASONS FOR DECISION

An application to a rental officer made by YHA on behalf of HNT as the Applicant/Landlord against BM as the Respondent/Tenant was filed by the Rental Office April 27, 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 registered mail, signed for May 10, 2023.

The Applicant alleged the Respondent had caused damages to the rental premises and had left the rental premises in an unclean condition. An order was sought for payment of costs for repairs and cleaning.

A hearing scheduled for May 30, 2023, was postponed by the Rental Officer. The hearing was rescheduled and held July 18, 2023, by three-way teleconference. PS appeared representing the Applicant. BM was served with notice of the hearing by registered mail, signed for July 5, 2023. The Respondent did not appear at the hearing, nor did anyone appear on the Respondent's behalf. The hearing proceeded in the Respondent's absence pursuant to subsection 80(2) of the *Residential Tenancies Act* (the Act).

Tenancy agreement

Evidence was presented establishing a residential tenancy agreement between the parties for subsidized public housing commencing March 29, 2017. The tenancy ended March 30, 2023, when the Respondent vacated the premises. I am satisfied a valid tenancy agreement was in place in accordance with the Act.

Previous orders

Rental Officer Order #17052 was issued November 27, 2020, and required the Respondent to remove a sliding lock from the unit door and not to breach his obligations respecting interfering with access to the premises again.

Rental Officer Order #17151 was issued in March 2021 and ordered the Respondent to comply with their obligation not to cause disturbances and not to breach that obligation again, not to breach their obligation to maintain the electricity account again, to comply with their obligation not to keep pets in the unit and not to breach that obligation again, not to tamper with fire safety devices, and to terminate the tenancy September 30, 2021, unless no further disturbances occurred and no further pets were present in the unit.

Rental Officer Order #17428 was issued January 5, 2022, and ordered the Respondent to pay rental arrears of \$537.05 and to pay costs of repairs of \$476.28, termination of the tenancy effective January 31, 2022, and eviction February 1, 2022. The monetary orders were effectively paid in full by May 4, 2022.

Rental arrears and security deposit

The lease balance statement entered into evidence represents the Landlord's accounting of monthly rents and payments received against the Respondent's rent account. As of May 4, 2022, the Respondent had accumulated rental arrears in the amount of \$563.38. The security deposit of \$1,628.27 was appropriately retained against the rental arrears leaving a remaining security deposit credit of \$1,064.89.

Replacement keys

The Applicant included, in their application, a claim of \$1,605 for costs to replace keys multiple times over the course of the tenancy. A document was provided that reflected 16 different dates between April 18, 2017, and November 10, 2022, with the Respondent's signature acknowledging receipt of 12 building keys, 9 unit keys, and 10 mailbox keys. The Respondent was not invoiced for any of these keys at the time they were issued to him, nor were any correlating charges reflected in the lease balance statement. The Applicant did not prepare an invoice for key replacements until March 30, 2023, at which time they charged costs for 11 building keys, 7 unit keys, and 9 mailbox keys.

The Applicant claimed at the hearing that when the Respondent signed for the keys on the provided document he was not only acknowledging receipt of the keys but also acknowledged that there would be a charge for them. However, nowhere on that document does it say anything about costs for replacing the keys.

It is clear throughout the Act that notices given regarding the tenancy must be given in writing to have any force or effect. The rules of natural justice and fair process further support the premise that a tenant cannot be held liable for a debt that they have not been notified of. An invoice is a form of written notice of a charge or claim being made.

Had the Respondent been given an invoice for each of the sets of key replacements and then proceeded not to pay them, then I could be satisfied that he was properly notified and charged and would be inclined to accept the debt. That is not what happened here. The Respondent may very well have been told at the time of each key replacement that there would be a charge imposed, but there is no evidence to support that he was, in fact, aware that he would be charged or how much he would be charged for. The Respondent cannot be expected to pay for a charge that he has not been invoiced for (notified of), let alone pay for it in a timely manner.

This brings us to the issue of legislated time lines for making a claim. Section 68 of the Act sets out that an application to a rental officer must be made within six months after the situation arose. It also sets out that the Rental Officer may extend the time for making the application where they are of the opinion that it would not be unfair to do so. There are only two incidents when keys were replaced that occurred within six months of the tenancy ending and within six months of the application being filed. However, I remain unconvinced that it is fair to charge a lump sum at the end of the tenancy for keys that were replaced at various times throughout the tenancy, the majority of which occurred more than six months before the application was filed.

