

IN THE MATTER between **CT**, Applicant, and **MR**, 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 **town of Hay River in the Northwest Territories**;

BETWEEN:

**CT**

Applicant/Tenant

-and-

**MR**

Respondent/Landlord

**REASONS FOR DECISION**

**Date of the Hearing:** August 20, 2024

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

**Appearances at Hearing:** CT, representing the Applicant  
MR, representing the Respondent

**Date of Decision:** August 25, 2024

### **REASONS FOR DECISION**

An application to a rental officer made by CT as the Applicant/Tenant against MR as the Respondent/Landlord was filed by the Rental Office June 12, 2024. The application was made regarding a residential tenancy agreement for a rental premises located in Hay River, Northwest Territories. The filed application was served on the Respondent by email and deemed served on June 21, 2024.

The Applicant claimed they were in a weekly tenancy starting August 8, 2023. The Respondent failed to provide the Applicant with a copy of the signed tenancy agreement. The Applicant vacated the rental premises, gave more than appropriate notice, and did not get back their security deposit. An order was sought for the return of the remaining security deposit.

A hearing was held August 20, 2024, by three-way teleconference. CT appeared representing the Applicant. MR appeared representing the Respondent. At the hearing, I reserved my decision on the rental arrears owing in order to further review the information provided.

From this point forward, the Applicant/Tenant will be known as the Tenant and the Respondent/Landlord will be known as the Landlord.

#### *Issues*

The application to a rental officer was based on the Tenant not receiving a copy of the tenancy agreement, the type of tenancy, and the Landlord withholding the security deposit. During the hearing, the Tenant also brought up the Landlord's maintenance staff entering the rental premises without providing appropriate notice.

#### *Tenancy Agreement and rent*

The Tenant claims the parties had entered into a signed weekly tenancy agreement on August 8, 2023. The parties did not agree to the signature of a weekly tenancy agreement nor were they in agreement on the tenancy being weekly. The Tenant also testified they were in the rental premises for one week then were required to evacuate due to the wildfire a week later. The Tenant also claimed they did not receive a copy of their weekly tenancy agreement, the Landlord sent them an email link but the link was broken. Later in the hearing, the Tenant testified, they were told for convenience they could pay monthly, and that is what they did. Evidence shows the Tenant made monthly payments starting January through to April 2024.

The Landlord testified the Tenant did not return to the unit until December 2023. Entered into evidence by the Landlord were multiple email and conversations between the parties ranging from payments towards rent, date of ending the tenancy, and Landlord's maintenance staff entering the rental premises without notice as required under the *Act*. The Landlord also stated, if the Tenant was in a weekly tenancy agreement, why would they provide one month's notice and if the Tenancy was weekly, why were the payments monthly vice weekly. The Landlord also testified if the tenancy was weekly, then they had not been paid for each week as the months are more than 4 weeks.

Also, entered into evidence, was a text conversation between the parties regarding payment of the \$750.00 for the remainder of the security deposit from weekly to monthly. The Landlord also testified and was supported by evidence, the Tenant informed they were leaving at the end of May. In review of the evidence provided, the Rental Officer noted, an email chain starting April 6, 2024, where among other issues discussed, the Tenant informed the Landlord they would be leaving on the 3<sup>rd</sup> week of May, because they could not live under the circumstances, asking for the return of \$250.00 for the last 10 days from the last month's rent if they left early. Then on April 13, 2024, they stated they were leaving the residence on May 13, 2024, and requested half a month's rent of \$500.00 to be returned. The Landlord testified they had sent a signed monthly tenancy agreement to the Tenant but had not received it back signed by the Tenant. The claim on the monthly tenancy agreement was supported by a January 28, 2024 email.

During the hearing, the Rental Officer raised the following questions:

1. To the Landlord: is there a signed weekly tenancy agreement from August 8? *(The Landlord denied an agreement existed (tenant disputes the claim));*
2. When was the date of the initial occupancy of the rental premises? *(Tenant responded on August 8, and evacuated August 13, 2023);*
3. What was the date the Tenant vacated the rental Premise? *(Both parties agreed May 13, 2024);*
4. To the Landlord, did they find a new tenant to replace the Tenant? *(The Landlord responded no, they did not find a new tenant for the remainder of May. The Tenant disputed the claim, they testified they knew the person, had a witness that is someone residing in the house. The Landlord disputed the Tenant's claim. The occupant did not move into until the middle of the next month. (The Tenant then claimed the Landlord uses rental premises as an Air BnB as well - the parties were advised the Rental Officer has no jurisdiction on Air BnBs);*
5. To the Landlord, if you are retaining the security deposit for the missed rent, did they provide formal notice of the retention of the security deposit? *(The Landlord stated they did not provide notice. (The Landlord was informed of section 18(4) of the Act)).*
6. To the Tenant, did they pay rent during the evacuation? *(Response: No, the Landlord said they did not have to do that as it was a weekly tenancy, they were under the union and the union is going under strike, they were not ready for monthly, if they go on strike, they would need to leave as they could not afford monthly rent.)*
7. To the Landlord, there was no rent paid up to December? *(Response, rent was only paid in one week in August. Tenant returned in December. No rent was paid was received for the remainder of August and September through November. The Tenant returned December 15 and paid \$500.00, if Tenant was weekly, they would have owed \$750.00, rent was placed on a monthly basis in December).*

