

IN THE MATTER between **MM**, Applicant, and **BC**, 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 **Janice Laycock**, Rental Officer, regarding a
rental premises located within the **town of Inuvik in the Northwest Territories**.

BETWEEN:

MM

Applicant/Landlord

-and-

BC

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: September 11, 2024

Place of the Hearing: Yellowknife, Northwest Territories

Appearances at Hearing: SC, representing the Applicant
BC, the Respondent

Date of Decision: September 11, 2024

REASONS FOR DECISION

An application to a rental officer made by MM as the Applicant/Landlord against BC as the Respondent/Tenant was filed by the Rental Office July 8, 2024. The application was made regarding a residential tenancy agreement for a rental premises located in Inuvik, Northwest Territories. The filed application was served on the Respondent by email, deemed served on August 31, 2024.

The Applicant claimed the Respondent had repeatedly not paid their rent when due and had rental arrears, they also alleged the Respondent had breached their obligation to maintain ordinary cleanliness. An order was sought for payment of rental arrears, for the Respondent to comply with their obligation to maintain ordinary cleanliness and not to breach this obligation again, for termination of the tenancy agreement, and eviction.

A hearing was held on September 11, 2024, by three-way teleconference. SC appeared representing the Applicant, the Respondent BC also appeared at the hearing. At the hearing, the Respondent corrected the spelling of their first name, as B, not B, and I agreed to revise the style of cause accordingly.

Tenancy agreement

The Applicant entered as evidence the written tenancy agreement between the parties for a one-year term commencing on February 1, 2024. The rent is currently \$1,750 per month.

At the hearing, the Applicant noted that the tenancy agreement was not signed by the Landlord, however, they did not dispute that this was the agreement between the parties for the tenancy. Other than correcting the spelling of their first name, the Respondent also agreed that this was the agreement they had signed.

I would note that under subsection 9(1) of the *Residential Tenancies Act* (the Act) a tenancy agreement may be oral, written or implied, and although subsection 9(3) requires a written tenancy agreement be signed by the parties or their agents, the fact that it isn't signed does not invalidate the agreement.

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

Rental arrears

In their application, the Applicant alleged that aside from their payment for February's rent, the Respondent had been late with their rent each month and had rent owing for July 2024. They provided, as evidence, a copy of their statement showing charges and payment made against the Respondent's rental account, up to July 2, 2024. According to the statement, the Respondent had paid March rent on the 8th of March; April's rent on May 18, 2024; May's rent on May 30, 2024; June's rent on June 11, 2024; and had not yet paid July's rent.

At the hearing, the Applicant testified that since the application was made the Respondent had paid rent for July on July 7th, had paid rent for August and September in full and on time and currently had no outstanding arrears.

The Respondent testified that they had just started a new business and had struggled to make their rent payments when due, however, they had communicated with the Landlord when they were going to be late. They also have identified a roommate to share rent with and planned to discuss with the landlord adding them to their tenancy agreement. The Applicant testified that the Respondent had communicated with them, but had not paid rent when promised and they were not confident that rent would be paid on time in the future.

According to their evidence provided by the Applicant, in addition to monthly rent of \$1,750 they charged the Respondent a late administration payment of \$50 for March, April, May, June, and July 2024. This amount is set out in the tenancy agreement as follows: "The tenant agrees to pay the Landlord the sum of \$1,750 /month payable in advance of the 1st day of each calendar month. Rent will be considered late if not received by the 4th of the month and the Tenant will be liable to a late administration payment of \$50."

At the hearing, I pointed out that this provision is not in accordance with the Act. Under subsection 41(2) of the Act, "a tenant who pays his or her rent later than the dates specified by the tenancy agreement is liable for a penalty calculated in accordance with the regulations" and section 3 of the *Residential Tenancies Regulations* states "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."

I calculated based on the statement and the testimony at the hearing that the Respondent had paid \$141 over what was allowed under the Act, as follows:

- \$41 March, overcharged and paid by tenant - payment due on March 4th, paid on March 8, 2024, 4 days late - $\$5 + \$4 = \$9$ as calculated under the Act, \$50 charged on March 2, 2024.
- \$1 April, overcharged and paid by tenant - payment due on April 4th, paid on May 18, 2024, 44 days late - $\$5 + \$44 = \$49$ as calculated under the Act, \$50 charged on April 2, 2024.
- \$19 May, overcharged and paid by tenant - payment due on May 4th, paid on May 30, 2024, 26 days late - $\$5 + \$26 = \$31$ as calculated under the Act, \$50 charged on May 2, 2024.
- \$38 June, overcharged and paid by tenant - payment due on June 4th, paid on June 11, 2024, 7 days late - $\$5 + \$7 = \$12$ as calculated under the Act, \$50 charged on June 2, 2024.
- \$42 July, overcharged and paid by tenant - payment due on July 4, paid on July 7, 2024, 3 days late - $\$5 + \$3 = \$8$ as calculated under the Act, \$50 charged on July 2, 2024.

Total overcharged on late payment penalties - \$141.00.

Based on the evidence and testimony, I find the Respondent has repeatedly breached their obligation to pay their rent on time and will order them to pay their rent on time in the future. However, they currently have no arrears and have been overcharged by the Landlord a total of \$141 for late payment penalties. At the hearing, I advised the Applicant I would be ordering the return of this amount and suggested they review their tenancy agreements and make revisions to conform with the Act.

Obligation - maintain cleanliness

In the application, the Applicant alleged the Respondent had breached their obligation under subsection 45(2) of the Act. This section of the Act requires the tenant to “maintain the rental premises and all services and facilities provided by the landlord of which the tenant has exclusive use in a state of ordinary cleanliness.” The Applicant provided, as evidence, photos of the yard outside the rental premises, showing a couch, boxes and other garbage, and a request to the tenant in May to clean the garbage up. The tenant responded to this request that they would clean it up when the snow went.

At the hearing, the Applicant testified that the garbage had still not been cleaned up. The Respondent refuted this, saying that they had cleaned up the garbage and had placed the couch under the deck, as they wanted to find a use for it or give it away.

The Applicant repeatedly challenged the Respondent’s testimony that they had cleaned up the garbage, but was not able to provide any evidence to support this claim.

Based on the testimony, I find that the Respondent was in breach of the Act, but has now complied with the obligation to clean up the outdoor area and I do not believe that an order under subsection 45(4) is justified.

Termination of the tenancy

In their application, the Applicant alleged that the Respondent had repeatedly breached their obligation to pay their rent on time, had rental arrears, and had breached their obligation to maintain cleanliness. For these reasons they asked for termination of the tenancy agreement and eviction.

As previously described during the hearing, I found that the Respondent had repeatedly not paid their rent when due, but currently had no rental arrears. I also found that the Respondent had complied with their obligation to clean up the garbage on the rental property. I will order the Respondent to pay their rent on time in the future, but do not believe that termination of the tenancy and eviction is justified for either of these breaches of the Act.

Orders

An order will issue:

- requiring the Respondent to pay their rent on time in the future (p. 41(4)(b)); and
- requiring the Applicant to refund the Respondent for overpayment of late payment penalties in the amount of \$141 (ss 41(2) and ss 83(2)).

Janice Laycock
Rental Officer