

IN THE MATTER between **HNT**, Applicant, and **KF**, 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 **community of Wekweeti in the Northwest Territories**.

BETWEEN:

HNT

Applicant/Landlord

-and-

KF

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	September 20, 2023
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	EN, representing the Applicant CO, representing the Applicant
<u>Date of Decision:</u>	September 26, 2023

REASONS FOR DECISION

An application to a rental officer made by the NTHC as the Applicant/Landlord against KF as the Respondent/Tenant was filed by the Rental Office January 31, 2023. The application was made regarding a residential tenancy agreement for a rental premises located in Wekweeti, Northwest Territories. The filed application was personally served on the Respondent on February 9, 2023.

The Applicant claimed the Respondent had repeatedly not paid their rent and had rental arrears, and had not complied with their obligation to pay for utilities resulting in damages to the rental premises. An order was sought for payment of the rental arrears and tenant damages, to comply with the obligation to pay utilities, and to not cause further damages, as well as for termination of the tenancy agreement and eviction.

A hearing was held on March 15, 2023, by three-way teleconference. EN and CO appeared representing the Applicant. The Respondent did not appear, nor did anyone appear on their behalf. As sufficient notice was provided, the hearing proceeded in their absence as provided for under subsection 80(2) of the *Residential Tenancies Act* (the Act). This hearing was adjourned pending receipt of further details on the Applicant's claim for costs related to the repair of damages, information on the current condition of the rental unit (i.e. had their been any further damages from a freeze-up), and proof of service on the Respondent.

Further information was provided to the Rental Office and a hearing was scheduled to resume consideration of this application on May 31, 2023. On May 31, 2023, the Respondent did not appear and recognizing the impact of a recent death in the community, the Applicant agreed to move the hearing to a later date.

Another hearing was scheduled for August 2, 2023, however, due to problems with the teleconference line, this hearing was rescheduled to September 20, 2023. I requested the Applicant provide a breakdown of the actual costs for repairs (rather than estimates) including a breakdown of labour and materials and further details on the claim for costs associated with flight, freight, accommodation, and meals prior to the September hearing.

Further information was provided and a hearing was held on September 20, 2023, by three-way teleconference to resume consideration of the application. EN and CO, appeared representing the Applicant. The Respondent did not appear, nor did anyone appear on their behalf. As sufficient notice was provided, the hearing proceeded in their absence as provided for under subsection 80(2) of the Act.

I reserved my decision at the hearing in order to review the evidence and testimony.

Preliminary matters

This application was made by the NTHC, which is now known as “HNT”. The style of cause has been amended accordingly.

Tenancy agreement

The Applicant provided as evidence a written tenancy agreement between the parties for subsidized public housing under the Homeownership Entry Level Program (HELP). This agreement commenced on October 1, 2020, and continues month to month. The subsidized rent is currently \$375 per month. I am satisfied a valid tenancy agreement is in place in accordance with the Act.

The Applicant also testified that prior to the current tenancy agreement, they had a joint tenancy agreement for the rental premises with the Respondent and Daniel Wedawin.

Rental arrears

The Applicant provided as evidence a copy of the lease balance statement with charges and payments made up to August 8, 2023. This statement represents the Landlord’s accounting of monthly rent charged and payments made against the account during this tenancy. According to the statement the balance owing for rent is currently \$1,075.

At the hearing I asked if there had been any further charges or payments for rent since this statement was released. The Applicant testified that the rent for September is typically charged and paid later in the month, so there were no further charges or payments made on the account at this time.

I find based on the evidence and testimony that the amount owing for rent is \$1,075.

Obligations - written tenancy agreement - utilities/notice premises unoccupied

Under subsection 45(1) of the Act, where a tenant has undertaken additional obligations in a written tenancy agreement, the tenant shall comply with the obligations that are reasonable in all circumstances. Under the written tenancy agreement between the parties the Respondent agreed in section 8 to “pay for all utilities provided to the property (including but not limited to, fuel oil, wood, electricity, water, sewer services and garbage disposal), and under section 18 the Respondent promised to not leave the property unoccupied for longer than (b) twenty-four hours during the period from October 1st to April 30th of each year without prior written notice.

