

IN THE MATTER between **CG and GMG**, Applicants, and **AB and SB**, 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 **city of Yellowknife in the Northwest Territories**;

BETWEEN:

CG AND GMG

Applicants/Landlords

-and-

AB AND SB

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: August 29, 2024

Place of the Hearing: Yellowknife Northwest Territories

Appearances at Hearing: CG, representing the Applicant

Date of Decision: September 12, 2024

REASONS FOR DECISION

An application to a rental officer made by CG and GMG as the Applicants/Landlords against AB and SB as the Respondents/Tenants was filed by the Rental Office June 19, 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 Respondents by email on August 13, 2024 and August 16, 2024 and deemed served on August 19, 2024.

The Applicants alleged the Respondents had accumulated utilities' arrears and caused damages to the rental premises. An order was sought for payment of utility costs and damages to the rental premises.

A hearing was scheduled for August 29, 2024, by three-way teleconference. CG appeared representing the Applicants. The Respondents did not appear, nor did anyone on their behalf. The hearing proceeded in the Respondents absence pursuant to subsection 80(2) of the Residential Tenancies Act (*Act*). The hearing was adjourned *Sine Die* for the Applicant to provide supporting evidence to their claim.

Tenancy Agreement

The tenancy agreement commenced on September 1, 2022 until September 1, 2023 and carried on as a month to month tenancy until the Respondents vacated the rental premises.

The tenancy agreement and addendum are not in the approved form based on the following items identified:

- **Security Deposit:** No pet deposit, instead it sets out a monthly pet fee starting at \$100 per month. *The Act does not allow for the charging of pet fees. A Landlord may only charge a pet deposit equivalent to one half months rent.*
- **Abandonment:** "Should the Tenant fail to take possession of the Premises at the commencement of the Term, or abandon the Premises before the expiration of this agreement, the Landlord may take possession without notice or demand and re-rent the Premises on such conditions as the Landlord may deem advisable. Without prejudice to the landlord's right to recover rent and utility charges which may be owing and without prejudice to any claim or claims for damages, the Tenant will be charged an **early move-out fee of Two Thousand four hundred (\$2,400.00) dollars plus the cost of advertising**, and will be responsible for paying the rent until the end of the Term, or until a new tenant, suitable to the Landlord is found to occupy the Premises.

Subsection 62(1) states “ where a tenant abandons a rental premises, the tenancy agreement is terminated on the day the rental premises were abandoned by the tenant remains liable, subject to section 5, to compensate the landlord for loss of future rent that would have been payable under the tenancy agreement. *In order to obtain this compensation, an application to a rental officer would be required. A landlord cannot impose a fee. A landlord is also responsible for mitigating this cost and risk by obtaining a suitable tenant as soon as possible.*

- **Non-assignment /Non Sublet:** The tenant shall not be permitted to assign this agreement without the prior written consent of the Landlord. The Tenant shall not sublet the Premises.

Subsection 22(1) states “Where a tenant has a tenancy agreement for a period of six months or more or has no fixed tenancy agreement and has occupied a rental premises for a period of six months or more, the tenant may, subject to subsection (2), transfer his or her right to occupy the rental premises to another person but the transfer must be either

- (a) an assignment where the tenant does not intend to return to the rental premises, and the tenant gives up all his or her interest in the rental premises to the other person; or
- (b) a subletting, where the tenant
 - (i) intends to return to the rental premises,
 - (ii) gives the right to occupy the rental premises to another person for a term ending on a specified date before the end of the tenant’s term, and
 - (iii) will resume occupancy on that date.

- (2) An assignment or subletting is not valid unless the landlord has given written consent, which must not be unreasonably withheld.

- **Monthly Payment of Rent** - For Tenants not paying rent according to their Residential Tenancy Agreement, the following charges apply:

Late Payment of Rent

1st late payment during the tenancy - **\$100 fee assessed**

2nd time late payment during tenancy - **\$125.00 fee assessed**

Any subsequent late payments during tenancy - \$200.00 + \$10 charge per day fee assessed until rent is received.

The Rental Officer questioned if the Applicant had applied this clause. The Applicant testified they did not.

Section 3 of the Residential Tenancies Regulations state: "For the purposes of subsection 41(2) of the Act, a late payment penalty respecting the rent due under a tenancy agreement must not exceed \$5 plus \$1 for each day after the due date that the rent is late, to a maximum of \$65.

NSF (Non-sufficient Funds) Cheques or PAD (Pre-Authorized Payment) Defaults

1st NSF/PAD Default during the tenancy - **\$100 fee assessed**

2nd NSF/PAD Default during tenancy - **\$125.00 fee assessed**

Any subsequent NSF/PAD Default during tenancy - **\$200.00 fee assessed**

Upon request of the Rental Officer, the Applicant testified the Respondents had gone NSF twice. The Applicant testified they may have only charged one fee of \$100.00 to the Respondents.

