

IN THE MATTER between **KKR and AR**, Applicants, and **KL**, 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 **city of Yellowknife in the Northwest Territories**.

BETWEEN:

KKR and AR

Applicants/Landlords

-and-

KL

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	October 16, 2024
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	KKR and AR, representing the Applicants KL, the Respondent
<u>Date of Decision:</u>	October 16, 2024

REASONS FOR DECISION

An application to a rental officer made by KKR and AR as the Applicants/Landlords against KL as the Respondent/Tenant was filed by the Rental Office January 19, 2024. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was the Respondent deemed served on the Respondent by email on March 14, 2024.

The Applicant claimed the Respondent had failed to pay their rent when due and at the end of their tenancy had rent owing, and were responsible for payment of outstanding utilities, and costs to repair damages. An order was sought for payment of rental arrears, outstanding utilities, and payment of costs to repair damages.

A hearing was held on April 10, 2024, by three-way teleconference. KKR and AR appeared as the Applicants. KL appeared as a Respondent. At the hearing, I made decisions regarding rental arrears, utilities, and some tenant damages and orders were issued. I adjourned the hearing to a later date pending further information from the Applicants regarding other damages to the rental premises as a result of the freeze-up.

The hearing was scheduled to resume on August 14, 2024 by three-way teleconference but was rescheduled at the request of the Applicant. A hearing was held on October 16, 2024 by three-way teleconference. KKR and AR appeared as the Applicants. KL appeared as the Respondent.

Tenancy agreement

At the previous hearing, I found that a tenancy agreement was in place between the parties in accordance with the *Residential Tenancies Act*. This sole tenancy with KL commenced on November 4, 2023 and terminated on April 14, 2023.

Tenant damages - freeze-up

At the hearing on April 10, 2024, I received evidence and found that there were damages to the rental unit as a result of the power disconnect on April 4, 2023, and subsequent freeze-up. I awarded costs to replace the water meter after the freeze-up as well as other damages.

At the request of the Applicant, I adjourned the hearing to consider a claim for costs of other damages to the unit as a result of the freeze-up. The Applicants testified that they had difficulty finding a contractor and needed more time to determine costs of repairs required.

When the hearing resumed on October 16, 2024, the Applicants testified that their insurance company classified the rental premises as abandoned and would not cover costs for repairs as a result of the freeze-up. The Applicants provided evidence and testified to steps that had been taken after they discovered the unit was frozen-up to address any damages:

- April 13, 2023 - exit inspection completed - copy of report provided, video, and photos showing damages to unit at move-out as well as photos showing the condition of the rental unit at move-in.
- April 20, 2023 - thaw frozen water pipes - copy of invoice from Pick's Steam \$378, not previously claimed.
- April 21, 2023 - brought Wilf's Restoration Ltd. in to assess needed repairs - copy of estimate for repairs to the rental unit totalling \$10,905.47:
 - Main level - replace kitchen sink faucet, exterior door, door knob/lock set, casing and flooring (flooring replacement \$2,380), further cleaning;
 - Laundry room - replace baseboard, remove and reset washer and dryer; and
 - Bathroom - replace cabinets, baseboard, detach and reset sink and toilet.
- October 31, 2023 - after current tenants complained about the floor sagging, the Applicant brought in another contractor, "Winmar", to do an assessment - copy of inspection report completed, "R's First Inspection", noting that "in the kitchen the subfloor is very saturated and damaged. Water has also been found under the sinks [sinks] back wall. Would recommend replacing floor, subfloor, kick plates, and removing and resetting the counter and lower cabinets. Under the house, there was belly bag damage and the insulation lines." The inspection report also includes photos showing disturbed insulation in crawlspace and moisture meter readings in the kitchen and living room showing readings between 21.2 to 99.9 with the majority of the floor readings being 99.9.
- August 1, 2024 - secured a contractor to do repairs - copy of Winmar estimate dated August 1, 2024, for \$11,000 including GST for costs to repair damages:
 - \$1,428.57 - Remove and replace vanity
 - \$2,380.95 - Replace damaged subfloor
 - \$6,666.67 - Remove and replace flooring

