

IN THE MATTER between **KC and WB**, Applicants, and **NP and GP**, Respondents;

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 **town of Fort Smith in the Northwest Territories**;

BETWEEN:

KC AND WB

Applicants/Tenants

-and-

NP AND GP

Respondents/Landlords

REASONS FOR DECISION

<u>Date of the Hearing:</u>	June 25, 2024
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	KC, representing the Applicant
	WB, representing the Applicant
	LT, supporting the Applicants
	NP, representing the Respondent
<u>Date of Decision:</u>	July 4, 2024

REASONS FOR DECISION

An application to a rental officer made by KC and WM as the Applicants/Tenants against NP as the Respondent/Landlord was filed by the Rental Office April 26, 2024. The application was made regarding a residential tenancy agreement for a rental premises located in Fort Smith, Northwest Territories. The filed application was served on the Respondent by email on May 7, 2024 and deemed served on May 10, 2024.

The Applicants/Tenants alleged the Respondent/Landlord had breached the *Residential Tenancies Act* by requiring payment of first and last months rent and a security deposit upon possession of the rental premises, did not complete a written entrance inspection with the Tenants prior to occupancy of the unit, did not complete an exit inspection, and inappropriately withheld a portion of the security deposit against the costs of cleaning and repairs.

A hearing was scheduled for June 25, 2024, KC and WB appeared representing the Applicants/Tenants. LT appeared as support for the Applicants/Tenants. NP appeared representing the Respondent/Landlord. Due to the severity of the claim, the hearing was adjourned *Sine Die* to allow both the parties to provide supporting documentation.

Tenancy Agreement

Testimony was presented establishing a tenancy agreement between the parties starting November 2021. When questioned if a written tenancy had been done, the Landlord confirmed and provided the written tenancy agreement. The written tenancy agreement establishes a fixed term lease running from November 1, 2021 to October 30, 2022 then converted to a month-to-month tenancy until the Tenants vacated the rental premises. The tenancy agreement also indicated the tenancy was between "KC & BB and NP & GP", resulting in a change to the "Style of Cause" to the Application and Order being issued. I am satisfied a valid tenancy agreement is in place.

From this point forward the Applicants/Tenants will be known as the Tenants and the Landlords/Respondents will be known as the Landlords.

In review of the tenancy agreement, the Rental Officer noted inaccuracies and contraventions of the Act:

- The agreement between the parties is reversed. A lessee is a tenant and the lessor is the landlord. The lessee is the temporary occupant of the property, and the lessor owns the property in which the lessee is occupying.

- Section 7 of the tenancy agreement requiring the tenant to pay first months rent, last months rent and a security deposit. *Pursuant to paragraph 14.2(1) A landlord shall not require or receive from a tenant or prospective tenant any amount as a deposit for damages or for arrears of rent, or any other amount as a condition of entering a tenancy agreement, other than a security deposit, and if applicable, a pet security deposit. **This breach was supported by the Lease Balance provided by the Landlord, showing the Tenants paid the first months rent on Sept 7, 2021, then paid the last months rent on November 1, 2021.***
- Section 14 of the tenancy agreement, where the tenant agrees not to assign or sublet the premises. Any room mates need to submit an application and subject to a new lease agreement. Section 22 of the Act legislates assignments and subletting.

In my opinion, the contraventions described in the written tenancy agreement are contrary to the Act and therefore invalid.

Rent Payment

In the application and the hearing, the Tenants testified the Landlords collected a damage deposit and last months rent and felt this was illegal. No actual evidence of this claim was provided by the provision of a rent balance statement or tenancy agreement. These items were requested and provided by the Landlords.

The rent balance statement provided by the Landlords upon request and entered into evidence represents the Landlords' accounting of the rent payments made against the Tenants' rent account. The rent balance statement supports the Tenants' claim for inappropriately collecting the last months rent. However, it was confirmed that it was used to cover the final month of tenancy within the rental premises.

Both parties acknowledged the rental premises was vacated on April 17, 2024 and the Landlords confirmed new tenants moved into the unit on April 17, 2024. Upon finding a new tenant to take occupancy the same day as the Tenants vacated the rental premises, the Landlords should not have withheld the rent and returned to the Tenants an overpayment of rent. However, there is nothing in the Act for overpaid rent to be returned to the Tenants in the circumstances of the application.

It should also be noted that collecting of last months rent is a contravention of section 91 of the Act and is subject to a summary conviction to a fine not exceeding \$2,000.

Withholding of security deposit

In the application the Tenants alleged the Landlords inappropriately withheld the security deposit. The Tenants claimed repairs (water leak) and painting were required to the rental premises. The Tenants testified repairs would need to be done and then a walk through would be done. The Landlords testified the rental premises was previously occupied for two years, it was newly painted, the previous tenant was not hard on the rental premises and did not know about the leak until they did a walk through with the Tenants. The Landlords also testified the Tenants' asked to do the work rather than have the Landlords do the work, then a walk through could be done. The Landlords also provided into evidence an email dated November 23, 2021, asking if the tenants were satisfied with everything, then they would do the walkthrough.

Entered into evidence was an exit inspection signed by only the Landlords. Both parties also acknowledged an entry inspection was not done. The *Act* state the landlord or their agent shall conduct an inspection of the condition and contents of the rental premises at the beginning of the tenancy and offer the tenants reasonable opportunities to participate in the inspection. I'm of the opinion that a walk through is not documentation of the condition of the rental premises at the start of a tenancy.

Alteration of the rental premises and cleaning

In the application, the Tenants entered into evidence, a statement of them building a basic room in the unfinished basement as a music room. When asked if they had gotten permission to make the alteration, both the Tenants and Landlords acknowledged no authorization for the construction was given. The Landlords also testified the music room needed to be moved as it was not up to code and could void their insurance. The Landlords also entered into evidence photos of the music room and an invoice indicating it had to be removed due to proximity to the furnace at a cost of \$994.00 and the cleaning of the rental premises at a cost of \$900.00.

Determinations

In review of the evidence provided and the testimonies given by both parties, I find the Landlords inappropriately withheld the Tenants security deposit. This does not mean the Landlords do not have a claim against the Tenants for the removal of the unauthorized room and cleaning. The Landlords would need to make their own application to a rental officer.

Orders

An order will be issued:

- requiring the Landlords to turn the security deposit with interest to the Tenants in the amount of \$1,750.38 (p. 18(5)(a), p. 18.1(b)).

Jerry Vanhantsaeme
Rental Officer