According to the evidence and testimony of the Applicant, the Respondent repeatedly did not comply with these obligations in breach of their tenancy agreement. These breaches resulted in freeze-ups and damage to the plumbing in the rental premises. The Applicant testified and provided copies of emails and notes detailing the events and communication with the Respondent:

1. January 28, 2019 (previous joint tenancy) - email, plumber that repaired furnace advised Applicant that oil tank gauge was on empty and he spoke to Respondent about this - “running a tank this low on fuel will cause continuing problems with dirt in fuel system and will cause the furnace to malfunction”. If ongoing problems with home, i.e. furnace going out or freeze-ups because of not having fuel in your tank this will be charged back to you as tenant damage. Respondent was advised by Landlord to keep enough oil in tank to avoid further freeze-ups.
2. November 5, 2019 (previous joint tenancy) - from notes - unit appeared to be abandoned, Respondent returned to community and was advised to notify landlord when out of town and to keep the fuel in the oil tank to avoid freeze-ups.
3. May 13, 2020 (previous joint tenancy) - from email - report from maintenance staff of further problems with plumbing in Respondent’s rental unit, leaky waterlines evidence of another freeze-up.
4. October 15, 2021 - from email - servicing of furnace by oil burner mechanic
5. December 7, 2021 - from photos - taken December 7, 2021 of freeze-up showing tank empty, and damages to plumbing.

6. February 7, 2022 - from email, Respondent reported problems with furnace but they were going to arrange for plumbers from Behchoko to deal with it. Landlord advised them to let them know what the outcome was.
7. April 14, 2022 - from email - Applicant found front entrance boarded up, entered from back door. Respondent not there, found furnace out and rental premises completely frozen-up.
8. September 2022 - from email - Respondent reported furnace not working, Applicant said if not able to get it going they would look at furnace following week.
9. November 2022 - from email - November 16, 2022, Respondent reported furnace keeps shutting off and they are going out of town on medical. Applicant's staff attended rental unit during the previous week and reported the Respondent was not there, no heat in the house and no fuel in the tank, further damages to the plumbing.

Based on the evidence and testimony I am satisfied that despite numerous warnings the Respondent did not comply with their obligation under section 8 of the written tenancy agreement to pay all utilities (keep the oil tank topped up), and left the rental premises unoccupied repeatedly without proper notice to the Landlord in breach of their obligation under section 18 of the written tenancy agreement.

Tenant damages

Under subsection 42(1) A tenant shall repair damage to the rental premises caused by the wilful or negligent conduct of the tenant. The Applicant testified and provided evidence that the negligence by the Respondent resulted in damages to the rental premises. On numerous occasions the Respondent breached their obligations under the written tenancy agreement and the heat went out in the rental premises resulting in freeze-ups and extensive damages to the plumbing.

According to the evidence provided by the Applicant, the Respondent complained that the furnace was malfunctioning. At the hearing I asked if this was the reason for the freeze-ups. The Applicant testified that they had made repeated repairs to the furnace and when it continued to malfunction it was because the fuel tank was low or empty. The Respondent was warned that not maintaining fuel in the tank would result in problems with the furnace and the Respondent would be responsible for any damages. However, despite these warnings, they repeatedly did not maintain fuel in the tank and left the unit unoccupied.

The Applicant claimed \$26,690, for repairs related to damages to the rental premises after the latest freeze-ups in April 2022 and November 2022. They testified that there were previous damages but they were not included in this claim.

10. \$1,790 claimed for freeze-up in April - work was completed in July 2022 to replace the toilet, faucet, and taps. A copy of the "Scope of Work and Estimate Cost" was provided with the Application and included replacing the toilet, faucets, and taps. On September 12, 2023, the Applicant provided as further evidence a copy of a letter from Tlich Property Management with their price breakdown for "Emergency Repair Program - Plumbing and Heating System":

- Toilet - \$600
- Bathroom taps - \$100
- Bathtub taps - \$100
- Shower Head - \$50
- Kitchen taps - \$150
- Labour - \$500
- Freight - \$280

In response to this breakdown the Respondent emailed the Applicant and Rental Office on September 12, 2023, saying they didn't agree with the "tabs" (assume meant taps) being replaced, and "I notice every time housing hires the contractor workers, they do less and act like they do more. Every time they go to Wekweeti they look at one thing and leave. Sorry but this is getting frustrating with those contractors. I'm beginning not to trust their labour, and price that's being charge to me, and that's been on going for a long time. Though I will be present at the hearing and trying my absolute best to cover this arrears."

At the hearing, I mentioned the Respondent's concerns and asked about the taps being replaced. The Applicant testified that the taps needed to be replaced because they were damaged from the freeze-up. I am satisfied based on the evidence and testimony that the Respondent is responsible for repair of these damages and the costs claimed are reasonable. **Approved costs totalling \$1,780.**

- \$20,500 claimed for further costs for freeze up in April 2022 - this work was completed in July 2022, and according to the Scope of Work and Estimate costs "Repair damage from freeze-up. Replace all water lines, replace water pump *price does not include fixtures (toilet, taps, faucets, sink, etc.)."