Section 13 of the Act prohibits penalties from being imposed when a breach occurs. Section 41(4) of the Act provides for remedies for when a tenant fails to comply with their obligation to pay the rent in full and when due. Those remedies do not include compensation to the landlord for losses suffered as a direct result of the breach. Consequently, it is also inappropriate and in contravention of the Act for the Landlord to claim administrative costs for NSF rent payments.

- **Addendum to the Tenancy Agreement 1** - signed July 28, 2022.

1.(b) Summary of monthly rental fee to include furniture:

i. Base Rent	\$3,200.00
ii. Pet(s) Fee	\$100.00
lii. Furniture Rent:	<u>\$250.00</u>
iv. Total Rent	\$3,550.00 + utilities per item #4 of this addendum)

- **Addendum to the Tenancy Agreement 3 for Additional Fees for Pets** - signed August 9, 2022.

1.(b) Summary of monthly rental fee to include furniture:

i. Base Rent	\$3,200.00
ii. Pet(s) Fee	\$100.00
iii. Additional Pet Fee	\$200.00
lii. Furniture Rent:	<u>\$250.00</u>
iv. Total Rent	\$3,550.00 + utilities per item #4 of this addendum

The written tenancy agreement includes a condition for monthly pet fees. The Act provides for a pet security deposit to a maximum value of 50 percent of one month's rent.

The Applicant testified the charge was in the template they used. The reason for the pet fee was to try and limit the number of pets in the premises. The monthly pet fees as described in the written tenancy agreement are contrary to the Act and therefore invalid.

The Applicant acknowledged the tenancy agreement used was not fully in accordance with the Act.

Termination of the tenancy agreement

The Applicant testified they were looking to sell the property and provided the Respondents with a 90-day termination notice in January 2024, this was accepted by the Respondents and they vacated the rental premises in April 2024. The Applicant also testified their child was going to move into the unit while up for sale. The Applicant testified the home has been taken off the market as they did not get any offers and the rental premises is being used as a short term rental.

The Applicant also entered into evidence a "Lease Termination Notice 30 Days as Requested by the Tenant". The notice indicates the Respondents provided to the Applicant notification on March 18, 2024:

- Both parties agreed to vacate the premises by April 16, 2024;
- April 2024 rent would be pro-rated;
- Balance of deferred rent fee of Sept 2023 (As per Addendum #4), the Tenant shall pay the remaining deferral lump sum;
- Lump sum fee for the remaining balance for September 2023 rental fee is \$1,465 (rental arrears);

- Balance on city Utilities to be pro-rated to April 16, 2024;
- Amount owing to Landlord (Pro-rated rent, September 2023 rental balance and city utilities);
- Move-out checklist and items for repair and heating fuel to be full on date of move-out; and
- Items as part of the lease would remain in the rental premises. The Respondents were to take only the furnishings they own.

Rental arrears

The Applicant entered into evidence a breakdown of the balance due at the end of the tenancy regarding the missed September 2023 rent. The Applicant testified and supported by evidence, they had broken down the cost of the September rent over 10 months. The Applicant testified the Respondents had \$1,465.00 remaining on the September. The Rental Officer requested and was provided a breakdown of the rent charges, payments, and fees charged.

The balance statement provided and entered into evidence is the Landlord's accounting of the monthly rent and payments received during the tenancy. The rent was established at \$3,200.00 for the term of the tenancy with a \$250.00 charge for furnishings and another \$300.00 applied for pets. The balance statement indicates the rent and furnishings charged during the tenancy was \$67,550.00 and the Respondents as having paid \$67,805.00, leaving the Respondents a credit balance of \$255.00.

I find the Respondents have a rent credit in the amount of **\$255.00**.

NSF fees

During the hearing, the Applicant also testified the Respondents had NSF'd two payments but had only charged the \$100.00 once. The Rental Officer requested and was provided information on the charge incurred by the Applicant. The evidence provided showed the Applicant had been charged \$7.00. Section 13 of the Act specifies that a landlord may not charge penalties against a tenant for breaches under the Act or tenancy agreement, other than late payment penalties calculated in accordance with the Act and Residential Tenancies Regulations (the Regulations). A Landlord is permitted to recover NSF costs which they actually incur but amounts in excess of actual costs are penalties which are prohibited. The collection of NSF fee in the amount of \$7.00 is authorized. **The remaining charge of \$93.00 is disallowed.**

Pet Fee

The written tenancy agreement sets out the calculated rent charge and a pet fee for the rental premises. As stated earlier, the Applicant testified, the reason for the pet fee was to try and limit the number of pets in the premises.

