IN THE MATTER between **ML**, Applicant, and **MM**, 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 **Yellowknife Bay in the Northwest Territories;**

BETWEEN:

ML

Applicant/Tenant

-and-

MM

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: **July 31, 2024**

Place of the Hearing: **Yellowknife, Northwest Territories**

Appearances at Hearing: **ML, representing the Applicant**

MM, representing the Respondent

Date of Decision: **August 12, 2024**

REASONS FOR DECISION

An application to a rental officer made by ML as the Applicant/Tenant against MM as the Respondent/Landlord was filed by the Rental Office May 30, 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 and deemed served on July 7, 2024.

The Applicant alleged the Respondent had improperly withheld the security and pet deposit for repairs, had the Applicant pay the costs of repairs to the rental premise for which the Respondent is responsible, and charged the Respondent for heating for which they did not use. An order was sought for the return of the security and pet deposit, the reimbursement of repairs incurred which were the responsibility of the Respondent, and reimbursement for heating costs not used by the Applicant.

A hearing was scheduled for July 31, 2024, in Yellowknife by three-way teleconference. ML appeared as the Applicant. MM appeared as the Respondent. Due to the severity of the claim, the hearing was adjourned *Sine Die* to allow the parties to provide supporting evidence to the clams.

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.

Tenancy Agreement

The Tenant entered into evidence an unsigned tenancy agreement outlining the terms of the tenancy between the parties for a rental premises located on a barge within Yellowknife Bay. The tenancy agreement was signed and dated only by the Tenant. During the hearing, the parties agreed the tenancy ran from November 1, 2021, to October 11, 2023. This time frame is also supported by evidence in the form of a tenancy letter provided by the Landlord. However, the Tenant did not move into the unit until December 2021. Later in the hearing, and submitted into evidence, a text message from October 15, 2023 stated the Tenant had vacated three days prior, making the tenancy end on October 12, 2023. Both parties also agreed the rent for October 2023 was prorated.

I am satisfied a month-to month tenancy agreement is in place in accordance with subsection 9(4) f the *Act*.

A review of the tenancy agreement identified numerous breaches of the *Act.* The tenancy agreement states:

- If the renter breaks the one year lease or does not move in they will forfeit the damage deposit being returned to them as well as the last month's rent.
- Should the renter move out before the lease ends they forfeit last months rent and damage deposit.

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Under the *Act:*

- *Subsection 18(4), allows the landlord to retain all or a part of the security deposit, a pet security deposit or both for arrears of rent owing from a tenant to the landlord in respect of the rental premises, and for repairs of damage to the premise caused by the tenant or a person permitted on the premises by the tenant; and*
- *Subsection 18(5), a landlord may not retain any amount of a security deposit or pet security deposit for repairs of damage to the rental premises if the landlord or his or agent (a) fails to complete an entry inspection report and an exit inspection report.*

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

Extension of time for making an application

Subsection 68(1) of the *Act* states that an application to a rental officer must be made within six months after the breach of an obligation under the *Act* or tenancy agreement or the situation referred to in the application arose.

Subsection 68(3) allows the Rental Officer to grant an extension to the time for making an application where the Rental Officer is of the opinion that it would not be unfair to do so.

In review of the application, the Tenant and Landlord were in continued contact to address the issues of the tenancy. Therefore, it is the opinion of the Rental Officer that it would be fair to grant an extension to the time for making this application, given the effort of both parties to resolve the matter within the legislated time frames.

Security deposit

The Tenant claims there was no entry and exit inspection completed as required by the *Act* and therefore the Landlord is withholding the security and pet deposit without authority.

The Landlord testified no formal entry inspection was completed as it was peak Covid, the Tenant had seen photos. The Landlord also testified a walk through was done via phone. The Landlord also acknowledged they would have been happy to have someone else complete the entry inspection but did not do so, as the Tenant needed into the unit immediately.

The Tenant disputes the claim on the walk through, and they did not have an entry inspection. However, stated they did not think to ask for a copy of an entry inspection. The Tenant testified the call with the Landlord was with regard to the functioning of the rental premises. They also testified they have also yet to receive a copy of the exit inspection.

The Landlord testified when the Tenant vacated the rental premises they were not in the territory due to evacuation and medical and did not conduct a move out inspection with the Tenant nor did they arrange for a representative to conduct a move-out inspection.

The tenancy agreement executed by the parties indicates “The Damage deposit will be returned upon a move out inspection with both parties”. Further within the tenancy agreement, it states*:* “An entry and exit inspection will be completed jointly upon move-in and move out by the Captain and the Renter”.

Upon request by the Rental Officer, the Landlord testified they did not return any portion of the security deposit as they could not come to an agreement on what the Tenant would pay for the damages to the floor and window. No notice was provided to the Tenant regarding the retention of the deposits, as they were not aware they were required to do so. The Landlord also testified, they felt it was unfair for the Tenant to get back their deposits and reimbursement for everything being claimed in the hearing.

The Landlord's tenancy agreement acknowledged the need for move-in and move-out inspections for return of the deposit. There is no doubt the Landlord was fully aware of their responsibility on the requirements to retain a security deposit. While the Landlord was not in attendance at the move-in or exit, they could have arranged for a representative to complete both inspections to ensure compliance with the *Act.*

Subsection 18(5) of the *Act* prohibits the retention of the security deposit by a Landlord when entry and exit inspection reports have not been completed; or fails without a reasonable excuse accepted by a rental officer, to give a copy of each report to the tenant.

As the Landlord failed to complete an entry and exit inspection report, the Landlord is not entitled to retain the security or pet deposit.

