

IN THE MATTER between **PS**, Applicant, and **NRR**, 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:

PS

Applicant/Tenant

-and-

NRR

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: June 27, 2024

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: PS, representing the Applicant

CC, representing the Respondent

Date of Decision: July 4, 2024

REASONS FOR DECISION

An application to a rental officer made by PS as the Applicant/Tenant against NRR as the Respondent/Landlord was filed by the Rental Office February 21, 2024. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was personally served on the Respondent on March 28, 2024.

The Applicant/Tenant alleged a water leak (flood) in a rental unit above theirs in the rental complex caused them to lose the quiet enjoyment of the rental premises, unnecessary expenses, and damage and loss of food and personal property. An order was sought for reimbursement of undue expenses.

A hearing was originally scheduled for May 8, 2024, CC appeared representing the Respondent/Landlord. The Applicant/Tenant failed to appear. First "Failure Notice to Appear" was sent to the Applicant/Tenant to determine if the hearing was to be rescheduled or dismissed. The hearing was rescheduled for June 27, 2024. PS appeared on behalf of the Applicant/Tenant. CC appeared representing the Respondent/Landlord. Due to the severity of the claim the hearing was adjourned *Sine Die* subject to the production of documents to support the application.

From this point forward the Applicant/Tenant will be referred to as the Tenant and the Respondent/Landlord will be referred to as the Landlord.

Tenancy Agreement

A tenancy agreement was not provided as evidence for the application. However, the application contained an assignment agreement referring to an assignment of tenancy. A copy of the tenancy agreement was ordered to be provided by the Landlord. In review of the tenancy agreement and the assignment agreement, I am satisfied valid tenancy agreement is in place in accordance with the Act.

Hearing

The Tenant testified water from the rental unit above theirs in the rental complex started to enter their unit to an extent it was not safe to maintain residency. The Tenant claimed the flooding was caused by a blocked pipe under a sink in a separate unit. Video evidence was submitted showing the extent of the water entering rental premises through the ceiling and light fixtures. The Tenant also testified, a representative for the Landlord requested the Tenant vacate the rental premises on February 13 due to the state of the flooding.

The Tenant testified there was an initial expectation of being able to return to the rental premises on February 17, 2024. However, concerns were raised by the Tenant regarding the amount of moisture in the unit, possibility of mold in the drywall, and the possibility of electrical issues from water running out of the ceiling fixtures. Evidence provided in the form of an email between the Landlord's staff and the Tenant indicated they could expect to return to the unit. The Tenant testified the flooding cost them close to \$5,000.00 in expenses they would not normally incur and are looking for reimbursement of a portion of those expenses in the amount of \$3,000.00. During the hearing, the Landlord's representative acknowledged the incident was caused by other tenants whom they were trying to evict. The Landlord's representative also testified the staff member who was in contact with Tenant was no longer with the company and unable to speak on their behalf.

The Landlord's representative testified there is a partial responsibility of the Landlord in this case, as the damage is caused by another tenant flooding the unit. The Landlord also testified they offered the Tenant a rent credit in the amount of \$1,500.00 but the parties could not come to an agreement, resulting in the hearing. The Tenant acknowledged they are willing to negotiate an amount that could be credited to their account and regarding the Tenant's insurance, the deductible needs to come from the Tenant. The Landlord acknowledged they would be willing to negotiate the amount. When the Rental Officer questioned if the Landlord would be willing to pay \$3,000.00, the Landlord's representative was only authorized to offer a \$1,500.00 credit. The Tenant testified they were willing to take \$3,000.00, even though their expenses exceeded that amount.

During the hearing, the Rental Officer questioned if the Landlord had credited the Tenant's rent account. The Landlord's representative acknowledged that they did not. The Rental Officer also questioned when the rental premises was deemed to be safe for return as correspondence between the Landlord's staff initially said February 16, 2024, but this did not happen due to the moisture and smell within the unit. The Landlord's representative testified they believed it was February 17th but could not confirm this. The Landlord's representative also testified they were not sure if a second opinion on when they could return. In response to the question put forward to the Landlord, the Tenant testified and provided e-mail evidence from February 23, 2024, stating (1) an inspection to the electrical was done, (2) three fixtures were changed out due to water exposure, (3) drywall work was being done and would take three to four days to complete and the Landlord asked the Tenant to clean up the food, garbage, and wet items left on the floor. Email evidence also between the Tenant and the Fire Marshals Office indicates the Tenant was able to return to the rental premises on February 29, 2024.