8. To the Landlord, is there an employment contract between the parties? *(The Landlord responded "No");*
9. To the Landlord, did they give keys for someone to do maintenance in the unit? *(Yes, it was winter, there was issue, the Tenant has informed them of heat loss. The Landlord sent someone to investigate and found the registers closed and the heating was not able to work properly. The maintenance person checked the rental premises as it was an emergency and had told everyone what was happening);*
10. Question to both parties regarding payments and how payments had been received. Both parties confirmed as below:

Date	Amount
August 2023	\$500.00 (\$250 - rent / \$250 - Deposit)
September 2023	Nil
October 2023	Nil
November 2023	Nil
December 2023	\$500.00
January 2024	\$1,000.00
February 2024	\$1,000.00
March 2024	\$1,000.00
April 2024	\$1,000.00
May 2024	Nil

11. To the Tenant, you gave notice on April 13, 2024, you were leaving end of May? *(The Tenant testified, they gave notice for 3<sup>rd</sup> week of May, then 13<sup>th</sup> of May). In review of evidence, an email, April 6, 2024, the tenant said they were leaving end of May. Then later on April 6 they stated they would leave on the 3<sup>rd</sup> week of May. A following email on April 13, 2024 showed they had given final notice on May 13, 2024); and*
12. Is there a security deposit being held by the Landlord? *(Yes, the tenant did not pay rent in May. Deposit held is \$1,000.00).*

### *Summations*

The Tenant summarizes, on August 8, 2023, weekly basis rent. Paid \$250 to rent and \$250 deposit signed by e-transfer. The parties had signed a weekly contract, the Tenant had not received a copy of the contract, they had not signed any contract. For convenience, they paid rent monthly as they were being harassed. They were from Ontario and they were not aware of the NWT laws. They thought because it was weekly, they reviewed the *Act* and felt a week or two was notice was enough, but gave a month's notice. They were hoping they could apply the deposit money towards rent and get \$500.00 back. If they were wrong, the Landlord could have corrected them, but the Landlord had never replied to their emails.

When the Tenant was there, the maintenance people entered the premises without their knowledge or advanced notice. Once they had entered late at night, they were terrified. The Tenant had felt harassed over things like rent, garbage, or maintenance or management people. The Landlord had not provided the Tenant with the mailbox key and was refused. They had ordered food online, but could not get it. The Tenant was unable to get food as the store was 30 minutes away. For many reason, the Tenant gave notice they had to vacate, they gave one month's notice even though it was a weekly rental.

The Landlord summarized, if the tenancy was weekly, with the payment being monthly, they would owe for the months longer than 4 weeks. The house has four bedrooms, and they were renting two other rooms. For privacy issues, one tenant was getting documents. They take privacy of all seriously, and nobody got keys. In regards to rent, it was paid on the first of the month, but the Tenant was not always paying on time. The Tenant would respond they would pay when they get paid. If it is harassment for asking for payment on time, or be careful of issues, everyone had to be told. If the Tenant complained about issues, the Landlord would look into this. Also if the rent is on a weekly basis, why did they not pay December or May weekly? The payment of rent was on the monthly basis and the deposit can be applied to rent. The Tenant can be angry and they do not know what they would do. They do not understand why they would pay every month if they were on a weekly basis. If they were to be paid on a weekly basis, they would be losing money.

### *Deliberations*

During the hearing, multiple subjects arose in regards to the tenancy between the parties, such as the Landlord's representatives entering the rental premises without authorization, provision of a tenancy agreement, security deposit, and the tenancy agreement between the parties.

#### *Entrance into the rental premises*

Under subsection 27, (1) A landlord has the right to enter the rental premises without giving the notice required by subsection 26(3) where: (a) an emergency exists; (b) the tenant consents at the time of entry; or (c) the landlord has reasonable grounds to believe that the tenant has vacated or abandoned the rental premises.

(2) In the case referred to in paragraph (1)(a), a landlord has a right to enter even though the tenant is not at home at the time and has not given his or her permission to the landlord to enter.

In the hearing, there was an issue noted regarding maintenance staff entering the rental premises while the Tenant was there. While all efforts should be made to notify the Tenant and while it is not known if other tenants in the rental unit were aware, when entering, in the case of loss of heat during the winter, it is of the opinion of the Rental Officer, this would be considered an emergency and fall under allowing a maintenance person permission to enter the premises.

