

IN THE MATTER between **DM and HM**, Applicants/Respondents and **JW**,
Respondent/Applicant.

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,

BETWEEN:

DM and HM

Applicant/Respondent/Tenant

-and-

JW

Respondent/Applicant/Landlord

REASONS FOR DECISION

<u>Date of the Hearing:</u>	January 10, 2024
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	DM, Tenant HM, Tenant LT representing the Tenants JW, Landlord
<u>Date of Decision:</u>	January 11, 2024

REASONS FOR DECISION

An application to a rental officer (File # 18082), was made by DM and HM as the Applicants/Tenants against JW as the Respondent/Landlord and filed by the Rental Office October 18, 2023. The filed application was served personally on the Respondent/Landlord on October 31, 2023.

The Tenants claimed that despite an agreement to terminate their tenancy agreement on August 31, 2023, the Landlord had failed to return their security deposit in accordance with the *Residential Tenancies Act* (the Act). They sought a finding on their continuing obligations under the Act, and an order for the return of the security deposit.

An application to a rental officer (File # 18101) was also made by JW as the Applicant/Landlord against DM and HM as the Respondents/Tenants and filed by the Rental Office November 1, 2023. The filed application was deemed served on the Respondents by email on November 22, 2023.

The Landlord claimed that the Tenants had breached the fixed-term tenancy agreement and as of October 19, 2023, the unit was still empty. An order was sought for payment of rental arrears for September and October 2023, and compensation for other costs associated with re-renting the unit.

Both applications were made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. As both applications dealt with the same tenancy agreement and rental premises, a common hearing was held. For clarity, as the parties are both Applicants and Respondents, for the remainder of these Reasons, I will refer to DM and HM as the Tenants, and JW as the Landlord.

A hearing on both matters was scheduled for November 21, 2023, but was rescheduled at the request of the Landlord. A hearing was held on January 10, 2024, by teleconference. The Tenants DM and HM appeared, as did LT in support of the Tenants. The Landlord, JW, appeared at the hearing.

I reserved my decision at the hearing in order to further consider the evidence and testimony of the parties.

Tenancy Agreement

The parties both provided as evidence a copy of the written tenancy agreement between JW as the Landlord and HM and DM as the Tenants. The fixed-term agreement was for 18 months, commencing on April 1, 2023, and ending on October 31, 2024.

According to testimony, agreed to by the parties, there was a previous agreement between the parties for the five-month period from November 1, 2022 to March 31, 2023. The Tenants testified that prior to signing the new tenancy agreement they understood that the Landlord would be willing to end the fixed-term tenancy early if they helped to find a new tenant.

According to their testimony and evidence, on May 12, 2023, the Tenants notified the Landlord that a unit was for sale in their building and they were considering putting in an offer. At that time they asked the Landlord if they were still open to “breaking the lease” if other renters could be found. The Landlord responded “If you can find a renter, I am open to the new renter and can take over your lease”. On July 19, 2023, the Tenants notified the Landlord that their offer on the property was accepted, with a possession date of August 19, 2023, and they would like to terminate the tenancy at the end of August 2023 so that new renters could move into the rental premises on September 1, 2023. The Landlord replied “please find renters to replace you”, “good luck with your new house”.

At the hearing I verified with the parties that the agreement was to terminate the tenancy on August 31, 2023, on the condition that new renters be found. All parties confirmed this agreement.

The Tenants testified and provided evidence, that on July 24, 2023, they started posting ads for the rental premises, then vetted prospective tenants according to the Landlord’s criteria, showed the unit to prospective tenants, and passed on the Landlord’s information and application form to others.

The Landlord testified and provided evidence, that on August 4, 2023, they also posted an ad for the rental premises and by August 10, 2023, was in discussion with a prospective tenant. On August 15, 2024, they agreed to rent the rental premises to this person and a tenancy agreement commencing on September 1, 2023, was sent to this tenant for signature along with a request to e-transfer the first month’s rent.

After the evacuation of Yellowknife which occurred August 16th due to wildfires, the Landlord continued to correspond with the prospective tenant. On August 17, 2023, the prospective tenant indicated the agreement was good, and they were on track for everything. On August 20, 2023, the Landlord followed-up to say that the current tenant was in Yellowknife and could move out by the end of the month and asked for the signed agreement to be returned. The prospective tenant said they would get the process moving.

On September 4, 2023, the Landlord followed up again, saying people would be allowed back to Yellowknife on Wednesday and asked them if they still wanted to proceed. The prospective tenant replied that because of the wildfires they were not going to proceed with renting in Yellowknife.

The Tenants testified and provided evidence that after the prospective tenant was identified they understood their agreement with the Landlord had been fulfilled. On August 23, 2023, they sent an email to the Landlord saying that based on a text message from the Landlord on August 13, 2023, notifying them he had found someone to take the lease, they were proceeding to take steps to move out of the rental premises by the end of August, but may need time after the evacuation was lifted to finish moving and clean. They asked him if he had any concerns to contact them. They testified no response was received to this email.