Applicant expenses

In support of their claim, the Tenant entered into evidence costs they incurred in an amount exceeding the proposed settlement offer by the Landlord, the Rental Officer reviewed the amounts claimed and have broken them down into categories:

Lodging

Evidence and testimony supports the Tenant was unable to have quiet enjoyment of the rental premises from February 13 -29, 2024 inclusive. The Tenant resided with a friend on February 13, then moved into a one-bedroom kitchen unit at the Capital Suites for 15 days. The daily rate charge for the one-bedroom unit was \$219.45 day tax included for a total of \$3,291.75 plus pet fee of \$78.75. The pet fee is denied as the tenancy agreement does not indicate the Tenant is authorized to have a pet in the rental premises. **\$3,291.75 claimed and approved, supported by evidence.**

Meals

In the application to the rental officer, the Tenant submitted a claim for \$822.98 for meals and incidental expenses. In confirmation of the lodging being a one-bedroom suite with kitchen, the Rental Officer questioned why the Tenant was claiming meals rather than cook. The Tenant testified she was from India, Indian cooking is not easy and she is vegetarian. The Tenant also testified she would make breakfast in the unit but not the remaining meals. When questioned why, if they had access to her residential premises, they would not bring items from there. The Tenant testified the reason they did not was that water damaged the groceries in the pantry. The Tenant also testified she purchased groceries from Edmonton, not Yellowknife. In review of the meals and incidental claimed, I find the following:

- \$132.40 - **denied** - Independent Grocer receipt date of December 1, 2023. Two months prior to the incident;
- \$35.45 - **partial approved amount of \$12.06**. Fatburger receipt dated February 14, 2024. Claim is for three meals. As the Tenant is vegetarian, only the vegetarian meal is approved;
- \$104.52 - **partial approved amount of \$104.17**, Independent Grocer receipt date of February 14, 2024. Bottle deposit removed;
- \$99.33 - **denied** - Woodyard receipt date February 14, 2024. Tenant acknowledged they took someone out for helping them. Does not have an itemized meal and may include alcohol and tip;
- **\$45.00 - approved** - invoice from takeaway dated February 16, 2024;
- **\$727.95 remaining claim for meals and incidentals from February 17 -29, 2024, denied.** The Tenant was capable of purchasing groceries for meal prep and other personal use.

\$161.23 approved for claim.

Electricity

The Landlord used the Tenants's electricity to dry the rental premises. To ascertain the cost of power, based on seasonal lighting and general residential use, the power consumption for January 12 - February 13, 2024 was used. During this time, the Tenant used 457 kW.h for 32 days equating to 14.28125 kW.h per day at a rate of 23.72 cents per hour equivalent to \$3.39 per day. From February 13 - March 14, 2024, 525 Kw.h were used over 30 days at a power charge of \$124.53 plus riders for a total of \$198.59. Using the daily rate of **14.28125 kW.h x 15 days = 214.21875 kW.h** was the amount of electricity used by the Tenant from the time they returned to the rental premises until the end of the billing cycle. This resulted in the Landlord using **310.78125 kW.h of power charged to the Tenant**. Other charges for power include Purchase Power Cost Adjustment Rider (Rider F at \$0.0779 per kW.h, Revenue Adjustment rider at a base rate of -1.815%, franchise fee, plus GST). Cost breakdown for the 310.78125 is as follows:

310.78125	kW.h x 23.72 cents = \$73.72	of power charged.
<u> x 23.72 </u>	cents per hour	
\$73.72	Electricity charged	
<u> \$24.21 </u>	Rider f (kW.h x \$0.0779)	
\$97.93		
<u> - \$1.34 </u>	Revenue Adjustment Rider (Electricity charged x -1.825%)	
\$96.55		
<u> \$1.19 </u>	Franchise fee (\$96.55 x 1.237%)	
\$97.74	Electricity cost	
<u> x 5% </u>	GST (\$4.89 rounded up)	
\$102.63	Electricity charge credited to the Tenant, supported by evidence.	

Additional claim

During the hearing, the Tenant testified a dining chair was missing from the rental premises. The Tenant testified that claim for \$3,000.00 included the chair. The Rental Officer requested photo evidence of the dining set in question. As there was no confirmed cost for purchase or replacement, a claim for replacing the chair or dining set is dismissed.

Determination

In review of the evidence provided and the testimony, I have determined the Tenant incurred costs due to the loss of use of the quiet enjoyment of their rental premises. I find the Landlord is liable to the Tenant for demonstrable monetary losses suffered as a direct result of a flooding from another unit within the rental complex. I find the Landlord is responsible for alternate lodging costs in the amount \$3,291.75, partial meal claim in the amount of \$161.23, and \$102.63 for increased electricity usage, totalling \$3,555.61. It was also noted during the hearing, any amount ordered by the Rental Officer, the Landlord will be crediting the Tenant's rent account.

Orders

An order will be issued:

- requiring the Landlord to compensate the Tenant for loss suffered as a direct result of flooding of the rental premises in the amount of \$3,555.61 (p.30(4)(d) and p.34(2)(c)).

Jerry Vanhantsaeme
Rental Officer