A landlord can limit the number of pets within a rental premises by placing this into a tenancy agreement. The *Act* permits a landlord to obtain a pet deposit where the tenant is permitted to keep a pet on the premises. The pet deposit cannot exceed 50% of the monthly rent and must be returned to the tenant, with interest, at the end of the tenancy provided there are no arrears of rent or repair costs related to damages. There is however, no regulation on how the pet deposit is collected. The parties could agree to paying a pet deposit over a period of time. As the tenancy agreement sets out a monthly pet fee varied in the agreement and the addendums, the pet fee being charged is for the privilege of keeping of a pet or pets on the premises. Upon request of the Rental Officer, the Applicant provided a ledger showing they had obtained \$5,860.00 in fees as part of the total rent charged.

It should also be recognized the charging of a non-refundable pet fee instead of the permitted refundable pet security deposit may be considered a summary offence under section 91 of the *Act*.

As no security deposit or pet security deposit was collected, I see no reason why the extra fees charged couldn't be put towards the pet and security deposit for totalling \$4,800.00; leaving an overage collected in the amount of **\$1,060.00**.

Security Deposit

Under the tenancy agreement, entered into evidence, the Respondents were to provide a security deposit in the amount of \$3,200.00. When questioned as to whether there was a security deposit or pet deposit received, the Applicant testified there was not. They only asked for the base rent. Under the *Act*, the Applicant was entitled to collect a security deposit equivalent to one month's rent and pet security deposit equivalent to one half months rent. Base on the tenancy agreement, the Applicant was allowed to collect a total of \$4,800.00 as a security and pet deposit.

The Rental Officer has directed \$4,800.00 of the overaged charged be put towards the security and pet deposit.

Utilities

The written tenancy agreement sets out the Respondents' responsibility for utilities, including heating, electricity, and city utilities (water and garbage disposal). The tenancy agreement indicates the utilities will remain in the name of the landlord and the tenant will pay to the Landlord the costs on a monthly basis and subject to review and may be modified on a monthly basis. During the hearing, the Applicant testified the parties were doing this, then an addendum was done for the Respondents to maintain their own heating and electricity account, the Applicant maintained the city utility account. The breakdown of utilities owed by the Respondents' are as follows:

Heating Fuel

The Applicant testified when the Respondents vacated the rental premise, they did not replenish the heating fuel at the termination of the tenancy as shown by photo evidence of the fuel gauge. This resulted in the Applicant adding a small portion of fuel to the tank to ensure the rental premises did not freeze. Evidence provided shows the Applicant placed 261.5 litres into the tank on April 26, 2024. The cost per litre at the time was \$1.53 for a cost of \$400.10. On August 29, 2024, the Applicant topped off the fuel tank by placing another 805.40 litres into the tank. The cost per litre at the time of top-off was \$1.55 for a cost of \$1,310.79. When a fuel gauge on a fibreglass tank reads empty, there is typically 5 - 10 litres of fuel remaining in the tank. In total, the Applicant placed 1,066.90 litres into a 900-litre tank. I find the Respondents are responsible for the cost to replenish the heating fuel as received when entering into the tenancy agreement.

The maximum allowable claim for fuel would be at the end of the tenancy for 900 litres at the cost of replenishment at that time. Below is the Rental Officer's calculation of fuel costs should the Applicant or Respondents had filled the tank at the end of the tenancy.

900 Litre	Maximum tank capacity
5 Litre	Estimated amount of fuel remaining in tank when gauge reads empty
855 Litre	Maximum allowable filling
\$1.53	Cost per litre of fuel at end of tenancy and initial filling
\$1,308.15	Total fuel cost at end of tenancy

I am satisfied the Respondents are responsible for heating fuel costs in the amount of **\$1,308.15.**

City Utilities

Entered into evidence were two city of Yellowknife utilities invoices totalling \$418.91 (March 2024 - \$225.49, Prorated April 2024 - \$193.42). The Applicant testified they paid the city invoices. I am satisfied the Respondents are responsible for city utility costs in the amount of **\$418.91**.

I find the Respondents responsible for utility arrears in the amount of **\$1,727.06**.

Damages and cleaning costs

The Applicant claimed costs for repair of damage and cleaning of the rental premises. The Applicant entered into evidence a move in/out checklist, photos and itemized statement of account outlining the charges and estimates for repairs and cleaning.

The checklist identified the condition of the rental premises when the Respondents entered into the tenancy agreement but did not indicate an inspection had been completed after the tenancy had been terminated. The Rental Officer questioned as to if an exit inspection had been completed or not. The Applicant testified an inspection had been done and the issues requiring the Respondents actions done by email. The Applicant also testified they did not have the form, had specific things Respondents' needed to address. The Applicant acknowledged they did not conduct a formal documented move out inspection.

