

IN THE MATTER between **AA**, Applicant, and **TN**, 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 **Jerry Vanhantsaeme**, Rental Officer, regarding a rental premises located within the **city of Yellowknife in the Northwest Territories**;

BETWEEN:

AA

Applicant/Tenant

-and-

TN

Respondent/Landlord

REASONS FOR DECISION

<u>Date of the Hearing:</u>	June 11, 2024
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	AA, representing the Applicant
	TN, representing the Respondent
<u>Date of Decision:</u>	June 20, 2024

REASONS FOR DECISION

An application to a rental officer made by AA as the Applicant/Tenant against TN as the Respondent/Landlord was filed by the Rental Office April 18, 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 personal service on May 1, 2024.

The Applicant alleged the Respondent/Landlord has not provided and maintained the rental premises in a good state of repair and fit for habitation during the tenancy and forced the Applicant/Tenant and other tenants to not have the heat higher than 20 degrees Celsius during the winter. An order was sought for the Respondent to abate the Applicant/Tenant's rent, comply with all health, safety, maintenance, and occupancy standards, and not withhold vital services.

A hearing was held on June 12, 2024, by three-way teleconference. AA appeared representing the Applicant/Tenant. TN appeared at the hearing representing the Respondent/Landlord. Due to the severity of the application, the hearing was adjourned *sine die* pending receipt supporting documentation of testimony by both the Applicant/Tenant and Respondent/Landlord. The information requested was to be provided to the Rental Officer no later than 12:00 p.m., June 14th, 2024.

Tenancy Agreement

Evidence presented established a residential tenancy agreement between the parties commencing December 1, 2023 and ending November 30, 2024. The tenancy agreement indicates a tenancy agreement between SC and the Respondent/Landlord. However, the signatures on the tenancy agreement shows SC as the first signatory and the second signature as the Applicant/Tenant. Confirmation of the tenancy was further validated by the Respondent/Landlord providing the Applicant/Tenant with a "Notice of Termination" on May 15, 2024.

During the hearing, the Respondent/Landlord confirmed other than the two signatories on the tenancy agreement provided there were three other tenants within the rental premises. A request for proof of the other tenants was provided prior to the deadline set by the Rental Officer. Comparing the tenancy agreement from the application and that provided by the Respondent/Landlord, the tenancy agreements were the same. However, the signature of the Applicant/Tenant was not in the same spot as provided by the Respondent/Landlord. This leads to me to believe a subsequent tenancy agreement was signed the same day but in multiple copies. It needs to be noted that both copies of the tenancy agreement provided as evidence has Saad Chunawala as the tenant, but at the same time signatures show a total of five (5) tenants. Names and signatures should be fully legible on a signed tenancy agreement.

This being said, I satisfied a valid tenancy agreement is in place between the Applicant/Tenant and the Respondent/Landlord in accordance with the *Act*.

From this point forward within the reasons for decision the Applicant/Tenant will be known as the Tenant and the Respondent/Landlord will be known as the Landlord.

Rent

During the hearing, the Rental Officer noted the rent charged in the tenancy agreement was \$2,500.00 per month. The Rental Officer questioned occupancy of the rental premises. It was determined the Landlord resides on one side of the duplex, "A" side, and the Tenant resides in the "B" side, known as the rental premises. The rental premise contained three bedrooms and is occupied by Five (5) individual tenants. Two (2) of the tenants work at the mines on shifts and share one of the rooms; two (2) other individuals share a room and work a lot. I also questioned how the tenancy was arranged, as the tenancy agreement state the \$2,500.00 was being charged for rent. Was the \$2,500.00 for the unit as a whole? The Landlord testified the rent was for the unit as a whole and the tenants broke down the rent charged between themselves. The Landlord confirmed the Tenant pays \$800.00 per month towards the rent and the remaining tenants pay the difference.

The Tenant requested abatement of rent. Abatement of rent cannot be broken down to an individual tenant as a joint tenancy is in place. Abatement must be applied to the full rent as identified in the tenancy agreement.

Rental Premises Concerns

In the application, the Tenant brought forward a number of concerns regarding the condition of the rental premises in regards to health and safety.