The Applicants testified that they had taken steps to identify and address the damages to the rental unit and were able to rent the unit starting in June 2023. They were not aware there was further damage from the freeze-up, until the current tenants reported the floors were sagging, at which point Winmar was called in to do an inspection with a moisture meter. They further testified that they had contacted a number of local contractors to do the work, without success, until this fall when Winmar agreed to take on the contract. Despite further delays, they expect the contractor to begin work soon. They offered to remove the cost for replacing the vanity as this was not identified in Winmar's inspection.

At the hearing, I agreed, based on the evidence, the rental unit was in good shape when the Respondent moved in, and the Respondent was responsible for the freeze-up in April 2023. This had been established at the hearing in April. However, it was not clear to me that the Respondent was liable for the costs to repair damages identified in October 2023 - six months after the Respondent vacated the rental premises. I thought it possible that the floor was not saturated directly as a result of the freeze-up in April, but because adequate steps weren't taken by the Applicant to assess the plumbing and address any leaks. The Applicants' evidence does not specifically show water damage in April 2023.

The Applicants argued that they had taken all the steps that they could, including bringing in a contractor on April 21, 2023, to assess the damages and provide an estimate. At this time, there was no indication of the extent of the damage discovered later and no reason to do further assessment. If the Respondent had paid their utilities, the power would not have been disconnected, resulting in the freeze-up, and the Applicants would not now be facing these costs. However, recognizing the amount of time that has transpired, they offered to split the costs to replace the subfloor and flooring with the Respondent.

The Respondent again apologized to the Applicants. They expressed concern about the extent of their liability, but stated that they were willing to cover some costs, despite the fact that their ability to pay is limited at this time.

At the hearing, I stated that if I awarded costs for the repairs, I would be depreciating the value of the flooring based on the useful life of laminate flooring which is typically 15 years. When I asked, the Applicant testified the laminate flooring was not new when they purchased the property and they understood from the previous owners that the flooring was installed prior to them purchasing the unit. I roughly estimated the laminate flooring is at least six years old.

I reserved my decision at the hearing in order to further review the evidence and testimony. After further review and consideration, I find the Respondent is responsible for damages to the subfloor and flooring as a result of the freeze-up. If the Respondent had paid their utilities as required, or taken other steps to avoid a freeze-up at the rental unit, the Applicant would not be facing these costs. Further, once they were aware of the issue, the Applicant hired a contractor locally known to have experience in restoration and mitigation of damages from water to assess the condition of the unit after the freeze-up, and they responded promptly when their current tenants raised issues.

However, I believe that had the Applicants might have been more diligent in monitoring the rental unit after the freeze-up, it is possible that they could have mitigated any water damage earlier. Considering this, I believe depreciating the value of the flooring, and splitting the costs between the Landlord and Tenant, as suggested by the Applicant, is reasonable. I also think it is reasonable for the Respondent to pay the invoice from Pick's totalling \$378.

Winmar's estimate to replace the damaged subfloor is \$2,380.95 + GST and to replace the damaged laminate flooring \$6,666.67 + GST. Assuming the laminate flooring has reached half of its useful life (at the hearing we estimated it was at least 6 years old), the depreciated value is \$3,333.34. With GST included the total amount is \$6,000 to replace the subfloor and laminate flooring, and half of that is \$3,000.

\$2,380.95 subfloor

\$3,333.34 (depreciated value of flooring)

\$ 285.71 GST

$\$6,000.00/2 = \$3,000.00 + \text{Pick's Steam Ltd. Invoice for } \$378 = \$3,378.00$

I find the Respondent responsible for costs to repair damages totalling \$3,378 and will so order.

Orders

An order will issue requiring the Respondent to pay costs for repair of damages in the amount of \$3,378.00 (p.42(3)(e)).

Janice Laycock
Rental Officer