Sections 15 and 17.1 of the Act a Landlord is required to conduct an entry and exit inspection and offer the Tenants an opportunity to participate. After an entry or exit inspection is completed, the Landlord has to prepare a report, sign it, provide the Tenants with an opportunity to include comments and sign it, and then provide the Tenants with a copy of the report within five days of the inspection.

Subsection 18(5) of the Act states: "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 her agent

- (a) fails to complete an entry inspection report and an exit inspection report; or
- (b) fails, without a reasonable excuse accepted by a rental officer, to give a copy of each report to the tenant.

In the event of damages being caused by a tenant, a Landlord can utilize the security and pet security deposits to cover all or a portion of the costs of repairs. The use of the move in/out inspection report aids in identifying the condition of the rental premises prior to and after the tenancy and along with other supporting evidence helps to substantiate the use of the deposits.

In the case of this tenancy, the Applicant did not obtain either form of deposit and was unable to use the funds to mitigate damages.

The Rental Officer reviewed the claim with the evidence provided to determine if the Respondents' were responsible for the damages, cleaning, and if the costs were reasonable.

Under subsection 42(1) of the *Act*, a tenant shall repair damages to the rental premises caused by their wilful negligent conduct of the tenant or persons permitted on the premises by the tenant, and under subsection 42(3)(e) of the *Act*, where, on the application of a landlord, a rental officer determines that a tenant has breached the obligation imposed by this section, the rental officer may make an order (e) requiring the tenant to pay any reasonable expenses directly associated with the repair or action.

The following are the amounts claimed and my findings:

- **\$12,441.00 claimed** - Damage to hot tub, Applicant claimed the hot tub was not winterized correctly and required repairs ranging from \$10,000.00 - \$12,000.00. A visual inspection conducted by TSS Mechanical identified numerous breaks in the piping, distribution, and return manifolds and heater. Due to the extent of damage, the hot tub could not be filled to assess the casing of the tub. The Rental Officer requested and was provided the model and serial number of the hot tub and was able to determine with the assistance of the manufacturer the hot tub was constructed in 1999; and the cost to purchase this hot tub used in a clean working condition is \$3,500.00, and the cost to purchase the unit new would be approximately \$14,500.00. The manufacturer's website also denotes the life span depending on quality of the hot tub can range from 5 - 20 years. The move in/out checklist does not provide evidence of the hot tub or its condition. The only reference to the hot tub is within the tenancy agreement and basic use/maintenance. As the hot tub is over the estimated life span by 4 years, the value of tub is \$0.00 dollars. However, evidence did show the hot tub was used and the Respondents had been given instructions on the care, the Rental Officer can only assume the hot tub functioned and was used by the Respondents and therefore have a duty of care under the tenancy agreement. It is of the opinion of the Rental Officer, the hot tub was functional and still maintained some minor value. The Rental Officer estimates a value of half the used purchase price in the amount of **\$1,750.00. Supported by age and estimated lifespan provided by the manufacturer.**
- **\$272.00 claimed and approved** - Broken light caused by children playing. **Supported by evidence;**

- **\$315.00 claimed and approved** - Removal animal waste in yard and patio. **Supported by evidence;**
- **\$263.75 claimed and approved** - Cleaning of yard and patio of garbage and cigarette butts. **Supported by evidence;** and
- **\$310.38 claimed and approved** - Broken window hardware. **Supported by evidence.**

\$2911.13 Approved damage and cleaning costs.

Summation

Adjusting the charges and balance of the rent account, assigned security/pet deposits and unauthorized pet fees, I find there is a balance owing to the Respondents in the amount of \$1,569.81. The breakdown is as follows:

Utility arrears	\$ 1,727.06
plus damages and cleaning costs	\$ 2,911.13
Approved claimeable amount	\$ 4,638.19
less rent balance credit as per statement	\$ 255.00
less disallowed NSF charge not posted	\$ 93.00
Less pet overcharges	\$ 1,060.00
Balance owed to Applicant	\$ 3,230.19
Less security and pet deposit	\$ 4,800.00
Balance or deposit owed to Respondents	\$ 1,569.81

Orders

An order will issue requiring the Applicant to comply with their obligation to return security deposits in accordance with section 18 of the Act, and to return the remaining security deposit credit of \$1,569.81 to the Respondents.

APPENDIX A

Exhibit 1: Landlord accounting of rent and pet fees

Exhibit 2: Rental Officer accounting of rent and pet fees

Jerry Vanhantsaeme
Rental Officer