The Tenant claims a water leak has consistently been occurring in his bedroom ceiling starting January 2024; the Landlord had taken no action other than offering a water bucket on a shoestring attached to a nail on the ceiling where the leak is occurring. The Tenant claims this to be a tripping hazard, and water droplets are contaminating his cloths and skin. The Applicant also testified the Landlord forced all tenants to not turn heat up past 20 degrees in the winter season. In order to better clarify the concerns, the Rental Officer has broken down concerns brought forward in the application and hearing:

Heating of the Rental Premises

The Tenant testified during the hearing the Landlord forced the tenants not to turn up the heat during the winter season. During the hearing, the Landlord testified the rental premises was heated by forced air, the tenants' have control of the heat within their rental premises. The Landlord testified on February 9, 2024, they had been in contact with the Rental Office to seek advice on how to address the temperature issue. The Landlord also testified they contacted the tenant named on the tenancy agreement regarding a reasonable temperature compromise, to leave the thermostat at 22 degrees Celsius. The Tenant acknowledged he had not been informed of the change to the temperature. Evidence requested *sine die* provided supports the Landlord's claim.

The *Act* does not contain a provision for heating and there are no standards set by Environmental Health. However as a Landlord, they must ensure vital services are maintained as defined in subsection 33(1) of the *Act*.

Water Leak

The Tenant submitted photo evidence of the condition of the bedroom ceiling and bathroom within the rental premises showing significant water damage. The Tenant also entered into evidence an Environmental Health Investigation Report from the Government of the Northwest Territories, Environmental Health and Social Services.

The Tenant testified they were concerned on the condition of the ceiling on fear of collapse, causing them stress.

The May 10, 2024 Environment Health Investigation inspection states:

An Environmental Health Officer attended the rental premises to conduct an investigation with regards to a rental housing and public health complaint received from the Tenant.

A Junior Environmental Health Investigation Report for the Rental Premises indicates the Tenant discovered a leak in the ceiling of the bedroom in January 2024. The Landlord was notified in January 2024 and a complaint was filed with the Rental Office in March 2024.

Environmental Health Observations: There is proof of significant water leaks during the site visit. Areas of the rental premises that have been determined to be impacted by water leaks are:

- walls and ceilings of the bathroom on the main floor
- walls and ceiling of common areas, such as living room/kitchen space
- wall by stairs leading to upper floor
- ceiling in the Applicant's bedroom

Evidence that is conclusive that there has been and continues to be water leakage for long period of time and resultant effects as follows:

- severe cracks on walls and ceilings, **supported by photo evidence;**
- peeling paint on walls and ceiling, **supported by photo evidence;**
- water stains on walls and ceilings, **supported by photo evidence;**
- musty odours in the rental premises, **supported by Environmental Health Officer report; and**
- A bucket used to hold water leads from the Tenant's bedroom ceiling. The flow of water drips is directed with a string into the bucket. **supported by photo evidence.**

During the site visit, it was discovered that the apartments's water leak problem has not yet found a long-term remedy. The Tenant's bedroom leak has a temporary measure in place by directing the flow of the water dripping from the ceiling using a bucket and string. The Landlord made this interim measure available to the Tenant.

Water damage can have extensive effects, affecting structural integrity and may lead to growth of mold, causing health issues. The longer the leak remains unaddressed the more extensive the damage can become. The following concerns may exist or develop with ongoing water leaks.

Environmental Health Officer Concerns and Recommendations

- **Possible mold and mildew:** The severity of the water leak observed create an environment for possible mold and mildew growth. Mold is a fungal grown that forms and spread on various kinds of dampness which may cause respiratory problems and a variety of health effect.
- **Water damage:** The water leaks observed have started to create water damage. Signs of wood rot on windows and swelling on the ceiling were evident. This was noted as an instance of water leaks in the past, as water seeped into fractures that weren't fixed.
- **Possible structure damage on the Applicant's bedroom ceiling:** The ceiling in the bedroom appears to be sagging, this could be a result of weakened beams and supports of the ceiling structure caused by excessive water leaks.
- **Potential electrical problems:** Lighting fixtures on ceilings affected with severe water leaks can lead to electrical problems which can start a fire.

Corrective actions MUST be taken to identify the source of water leaks in the affected areas. A permanent and appropriate mitigation measures MUST be put in place to stop the ongoing water leak issues in the apartment and repair all affected areas and materials.

In response to the Tenant's claim, the Landlord testified the issue was caused by condensation, and was intermittent, based on weather and not ongoing for months. The Landlord stated that they would need to wait for the end of winter before repairs could be made. The Landlord also stated they were experiencing the same issue.

The bucket and string was also provided to the Tenant to reduce the sound of dripping.