The Tenants were able to vacate the rental premises by the end of August, and completed cleaning on September 7, 2023. They returned to do further minor work identified by the Landlord's representative during the walk through, and returned the keys to the Landlord on September 19, 2023. The Landlord indicated to them they were not in a rush as another tenant had not been identified. No concerns were expressed about their agreement to end the tenancy. To assist the Landlord, they also continued to post ads for the unit and to forward prospective tenants to the Landlord.

The parties provided as evidence a copy of an email from the Landlord to the Tenants dated September 30, 2023. In this email the Landlord claimed the Tenants were in breach of the tenancy agreement as they had not paid rent for September, that even though they had vacated the rental premises the tenancy agreement was still valid until the end of the term, and that they would take legal action and report them to the Credit Bureau.

The Tenants responded to this email on October 6, 2023, reviewing the steps that had been taken, reiterating their position that the agreement had been fulfilled prior to them vacating the rental premises in August and they could not be held responsible for the impacts of the wildfire evacuation on the situation. In order to resolve the situation they suggested the Landlord retain their security deposit and release them from any further obligations.

The Landlord responded on October 11, 2023, saying that the unit was still not rented, even though they had advertised a second time, and they would settle if the Tenants paid rent for October as well as allowing the Landlord to retain security deposit. This offer was refused and the parties subsequently made inquiries and filed applications with the Rental Office. At the hearing the Landlord testified that the rental premises was rented on October 23, 2023.

After further considering the evidence and testimony of the parties, I am satisfied a valid tenancy agreement was in place, and this tenancy was terminated on August 31, 2023, by agreement of the parties, in accordance with the Act.

Under Section 50 of the Act, “a landlord and tenant may agree in writing after a tenancy agreement has been made to terminate the tenancy on a specified date and the tenancy is terminated on the date specified”. In this case the parties agreed in writing (by text and email) to end the tenancy on August 31, 2023, on the condition that a tenant was found to take over the tenancy.

I believe that this condition was met, a prospective tenant was found who was acceptable to the Landlord, and this person agreed to rent the premises from the Landlord starting on September 1, 2023. Further, despite the wildfire evacuation the Tenants arranged to vacate the rental premises by the end of August as promised. Although cleaning was carried out on September 7, 2023 and the keys were not returned to the Landlord until September 19th, this was at the agreement of the Landlord and I don’t feel that this qualifies as overholding under subsection 67(1) of the Act.

It is unfortunate that the prospective tenant later chose not to proceed with the tenancy, but that is through no fault of the Tenants. Also, the Landlord, by their actions of carrying out a walkthrough and taking possession of the rental premises in September, and by their lack of action on not responding to the August 23, 2023, email confirmed that the agreement had been fulfilled.

In conclusion, I find that the tenancy agreement between the parties was terminated on August 31, 2023, in accordance with the Act, and the Tenants have no further obligations to the Landlord. As the tenancy was terminated in accordance with the Act, I deny the Landlord's claim for rent for September or October, as well as other costs claimed.

Security Deposit

In their application, the Tenants had also requested the return of their security deposit with interest. Under subsection 18(3) of the Act, a landlord who holds a security deposit shall within 10 days after the day the tenant vacates the rental premises (a) return the security deposit; and (b) give the tenant an itemized statement of account for the deposit. Under subsection 18(4) of the Act, a landlord may retain all or part of the security deposit for rental arrears or damages caused by the tenant, but under subsection 18(7) of the Act they need to notify the tenants of their intentions within 10 days after the tenant vacated the rental premises.

The Tenants vacated the rental premises by August 31, 2023, but due to the wildfire evacuation were not able to complete the cleaning until September 7, 2023. The walk through of the unit was done by someone for the Landlord on September 14, 2023. Based on testimony at the hearing it is clear that the landlord had breached the Act repeatedly, the Tenants were not provided an opportunity to participate in the inspection, nor did they receive an inspection report as required under section 17.1 of the Act. They also did not receive from the Landlord an itemized statement of the security deposit, nor did they receive an indication that the Landlord intended to retain the security deposit.

When the Tenants returned the keys on September 19, 2023, they understood there were no deficiencies, and had no rent owing at the end of August 2023. This was not disputed by the Landlord in their application or at the hearing.

At the hearing, in the absence of any statement, I confirmed with the parties that the security deposit paid was \$2,820, and I calculated that the interest earned during their tenancy at the approved rate would be 24 cents.

As there is no evidence of rental arrears or damages to the rental premises, there are no grounds to retain the security deposit. Therefore, the Landlord is obligated to return the security deposit with interest totalling \$2,820.24 to the Tenants.

Orders

An order will issue requiring the Respondent/Landlord to return to the Applicants/Tenants the security deposit with interest in the amount of \$2,820.24 (p. 18.1(b)).

Janice Laycock
Rental Officer