

IN THE MATTER between **WD**, Applicant, and **MRF**, 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,

BETWEEN:

WD

Applicant/Landlord

-and-

MRF

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: March 20, 2024

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: WD, representing the Applicant

Date of Decision: March 20, 2024

REASONS FOR DECISION

An application to a rental officer made by WD as the Applicant/Landlord against MRF as the Respondent/Tenant was filed by the Rental Office January 8, 2024. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was deemed served on the Respondent by email on January 18, 2024.

The Applicant claimed the Respondent had repeatedly not paid rent when due and had significant rental arrears at the end of their tenancy. Further, they claimed the Respondent had not paid utilities in violation of their obligation under the tenancy agreement, were responsible for costs to store abandoned property and to repair damages. An order was sought for payment of rental arrears, payment of utilities, payment of storage costs including care and feeding of the Respondent's fish. The Applicant also proposed to retain the security deposit to pay for costs related to repair of damages.

A hearing was held on March 20, 2024, by three-way teleconference. WD appeared representing the Applicant. The Respondent did not appear, nor did anyone appear on their behalf. As the Respondent was provided sufficient notice, the hearing proceeded in their absence as provided for under subsection 80(2) of the *Residential Tenancies Act* (the Act).

Tenancy agreement

A copy of the written residential tenancy agreement between the parties was provided as evidence. The tenancy was originally for a fixed term, October 1, 2018 to September 30, 2020, and then was continued month to month. According to the evidence and testimony of the Applicant, the tenancy was terminated on November 15, 2023, when the Respondent vacated the rental premises.

I am satisfied that a valid tenancy agreement was in place in accordance with the Act and this tenancy was terminated on November 15, 2023.

Rental arrears

The Applicant provided as evidence a copy of a statement for the period of the tenancy, detailing the charges and payments made against the Respondent's rental account. During the tenancy the monthly rent charged was \$2,100 per month.

According to the statement after having no arrears in September 2022, they did not pay full rent in October 2022, paid no rent in November or December 2022, and also paid no rent during the ten and one-half month period from January 2023, to November 15, 2023. As a result arrears had accumulated totalling \$26,647.91. The Applicant provided as evidence correspondence during the period with the Respondent detailing repeated requests for payment of the outstanding arrears and promises by the Respondent to do so.

I am satisfied that the statement provided as evidence represents the status of the rental account and find that at the end of their tenancy the Respondent was responsible for rental arrears totalling \$26,647.91.

Utilities

Under part 5 of the written tenancy agreement "Service and Facilities", the Respondent was responsible for costs associated with electricity, water, propane and pellets. Under subsection 45(1) of the Act, "where in a written tenancy agreement a tenant has undertaken additional obligations, the tenant shall comply with the obligations under the tenancy agreement ..".

The Applicant testified and provided evidence that at the end of their tenancy the Respondent was responsible for City of Yellowknife utilities (water and sewer) totalling \$1,214.71, and for propane totalling \$3,400.27. They provided copies of the invoices from the City of Yellowknife and Superior propane to support their claim.

The Applicant noted at the hearing that the propane tank which is very large was filled when the tenancy began and the Respondent was made aware that they were responsible for leaving the tank at 80% when the tenancy was terminated. The tank was almost empty when the Respondent vacated the rental premises.

I find based on the evidence and testimony that the Respondent has breached their obligation under the written tenancy agreement to pay for City of Yellowknife utilities as well as propane and is responsible for arrears totalling \$4,614.98.

Storage of abandoned property

At the end of their tenancy the Respondent abandoned property at the rental premises. The Applicant provided correspondence detailing their efforts to get the property removed before filing an inventory of the remaining abandoned property with the Rental Office. The Applicant was authorized by the Chief Rental Officer to dispose of the property on January 16, 2024.

In their application the Applicant claimed \$256.68 to store the property for these two months at the rate of \$4.14 per day. This was the rate they were paying for storage of their own property in town. At the hearing the Applicant testified that the Respondent did not claim the property and as the property was worthless they had eventually taken it to the dump. The Applicant also claimed costs totalling \$329.23 for the care and feeding of the Respondent's fish that had been left at the rental premises.

At the hearing I reserved my decision on the storage charges, and denied the claim for care and feeding of the fish. I explained that the Act did not have a provision that would allow me to order these costs paid.

On the storage charges, under subsection 45(2) of the Act a tenant is responsible for maintaining the rental premises in a state of ordinary cleanliness. In order to return the rental premises to this state after the tenancy it was necessary for the landlord to store and then later dispose of the abandoned property. After further consideration I find the claim for storage of the property totalling \$256.68, reasonable and will order it paid under section 45(4)(d) of the Act.

Damages

The Applicant claimed the Respondent was responsible for damages to the rental premises and they intended to retain the entire security deposit to compensate them for the cost of repairs. They also claimed some damages were associated with the Respondent having a pet and smoking in the premises in violation of the tenancy agreement. The Applicant provided a copy of the entry and exit inspection reports as well as photographs. No evidence was provided detailing the costs for repairs.

At the hearing the Applicant testified that they had been working on the repairs and were not sure they could charge their own time. I stated that if the costs were reasonable and supported by the evidence I could consider their claim for costs. I adjourned the hearing to a later date to allow the Applicant to provide evidence to support a claim for cost of repairs as well as proof of service on the Respondent.

Security Deposit

The Applicant provided a statement of the Respondent's rent account showing that the security deposit of \$2,100 had been paid by the Respondent. I calculated that interest earned on the security deposit would be approximately \$4.07.

At the hearing I asked if the Applicant had provided the Respondent with a statement on the Security Deposit. They stated that they had not done so, but had indicated their intention to retain the security deposit in the application to the Rental Office. I informed them that they are required to provide a statement within 10 days of the tenant vacating the rental premises (subsection 18(3)) and they should keep this and other provisions relating to the security deposit in mind in the future.

At the hearing I found that the security deposit cannot be applied against the costs for repair of damages, as no costs have been provided, however, under subsection 18(4) of the Act, the security deposit can be retained for rental arrears. When the security deposit with interest of \$2,104.07, is applied against the rental arrears owing of \$26,647.91, the amount owing that can be ordered is \$24,543.84.

Orders

An order will issue:

- requiring the Respondent to pay rental arrears owing totalling \$24,543.84 (p. 41(4)(a));
- requiring the Respondent to pay utilities owing totalling \$4,614.98 (p. 45(4)(c)); and
- requiring the Respondent to pay costs for storage of abandoned property totalling \$256.68 (p. 45(4)(d)).

Janice Laycock
Rental Officer