Evidence provided by the Landlord showed they reached out to Environmental Health regarding the report at 10:09 a.m. on June 11, 2024 (approximately 5 hours prior to the hearing) regarding issues identified in the report and remedies the Landlord will be taking to address the issues noted. The Landlord's evidence also noted they discussed the issue with the Fire Marshal and City Building Inspector. No evidence was provided of those conversations occurring other than the email to the Health inspector.

I find the water leak in the ceiling and the short term mitigation method provided by the Landlord limits the full usability of the bedroom and thus has disturbed the Tenant's enjoyment and possession of the rental premises. During the hearing, a question was raised with regards to continued dripping. The Tenant testified the leak has stopped. The likelihood of the leak being caused by condensation may be valid but needs to be fully investigated and measures must be taken to ensure proper remediation and repairs are done to ensure the health and safety of the rental premises.

Personal items

In the application to the Rental Officer, the Tenant claimed water droplets from the ceiling were contaminating his clothing, and other items; specifically one of their two mattresses. The Tenant testified they did not trust on where the water droplets were coming from, as a result would either re-wash or throw the items out. The Tenant testified they have not used the mattress after getting wet as they feel it is not safe to use due to contamination. The Tenant testified, rather than clean the mattress due to cost, they would just use their other mattress.

During a hearing, it was brought forward The Tenant also testified they did not have tenant insurance nor was it brought forward for them to have tenant insurance. "Tenant Insurance" could help to cover expenses that come up accidentally or unexpectedly. The tenancy agreement does not contain a requirement for tenants to have and maintain tenant insurance.

As the Tenant has chosen to not use or clean the mattress, compensation is denied.

Medical concerns

In the application, the Tenant claimed water droplets were contaminating their skin. When questioned on whether the Tenant sought medical attention regarding their health concern. The Tenant testified, they have not sought medical attention but the fact that the water touches their skin, they take extra showers.

The Act does not contain a provision personal injury, pain, or suffering.

Early termination

On May 15, 2024, the Landlord served the Tenant with a "Notice of Termination pursuant to subsection 54(1) of the Act. The "Notice of Termination" referred strictly to the Applicant/Tenant. The tenancy agreement is a joint tenancy, the Landlord would be required to provide "Notice of Termination" to all signatories on the tenancy agreement to be in compliance with subsection 54(1) of the Act.

Rental Officer findings

In view of the photos and environmental health investigate report provided as evidence and the testimony at the hearing, the Landlord is obligated under subsection 30 (1) of the Act, a landlord shall:

(a) provide and maintain the rental premises, the residential complex and all services and facilities provided by the landlord, whether or not included in a written tenancy agreement, in a good state of repair and fit for habitation during the tenancy; and

(b) ensure that the rental premises, the residential complex and all services and facilities provided by the landlord comply with all health, safety and maintenance and occupancy required by law.

I am satisfied the Landlord is taking the steps required to mitigate damages and repairs to the rental premises. The Landlord must ensure this is done to meet the applicable codes and standards required in satisfaction of the City building inspector.

I also find the Landlord has breached the Tenant's quiet enjoyment of the rental premises, for the loss of usability of the rental premises, and is responsible to compensate the Tenant for the loss. A claim for compensation in this regard is approved.

An abatement of 10% will be applied to the rent starting February 1, 2024 and remain in place until such time as the repairs are completed.

Orders

An order will be issued:

1. Requiring the Landlord to comply with the obligations to provide and maintain the rental premises in a good state of repair, fit for habitation and in compliance with all health, safety maintenance and occupancy standards required by law, and must not breach that obligation again (p. 30(4)(a), p.30.(4)(b) and ss. 83(2));
2. require the Landlord provide the Tenant and the Rental Officer satisfactory proof of remediation and repairs and permit for occupancy as issued by the city of Yellowknife (p. 30(4)(a), ss.83(2));
3. require the Landlord to apply a 10% credit of the current and future rents charged on the joint tenancy starting February 1, 2024 and each month there after until such time satisfactory proof of remediation and repairs are done (p. 30(4)(d), p. 34(4)(c), ss. 83(2)); and
4. require the Tenant to pay all future rent to the Rental Officer to be held in trust until such time as the repairs are completed (p. 32(1), ss 83(2)).

To clarify with respect to how parts 3 and 4 affect the current tenancy and future rent. The Tenant is required to pay the abated rent of the joint tenancy agreement to the Rental Officer until evidence is provided under part 2. Any notice of rent increase for the tenancy will need to be provided to the Rental Officer to ensure proper calculations are completed for rent charges.

Jerry Vanhantsaeme
Rental Officer

APPENDIX

Exhibit 1: Environmental Health Investigation Report, dated May 10, 2024