

IN THE MATTER between **DPM**, Applicant, and **SA**, 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-

SA

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 16, 2024

REASONS FOR DECISION

An application to a rental officer made by DPM as the Applicant/Landlord against SA 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 on July 19, 2024 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 January 11, 2023 to December 31, 2023. After which time, the tenancy became month-to-month. The tenancy agreement was signed by the Respondent and one other person. The Rental Officer questioned the other person's signature to determine if the tenancy agreement was a sole or joint tenancy. The Applicant testified, the second signature was a relative who signed but was only staying there. The Applicant also testified, they had never met the second signature and advised the tenancy was only with the Respondent.

I am satisfied a valid sole 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 charged 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) of the *Act* 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.

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 SA from February 12, 2023 through May 14, 2024. The monthly rent charged during the tenancy was \$2,100.00. While the tenancy agreement indicates the tenancy was to start on January 11, 2024, the Respondent did not take possession of the unit till a later date and the rent charged was prorated. The statement entered into evidence shows the Respondent had rental arrears in the amount of \$21,250.00 on May 1, 2024.

The Applicant also entered into evidence, an email correspondence page regarding invoicing and payment communications with the Respondent. Upon request, the Applicant provided copies of this correspondence to the Rental Officer.

During the hearing, the Applicant also testified the Respondent had not made any payments towards the rent account and arrears after the application. The Applicant also testified on July 6, 2024, the Respondent gave notice they had vacated the rental premises. The Applicant then waited a week before entering the rental premises; the Applicant advised they are in process of terminating the tenancy, completing the exit of the rental premises.

The Applicant's representative also testified they hold a security deposit in the amount of \$2,100.00. They also testified they had a cleaning fee for the unit charged against the security deposit in the amount of \$493.50, leaving a balance remaining in the amount of \$1,606.50. Upon request, evidence was provided to support the claim.

I am satisfied the Tenant Statement accurately reflects the current status of the rent account and the historical pattern of behaviour throughout the tenancy. I find, during the tenancy, the Respondent repeatedly failed to pay the rent when due and in full and has accumulated rental arrears in the amount of \$21,250.00.

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.

After applying the remainder of the security deposit of \$1,606.50, I find the rental arrears balance owing to be \$19,643.50.

Order

An order will be issued:

- requiring the Respondent to pay rental arrears in the amount of \$19,643.50 (p. 41(4)(a)).

Jerry Vanhantsaeme
Rental Officer