Fuel charges

During the hearing, the Tenant testified the Landlord gave them a propane bill covering August 2023 through to October 2023. The Tenant testified they are not disputing the August and September, only the October bill as the propane was not turned on to the rental premises prior to vacating the rental premises on October 11, 2023.

During the hearing, the Landlord testified the Tenant pays 16% of the propane costs for the rental complex, which includes hot water, propane fridge, stove, and propane heater. The Landlord also testified propane was on prior to evacuation but was shut off to the rental complex during evacuation. However, could not confirm as to whether the propane had been turned back on when the Tenant had returned, as they had not yet returned to Yellowknife and a caretaker was in place. The Landlord also stated heat was required in the rental premises for repairs such as drywall repair and painting.

The tenancy ended on October 11, 2024, as acknowledged by the Landlord and supported by evidence of a letter identifying the term of the tenancy. During the hearing, both parties acknowledged the rent for October was charged at a prorated rent. As the Tenant was not in possession after October 11, 2024, therefore they were not responsible for propane costs from October 12 through October 31, 2024.

Based on the evidence provided, the Tenant was charged and paid $236.88. Of this amount, $60.00 was for the month of October. Prorating the daily use, the charge for propane would be $1.94 per day for the 11 days in October the Tenant was in possession of the rental premises. Based on the prorating, the usage cost of propane would be $21.29. (**note**: propane is needed for the complete rental complex and not metered to each individual unit).

Damages

The Tenant is claiming the reimbursement for repairs done by two contractors for a total amount of $1,041.46 for repairs to drywall under a window, drywall above the door frame in the rental premises, and sanding/staining of wood top surface.

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During the hearing, the Tenant testified they repaired damages to the wall under the window as their dog's paws had gone through the drywall. The Tenant also testified when they brought in a contractor to repair the damages, the contractor questioned as to why they were paying for the repairs as the drywall was wet. Submitted into evidence were photos to support the Tenants claim regarding drywall repairs. The Tenant also claimed the window was old, builds up frost/condensation, and did not seal properly. During the first winter, there was no real issue, but during the second winter the window had frozen open. The Tenant also testified there were text messages to the Landlord regarding the window. The Tenant testified they are unsure on when the drywall was getting wet until but assumed it was after the first winter. The Tenant also testified they were required to constantly wipe moisture from the window during the winter months.

The Landlord is disputing the claim on the basis the Tenant had frozen the window when the weather is below freezing and froze the window open. A layer of ice had formed and had to be removed by a contractor, causing damages to the window and frame, which in turn caused a moisture issue resulting in mould found during the drywall repair from the dog.

In regard to the scratched wood, the Tenant testified their dog has made some minor scratches but there were already wear marks on the wood and they were not responsible for those repairs. However, the Tenant did hire the first contractor who repaired the drywall under the window to sand and stain the wood top, but the contractor did not do the work they were requested to do. As a result, the Tenant hired a second contractor to complete the originally requested repairs. The Tenant also testified, the second contractor went beyond the scope of work for sanding and staining. The Tenant acknowledged that they feel they may owe a portion of the repairs, as their dog had done damage, but there was existing damage there.

The Landlord disputed the claim regarding scratched wood top. The Landlord testified the Tenant's dog pen was in that area and had worn the stain, the area of the wood top was not damaged prior to the tenancy started. The Landlord also testified the Tenant did carry out repairs, but the person employed by the Tenant did not use the correct stain colour to match the existing colour.

The Landlord testified that during the time the repairs were being done, they were on isolation outside territory and was unable to see the work being completed and could only go by the photos submitted into evidence.

During the summations of the hearing, the Tenant testified, the window did have plastic on it but they had removed the plastic due to the heat and they had no indication of moisture as there was no bubbling of paint. The Landlord stated, they were willing to pay for half of the repairs as they were unsure on full extent of damages and wanted to avoid the Rental Officer hearing, however as this was being heard, withdrew their offer to cover half the cost for the pet damage.

Subsection 42(1) of the *Act, A tenant shall repair damage to the rental premises and the residential complex caused by the wilful or negligent conduct of the tenant or persons who are permitted on the premises by the tenant.*

Taking in mind there was no move-in/out inspection to take into account the status of the rental premises at the start and end of the tenancy, the evidence provided, and testimony of both parties, I find the Tenant responsible for the initial repairs with the first contractor and a portion of the second contractor.

Determinations

During the hearing, both parties wished to determine what the definition of wear and tear meant. The Rental Officer informed the parties that wear and tear was defined as reasonable damage from regular use. For example, loose fixture and fittings, wear marks in carpet, minor scuffs in walls and scratches on shelves.

In review of the testimony and evidence, I find the Landlord withheld the security deposit without legal authorization; the Tenant was not responsible to pay heating costs after the tenancy had been terminated.

I find the Tenant to be fully responsible for repairs to the drywall as their dog's paw had gone through the wall. The removal of the drywall to repair the hole would be the same as that whether or not dampness was found. I also find the Tenant and Landlord both have responsibilities for the repairs to the rental premises based on no entry and exit inspection being done and that the Landlord had been willing to cover a portion of the cost prior to the hearing occurring.

This does not mean the Landlord does not have a claim against the Tenant for damages. The Landlord would need to make their own application to the rental officer.

Orders

- The Respondent must return the security deposit with interest to the Applicant in the amount of $1,250.23 (p.18.1(b));
- The Respondent must return to the Applicant the propane overpayment in the amount of $38.71 (p. 45(1), ss. 83(2)); and
- The Respondent must return to the Applicant the cost of repairs in the amount of $224.28 (p. 42(1), ss. 83(2)).

Jerry Vanhantsaeme
Rental Officer