

IN THE MATTER between **DPM**, Applicant, and **CR**, 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:

DPM

Applicant/Landlord

-and-

CR

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: August 13, 2024

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: KS, representing the Applicant

Date of Decision: August 13, 2024

REASONS FOR DECISION

An application to a rental officer made by DPM as the Applicant/Landlord against CR as the Respondent/Tenant was filed by the Rental Office June 3, 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 22, 2024.

The Applicant alleged the Respondent had repeatedly failed to pay rent when due and had accumulated rental arrears. An order was sought for payment of rental arrears and payment of future rent on time.

A hearing was scheduled for August 13, 2024, in Yellowknife by three-way-teleconference. KS appeared representing the Applicant. The Respondent did not appear at the hearing, nor did anyone appear on their behalf. The Respondent was served notice of the hearing on July 19, 2024 by email and deemed served on July 22, 2024. The hearing proceeded in the Respondent's absence pursuant to subsection 80(2) of the Residential Tenancies Act (*Act*). Due to the severity of the application, the hearing was adjourned *Sine Die* to allow the Applicant to provide supporting documents to the claim.

Tenancy agreement

The Applicant entered into evidence a fixed term residential tenancy agreement between the parties running from March 15, 2023 to February 28, 2024. After which time the tenancy became month-to-month. The tenancy agreement was signed by all parties.

I am satisfied a valid tenancy is in place in accordance with the *Act*.

In review of the tenancy agreement, the Rental Officer noted an issue. Paragraph 14 of the tenancy agreement stated: "During the term of this Lease, or after its termination, the Landlord may charge the Tenant or make deductions from the Security Deposit any or all of the following:"

- a. repair of walls due to plugs, large nails or any unreasonable number of holes in the walls including the repainting of such damaged walls;
- b. repainting required to repair the results of any other improper use or excessive damage by the Tenant;
- c. unplugging toilets, sinks and drains;

- d. replacing damaged or missing doors, windows, screens, mirrors or fixtures;
- e. repairing cuts, burns, or water damaged to linoleum, rugs and other areas;
- f. any other repairs or cleaning due to any damage beyond normal wear and tear caused or permitted by the Tenant or by any person whom the Tenant is responsible for;
- g. the cost of extermination where the Tenant or the Tenant's guests have brought or allowed insect into the Property or building;
- h. repairs and replacement required where windows are left open which have caused plumbing to freeze, or rain or water damage to floors or walls;
- i. Replacement of locks and / or lost keys to the Property and any administrative fees associated with the replacement as a result of the Tenant's misplacement of the keys; and
- j. any other purpose allowed under this lease act.

Subsection 18(4) states a landlord may, in accordance with this section, retain all or a part of a 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 premises caused by the tenant or a person permitted on the premises by the tenant.

While it may be done with good intentions to use a security deposit for issues during the tenancy, this is in breach of the *Act* and thus deemed to be invalid for use other than rental arrears or damages at the end of the tenancy.

During the hearing, the Landlord testified the Respondent has vacated the rental premises but still has items in the unit and has not returned the keys. The Applicant also testified they are in the process of ending the tenancy as per the *Act*.

Rental Arrears

The Applicant entered into evidence a "Tenant Statement" representing the Landlord's accounting of the monthly assessed rents and payments received against the tenancy of Carol Ross from March 15, 2023 through to March 1, 2024. The Tenant Statement indicated the Respondent has an arrears balance owing in the amount of \$32,298.94. According to the Tenant Statement and the Tenancy Agreement, the rent charged was \$3,550.00 per month starting February 15, 2023. However, as the Respondent did not take possession of the property at the start of the month, the Applicant prorated the Respondent's rent for the first month.

The Tenant Statement showed between March 15, 2023, and February 29, 2024, the Respondent had missed or underpaid the rent charged multiple times. The Tenant Statement also indicated two outstanding water charges, December 31, 2023 for \$62.13 and February 29, 2024 in the amount of \$1,600.00. When questioning the water charges, the Applicant testified the charges were still outstanding. The Applicant also testified the invoices were in the name of the Respondent.

The Applicant also entered into evidence an email correspondence page regarding invoicing, payment receipts, and other correspondence. Upon request, the Applicant provided copies of the invoice and receipt emails to the Rental Officer.

I am satisfied the Tenant Statement accurately reflects the current status of the rent account and the historical pattern of behaviour throughout the tenancy. After deducting the unpaid water bill from the February 29, 2024 statement balance, I find the Respondent has repeatedly failed to pay the rent when due and in full and has accumulated rental arrears in the amount of \$27,086.51.

Determinations

Subsection 41(1) A tenant shall pay to the Landlord the rent when lawfully required by the tenancy agreement on the dates specified by the tenancy agreement. In review of the evidence submitted and the testimony provided, the Rental Officer removed the water charges from the Tenant Statement to get an accurate accounting of arrears as the bill is in the name of the Respondent. As the Landlord had not provided an updated Tenant Statement to the Rental Officer and the Respondent prior to the hearing, to ensure accurate accounting arrears, the February 29, 2024 balance was used for the calculation of arrears, as noted above.

This does not mean the Applicant cannot claim the remaining arrears. They would need to make a separate application based on notification to the Respondent in accordance with the *Act*.

Order

An order will be issued:

- requiring the Respondent to pay rental arrears in the amount of \$27,086.51 (p. 41(4)(a)).

Jerry Vanhantsaeme
Rental Officer