

IN THE MATTER between **LL**, Applicant, and **HN**, 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:

LL

Applicant/Tenant

-and-

HN

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: March 20, 2024

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: LL, the Applicant/Tenant
SM, representing the Respondent/Landlord
GM, witness for the Respondent/Landlord

Date of Decision: April 16, 2024

REASONS FOR DECISION

An application to a rental officer made by LL as the Applicant/Tenant against HN as the Respondent/Landlord 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 served on the Respondent by email, deemed received January 18, 2024, pursuant to subsection 4(4) of the *Residential Tenancies Regulations* (the Regulations).

The Tenant alleged that the Landlord had failed to maintain the rental premises in a habitable condition and that the Landlord had disturbed their possession and enjoyment of the premises as a result. The Landlord countered with allegations that the Tenant had repeatedly failed to pay the rent in full when due and had failed to pay the electricity bills as required.

A hearing was held March 20, 2024, by three-way teleconference. LL appeared as the Applicant/Tenant. SM appeared representing the Respondent/Landlord, with GM appearing as a witness for the Landlord. The hearing initially commenced with a potential mediated settlement, but the parties positions were too far apart for the mediation to be successful. The matter proceeded as a contested hearing.

Tenancy agreement

The parties agreed and evidence was presented establishing a residential tenancy agreement that began in January 2012 with a different Landlord. The parties agreed that the rent was established at \$1,500 per month plus a majority portion of the electricity bills. By the time of the hearing, the Tenant had given notice to terminate the tenancy for March 31st, which the Landlord accepted. After the hearing, the Rental Office was notified that the Tenant had vacated the premises and returned the keys to the Landlord on March 25th. I am satisfied a valid tenancy agreement was in place in accordance with the *Residential Tenancies Act* (the Act).

Rental arrears

At the hearing, the Landlord claimed the Tenant had accumulated rental arrears in the amount of approximately \$7,647. The Tenant disputed that they carried any rental arrears, instead indicating they believed they had a rent credit. Neither party had provided complete ledgers to account for their claims, so the decision on the claim for rental arrears was reserved pending receipt of the ledgers from both parties.

The ledgers were provided starting from April 1, 2020, when the Respondent/Landlord took over management of the tenancy, and neither set of ledgers corroborated either of their respective claims regarding the rental arrears. The Landlord's updated ledger accounted for three months' rent credit for October, November, and December 2021 as compensation for disruptions resulting from replacement of the sewage tank during that period. The Tenant's updated ledger included a \$1,000 payment recorded April 3, 2020, that the Landlord denies receiving and for which the Tenant did not provide proof of payment. After deducting that \$1,000 payment from the Tenant's ledger, both sets of updated ledgers agreed that the Tenant had accumulated rental arrears in the amount of \$1,697.50 as of March 31, 2024.

I am satisfied the Tenant has failed to pay the full amount of rent when due and has accumulated rental arrears in the amount of \$1,697.50.

Electricity arrears

The rental premises comprises the majority of space in a small, old building that also houses a separate area rented out to carvers to exercise their craft. Both spaces share the same electricity panel, and the electricity bill comes in one statement to the Landlord each month.

The Tenant claims that it was her understanding the previous Landlord was applying the carver's rent against the electricity bills to cover their share of the electricity costs to the premises and that the Tenant was paying the remaining balance. There is no indication that the Tenant was provided with the actual values for this arrangement.

When the current Landlord took over management of the rental premises in April 2020, the previous Landlord told the new Landlord that they had been applying an annual \$900 credit towards the electricity account as compensation for the carver's electricity usage, and that the Tenant had been repaying the Landlord for the electricity bills monthly. The current Landlord continued this practice, applying the \$900 credit at the end of each fiscal year, and otherwise forwarding the monthly electricity bills to the Tenant by email each month.

The Tenant has made no payments towards the electricity account since April 2020. The Tenant disputed that the carver's share was being fairly accounted for, despite the \$900 per year credit, and refused to pay the electricity bills. The Tenant claims they were unaware of the \$900 per annum credit. It seems plausible to me that the Tenant was unaware of how the Landlord accounted for the carver's usage; the Tenant was told the carver's rent would be applied against the electricity costs, but \$900 per year may very well have been what the carver's rent amounted to. The Tenant also argued that the electricity and fuel costs were highly impacted as a direct result of heating and insulation problems arising from the sewer tank replacement, general condition of the premises, and age of the premises.

The evidence presented does establish that the sewer tank replacement in late 2021 was fraught with issues, including leaving the crawl space below the premises exposed to the cold exterior temperatures and uninsulated. The Landlord did remedy those issues and compensated the Tenant accordingly. Although the remedies improved the interior temperatures to a more comfortable level, the Tenant submitted that sub-zero temperatures continued to be experienced in the corners and under the bathroom fixtures. The Tenant claimed that the efforts to keep the premises adequately heated resulted in increased heating costs.

The Landlord does not deny that the premises has issues given its age. It is a very old building and has admittedly been maintained only to a limited and as necessary degree. The Landlord made a large investment initially to address some of the issues that appear to have been only marginally successful. While acknowledging the Landlord's responsibility to provide and maintain the rental premises in accordance with section 30 of the Act, the Landlord also argued that the issues with the heat have been ongoing issues since before this tenancy began. However, the Landlord submitted, at the hearing, that they would be prepared to forego the electricity costs given the extent of the heating issues which have continued even after the re-insulation of the premises in 2022 in order to resolve this dispute.

Given the evidence presented and the Landlord's acknowledgement of the condition of the premises, and being mindful that this is the Tenant's application for compensation for the lack of adequate heat which interfered with the Tenant's possession and enjoyment of the premises, I am of the opinion that the Landlord's offer to forego the outstanding electricity costs is a reasonable compromise. Particularly, given the tenancy has now ended and that the disturbances will not be continuing. This is no small amount of compensation; the electricity bills were provided after the hearing for the period from April 2020 to February 2024 and after accounting for the \$900 per annum credits – including for the 2023-2024 fiscal year – and the \$505.96 credit provided against the December 2021 electricity bill, the total electricity bills amount to \$10,611.51.

Order

An order will issue requiring the Tenant to pay rental arrears in the amount of \$1,697.50.

Adelle Guigon
Rental Officer