On September 12, 2023, the Applicant provided as evidence a copy of a letter from Tlich Property Management providing a further breakdown of these costs:

- PEX piping and fittings - \$2,500
- Labour \$5,000
- Water pump \$2,000
- Labour \$500
- Hot water tank \$3,000
- Labour \$1,000
- ABS piping \$200
- Labour \$300
- Flight/Freight/Accommodation/Meals \$6,000

At the hearing on September 20, 2023, I asked the Applicant to substantiate the cost to replace the hot water tank. My preliminary research showed that an electric hot water heater could be purchased in Yellowknife for about \$1,000. The Applicant testified that the hot water tank is oil fired and as a result is more expensive than a typical electric hot water heater, and can cost \$3,000 or more.

At the hearing in March 2023, I questioned the \$6,000 charged for flight, freight, accommodation, and meals, and had asked for further information to support this claim. I also asked for further information in August 2023. No further information was provided on these charges by the Applicant.

I deny this part of the claim as I am not satisfied that these charges are reasonable and justified. I have no idea what the cost for freight might be and do not consider the other charges - flight, accommodation, meals - to be costs for repair of damages. In my opinion these are the Landlord's cost of doing business in this community.

I am satisfied based on the evidence and testimony that the Respondent is responsible for repairing damages from the freeze-up discovered in April 2022, and aside from the \$6,000 claimed for flight, freight, accommodation, and meals, the costs claimed for repairs are reasonable. **Approved costs totalling \$14,500.**

- \$4,400 as a result of the freeze-up in November 2022. This work was completed in January 2023. According to the "Scope of Work and Estimated Costs" \$4,400 was the cost to "replace frozen water pump". On September 12, 2023, the Applicant provided as evidence a copy of a letter from Tlich Property Management reiterating these costs as, without any breakdown, "Tenant Damages Program - Water Pump, \$4,400".

At the hearing I pointed out that the breakdown for the repairs completed in July 2023 included a charge of \$2,000 to purchase a water pump, and \$500 for labour. In my opinion \$2,500 could reasonably be justified as a reasonable expense for repair of the damages to the water pump, however, without further evidence or testimony I could not justify the further charges of \$1,900.

I am satisfied based on the evidence and testimony that the Respondent is responsible for repair of damages to the water pump and \$2,500 of the costs claimed are reasonable.

Approved costs totalling \$2,500.

I find the Respondent responsible for costs for repair of damages as a result of freeze-ups totalling \$18,780. According to the lease balance statement provided as evidence for the hearing, the Respondent has paid \$1,725 on the damages, and now owes \$17,055 for costs associated with repair of damages.

Termination of the tenancy agreement and eviction

Based on the evidence and testimony, although the Respondent has in the past not paid their rent when due and have rental arrears owing, they have been paying their subsidized rent regularly and I do not believe that the arrears owing justify termination of the tenancy agreement under paragraph 41(4)(c) of the Act.

I am satisfied that the Respondent has repeatedly breached their obligation under subsection 45(1) of the Act, and sections 8 and 18 of the written tenancy agreement, resulting in extensive damages to the rental premises, and for these reasons termination of their tenancy agreement and eviction are justified.

Although there have not been further breaches since the last freeze-up in November 2022. I can appreciate, based on the Respondent's history, that the Applicant is concerned about further freeze-ups this winter and the resulting damages. At the hearing the Applicant testified that considering the Respondent was making efforts to pay off the damages and no further damages had occurred, they would be willing to give the Respondent another opportunity.

Considering the Applicant's agreement, the termination and eviction orders will be conditional on the Respondent paying expenses for repairing damages totalling \$17,055, and on complying with their obligations under the written tenancy agreement to pay for utilities and to not leave the rental premises unoccupied.

I note that at the hearing I had also considered including in the order and conditions that the Respondent comply with their obligation to not cause damages and not breach this obligation again (paragraph 42(3)(a) and (b) of the Act). However, considering that the damages were as a result of the Respondent not complying with their obligations under the written tenancy agreement, and not as a result of their direct actions, it is my opinion that it is not appropriate to include this in the order.

Orders

An order will issue:

- requiring the Respondent to pay rental arrears totalling \$1,075 (p. 41(4)(a));
- requiring the Respondent to pay costs related to repairing damages totalling \$17,055 (p. 42(3)(e));
- requiring the Respondent to comply with their obligations to pay for utilities and to not leave the rental premises unoccupied, and not to breach those obligations again (p. 45(4)(a), p. 45(4)(b));
- terminating the tenancy agreement and requiring the Respondent to vacate the rental premises on March 31, 2024, unless the costs for repairing the damages totalling \$17,055 are paid in full and the Respondent complies with their obligations under the written tenancy agreement to pay the utilities and to not leave the premises unoccupied (p. 42(3)(f), p. 45(4)(e), ss. 83(2)); and
- evicting the Respondent from the rental premises on April 1, 2024, if the termination of the tenancy agreement becomes effective (p.63(4)(a), ss. 83(2)).

Janice Laycock
Rental Officer