#### *Security deposit*

Subsection 14(1), No landlord shall require or received a security deposit from a tenant other than (a) in the case of a weekly tenancy, an amount equal to the rent for a period not exceeding one week; or (b) in the case of a tenancy other than a weekly tenancy, an amount equal to the rent for a period not exceeding one month.

Subsection 18(3), Subject to this section, a landlord who holds a security deposit, pet deposit or both shall within 10 days after the day a tenant vacates or abandons the rental premises, ensure that (a) the deposit is returned to the tenant; and the tenant is given an itemized statement of account for the deposit or deposits.

Subsection 18(4), A landlord, may in accordance with this section, retain all or part of a security deposit or pet security deposit or both for arrears of rent owing from a tenant to the landlord in respect of the rental premise, and for repairs of damage to the premises caused by the tenant or a person permitted on the rental premises by the tenant.

Testimony and evidence showed on August 8, 2023, the Tenant paid \$500.00. This was broken down with \$250.00 paid each towards rent and deposit. Then upon evacuation, no further payments were received. Later on December 23, 2023, the Tenant had paid \$500.00 towards rent as they had re-occupied the rental premises on December 15, 2023. In the hearing, the Landlord had testified they had received and were holding another \$750.00 for a total of \$1,000.00 as a security deposit. This was not disputed by the Tenant.

#### *Tenancy agreement*

During the hearing, there was conflicting testimony on the type of tenancy was in place. Under the subsections:

- 9(1) of the Act, A tenancy agreement may be oral, written or implied.
- 9(3) a written tenancy agreement must be signed by the parties or their agents and may be in the form of a tenancy agreement set out in the regulations.

- 9(4) a tenancy agreement is deemed to be in writing when it has been signed by one party or his or her agent, given to the other party or is or her agent and the landlord permits the tenant to take occupancy of the rental premises.
- 11(1) where a tenancy agreement is in writing, the landlord shall ensure that a copy of the agreement signed by the landlord and tenant is given to the tenant within 60 days after it has been signed by the tenant and delivered to the landlord.
- 11(2) Where a landlord does not deliver a copy of a tenancy agreement in compliance with subsection (1), a tenant may pay to a rental officer the rent lawfully required on the subsequent dates specified by the tenancy agreement until the landlord complies with subsection (1).
- 52(1) Where a tenancy agreement does not specify a date for the termination of the tenancy agreement, the tenant may terminate the tenancy on the last day of a period of the tenancy by giving the landlord a notice of termination, (a) in the case of a weekly tenancy, not later than seven days before that day; or (b) in the case of a monthly tenancy, not later than 30 days before that day.

During the hearing, both parties disputed the weekly tenancy in itself. On August 8, 2023, the Tenant paid to the landlord \$500.00 of which half was for rent and the other half towards the security deposit. When the community was evacuated and returned, the Tenant did not return for months afterwards (December 15, 2023). On December 23, 2023, the Tenant paid \$500.00 towards their rent. After which time, evidence showed from January through April 2024, the Tenant made monthly payments towards rent, but did not make the rent payment for May when they left. Email evidence presented also showed the payments to say the month's rent (e.g., January rent). The Landlord also submitted into evidence a text message from January 2, 2024 of a conversation regarding payment of rent and security deposit. There was no indication in the email the rent was to be weekly. Also entered into evidence was an email from January 28, 2024, with a new rental contract for the Tenant to sign, which was not signed.

In review of the evidence and testimony, it is my opinion, the parties entered into a weekly tenancy starting August 8, 2023. However, due to the evacuation and other unknown disclosed reasons, the Tenant did not return to the community. When the Tenant returned to the rental premises, they had agreed to pay monthly, resulting in a month-to-month oral tenancy agreement being created. Therefore subsection 52(1)(b) would apply, which states: " When a tenancy agreement does not specify a date for the termination of the tenancy agreement, the tenant may terminate the tenancy on the last day of a period of the tenancy by giving the landlord a notice of termination, (b) in the case of a monthly tenancy, not later than 30 days before that day. As the Tenant was in a month-to-month tenancy, they were required to provide the Landlord with 30 days notice no later than the month prior to vacating.

Based on emails dated April 6, 2024, the Tenant advised the Landlord via email they were vacating the rental premises at the end of May. Then again on the same day, they advised they would vacating earlier on the third week of May. Then on April 13, 2024, the Tenant gave a final notice they were leaving on May 13, 2024. The Tenant also indicated using the last months rent to cover that time and to refund the remainder to the Tenant.

The Tenant assumed the security deposit was actually able to be used for rent, whereas it is not and by not paying rent for May, accumulated rental arrears in the amount of \$1,000.00 for the month of May. While the Landlord did not make an application to the rental officer under paragraph 41(4)(a) for an order to pay arrears, they did apply the security deposit as requested towards the rent for May as the Tenant had vacated the rental premises on May 13, 2024.

As the Tenant remained responsible for the full rent for May, the Tenant's application for return of the security deposit is denied.

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Jerry Vanhantsaeme

Rental Officer