I am not satisfied the Respondent was properly notified of the charges for replacement keys at or near the time when the replacements were provided. As such, I am not satisfied the Tenant is liable for those costs. The Applicant's claim for costs to replace keys in the total amount of \$1,605 is denied.

Repairs and cleaning

The Applicant provided the entry and exit inspection reports, photographs, work orders, invoices, and a statement of damages in support of their claims for the following:

| | |
|--|------------|
| Unit Lock Change - 23 June 2022 | \$210.00 |
| Mailbox Lock Change - 29 June 2022 | \$95.14 |
| Removal and disposal of items, garbage, debris | \$198.00 |
| Cleaning throughout | \$450.00 |
| Patching and painting walls throughout | \$2,475.00 |
| Replacing unit door and frame | \$1,600.00 |
| Reinstalling one sprinkler head | \$396.00 |
| Replacing six receptacle/switch plate covers | \$60.00 |
| Replacing one light switch | \$56.00 |
| Replacing two smoke detector | \$132.00 |
| Replacing window hardware | \$950.00 |
| Replacing kitchen counter top | \$1,800.00 |
| Replacing three interior door | \$1,200.00 |
| Replacing one door knob | \$75.00 |
| Reinstall radiator cover | \$500.00 |
| Replacing laundry room flooring | \$1,500.00 |
| Reinstall one light globe | \$100.00 |

| | |
|--------------|--------------------|
| Sub-total | \$11,797.14 |
| 10% Admin | \$1,179.71 |
| 5% GST | \$648.84 |
| Total | \$13,625.70 |

Upon reviewing the provided materials, I am satisfied that the Tenant is responsible for all of the referenced damages and should be held liable for the associated costs of repairs. My only concern is with respect to the costs being claimed for the kitchen counter top and the laundry room flooring. Both of those items require a consideration of depreciation based on their average useful life.

The Applicant was granted an opportunity to collect information on the dates the counter top and the flooring were installed, and to provide a breakdown of the labour and materials costs. The Applicant was also asked to provide the square footage of the laundry room in order to consider whether a proportion of the costs for the flooring may be necessary. The Applicant provided the requested information regarding the counter top on July 20, 2023, and in that correspondence withdrew the claim for the laundry room flooring.

As evidenced in the photographs, the kitchen counter top was irreparably damaged. There were two dents that cracked the counter and a large hole that had been dug through the counter top. It is abundantly clear that the counter top had to be entirely replaced due to the damages caused by the Tenant. However, the counter top was installed in 2013. Kitchen counter tops have an average useful life of 15 years, meaning the Landlord benefited from 10 years of use, or 66 percent of the average useful life, of the counter top before it was damaged to the point of requiring replacement. As such, while I am satisfied the Respondent is liable for the labour costs to replace the counter top, the Respondent is only liable for 33 percent of the costs of the counter top itself.

The Applicant submitted evidence that the counter top cost \$2,450 and the labour cost \$297. Thirty-three percent of \$2,450 amounts to \$808.50. I find the Respondent liable for the costs of replacing the kitchen counter top in the amount of \$1,105.

I find the Respondent liable for the total costs of repairs and cleaning, after accounting for the security deposit credit, as follows:

| | |
|--|---------------------------|
| Unit Lock Change - 23 June 2022 | \$210.00 |
| Mailbox Lock Change - 29 June 2022 | \$95.14 |
| Removal and disposal of items, garbage, debris | \$198.00 |
| Cleaning throughout | \$450.00 |
| Patching and painting walls throughout | \$2,475.00 |
| Replacing unit door and frame | \$1,600.00 |
| Reinstalling one sprinkler head | \$396.00 |
| Replacing six receptacle/switch plate covers | \$60.00 |
| Replacing one light switch | \$56.00 |
| Replacing two smoke detector | \$132.00 |
| Replacing window hardware | \$950.00 |
| Replacing kitchen counter top (depreciated) | \$1,105.00 |
| Replacing three interior door | \$1,200.00 |
| Replacing one door knob | \$75.00 |
| Reinstall radiator cover | \$500.00 |
| Reinstall one light globe | \$100.00 |
| Sub-total | \$9,602.14 |
| 10% Admin | \$960.21 |
| 5% GST | \$528.12 |
| Total | \$11,090.47 |
| Less security deposit credit | \$1,064.89 |
| Remaining balance | <u>\$10,025.58</u> |

Order

An order will issue requiring the Respondent to pay costs of repairs and cleaning in the amount of \$10,025.58.

Adelle Guigon
Rental Officer