

IN THE MATTER between **SB**, Applicant, and **AR**, 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:

SB

Applicant/Tenant

-and-

AR

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: **October 3, 2024**

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

Appearances at Hearing: **PH, representing the Applicant**

SB, observing the hearing

AR, representing the Respondent

Date of Decision: **October 18, 2024**

REASONS FOR DECISION

An application to a rental officer made by SB as the Applicant/Tenant against AR as the Respondent/Landlord was filed by the Rental Office June 24, 2024. The application was made regarding a residential tenancy agreement for a rental premises located in Yellowknife, Northwest Territories. The filed application was personally served on the Respondent June 27, 2024.

The Applicant alleged the Respondent had entered the rental premises without advanced written notice of intent in accordance with the *Residential Tenancies Act (Act)*. An order was sought for losses suffered as a direct result of the Landlord's entry without notice.

A hearing was originally scheduled for August 29, 2024, but was rescheduled on request of the Applicant. A hearing was held October 3, 2024, by three-way teleconference. PH appeared representing the Applicant and SB as an observer only as they were not sworn in. AR appeared representing the Respondent. The hearing was adjourned *Sine Die* to allow both parties to evidence requested by the Rental Officer to support the claim and response.

Tenancy agreement

The parties entered into an oral tenancy agreement for a room in the Respondent's home. The terms of the tenancy agreement were outlined in a text message conversation between the parties indicating the Applicant would have internet, cable, parking, and sole use of a shared washroom, as there was no other tenant currently in the home. The tenancy also included water and electricity except for plugging a vehicle in during the winter months. The tenancy commenced March 10, 2022 until June 30, 2024.

I am satisfied a valid oral tenancy agreement is in place in accordance subsection 9(1) of the *Act*.

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

Rent

Evidence provided by both parties indicated the rent charged at the start of the tenancy was \$800.00 per month. Also entered into evidence by the Tenant was a note on the bottom of photo evidence claiming a conversation had taken place between the parties of the Tenant requesting a reduction of the rent from \$800 to \$600 per month starting February 2024.

The Landlord's representative disputed the claim as there was no verbal agreement for a rent reduction. The Rental Officer questioned why the Landlord had not made a claim to a Rental Officer regarding the arrears. The Landlord's representative testified they did talk to the Tenant regarding the reduction.

As both parties were disputing rent payments and charges, proof of payments was requested and provided. In review, of the known rent charge and payments recorded by both parties, no accurate method of accounting was maintained and the ability to determine what was actually paid is inconsistent.

Withholding of mail

The Tenant's representative claims mail sent by the Federal Government had been delivered to the address and the Landlord is withholding the mail. The Landlord's representative disputed the claim, they advised the mail had not been received and if it had, it would have been provided to the Tenant.

Termination of tenancy

The Tenant's representative testified at the end of May 2024 the Tenant provided verbal notice to the Landlord they were vacating the rental premises at the end of June 2024. The Tenant's representative testified there was a witness to the verbal notice. When questioned as to why they were not in attendance, the Tenant's representative stated the notice was given in the workplace.

Subsection 55(1)(a) through (d) states how and what must be done by a tenant, who is giving early notice of termination to the Landlord.

In the case of a month-to-month tenancy, notice must be given no less than 30 days before the end of the tenancy. Based on evidence provided by the Landlord, the Tenant turned over the keys on June 30, 2024.

Entry into a rental premise

The Tenant's representative claimed the Landlord improperly entered and used the rental premises for storage of their personal items prior to the end of the tenancy. The Tenant had not fully vacated and when they had returned to the rental premises on June 17, 2024, items that did not belong to the Tenant were in the rented space. The note on the photo indicated the items belonged to another tenant. A photo provided into evidence taken on June 20, 2024, were of items not belonging to the Tenant and these items continued to remain in the rental premises on June 23, 2024.

The Landlord's representative disputed the claim of their items being in the rental premises prior on June 17, 2024. The Landlord's representative testified they were out of the country and did not return until June 20, 2024, luggage was put into the rental premises as it was near the entrance to avoid blocking the hallway to avoid a fire hazard. The Landlord's representative testified almost all of the Tenant's personal items had been removed. The Landlord's representative also testified the items were only in the room for a couple days. The Tenant's representative disputed the time line and to support the claim provided an affidavit the Landlord's items were still being stored in the rental premises on June 23, 2024. Upon request, proof of travel was provided showing the Landlord's representative had not returned home until June 20, 2024.

Paragraph 26(2)(a) of the *Act* establishes the Landlord's right to enter the rental premises to perform their obligations under the Act. Paragraph 26(3) of the Act requires the Landlord to give the Tenant at least 24 hours advanced written notice of their intention to enter the rental premises, including the purpose, days, and hours of entry during which the landlord intends to enter the rental premises.

I am satisfied that the Landlord failed to comply with their obligation to give the Tenant advance written notice of their intention to enter the rental premises. Under the circumstances, I am also satisfied that the Landlord disturbed the Tenant's enjoyment and possession of the rental premises, contrary to subsection 34(1) of the *Act*.

Remedies available to the Tenants under section 28 of the *Act* for failing to give notice of intent to enter the rental premises include either requiring the Landlord not to breach the obligation again or requiring the Landlord to compensate the Tenant for losses suffered as a direct result of the breach.

Remedies available to the Tenants under subsection 34(2) of the *Act* for disturbing the Tenants' possession or enjoyment of the rental premises include: requiring the Landlord to comply with their obligation not to cause disturbances and not to breach that obligation again, requiring the Landlord to compensate the Tenants for losses suffered as a direct result of the breach, or terminating the tenancy agreement.

While the Tenant was not using the rental premises as their full time residence at the time, they did have personal items within the premises and the Landlord had effectively used the area prior to the tenancy being fully terminated.

Conclusion

The tenancy had not ended and the Tenant had rights to the quiet enjoyment of the rental premises whether they were there full time or not. Based on testimony and evidence provided, items found in the rental premises from June 20 to 23, 2024, did belong to the Landlord. At that time, the Tenant was still in the possession of the rental premises and entitled to their quiet enjoyment of the rental premises. As it can only be verified the Landlord had utilized the rental premises for 4 days, a daily rate of \$20.00 will be authorized.

Orders

An order will be issued:

- Requiring the Landlord to pay to the Tenant \$80.00 (p. 28(b), p. 34(2)(c)).

Jerry Vanhantsaeme
Rental Officer