

IN THE MATTER between **HC and DC**, Applicants, and **KM**, 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 Norman Wells in the Northwest  
Territories**;

BETWEEN:

**HC AND DC**

Applicants/Landlords

-and-

**KM**

Respondent/Tenant

**REASONS FOR DECISION**

**Date of the Hearing:** February 18, 2025

**Place of the Hearing:** HC, representing the Applicant  
KM, representing the Respondent

**Date of Decision:** February 25, 2025

### **REASONS FOR DECISION**

An application to a rental officer made by HC and DC as the Applicants/Landlords against KM as the Respondent/Tenant was filed by the Rental Office January 22, 2025. The application was made regarding a residential tenancy agreement for a rental premises located in Norman Wells, Northwest Territories. The filed application was served on the Respondent by email and deemed served on January 29, 2025.

The Applicants alleged the Respondent failed to pay rent from the start of the tenancy, failed to pay the security deposit, and failed to obtain utility accounts in their name as required by the tenancy agreement. An order was sought for payment of rental arrears, and the cost of utilities, termination of the tenancy agreement, and eviction.

A hearing was scheduled for February 18, 2025, in Yellowknife by three-way teleconference. HC appeared representing the Applicants. KM appeared representing the Respondent. Due to the severity of the claim, I reserved my decision for both parties to provide requested supporting documentation and to further review the evidence and testimony.

From this point forward the Applicants will be known as the Landlords and the Respondent as the Tenant.

#### *Tenancy agreement*

The parties entered into a fixed term tenancy agreement commencing December 1, 2024 until November 1, 2025.

The tenancy agreement is not in the approved form based on the following identified items:

- Paragraph 13: The Tenant will be charged an additional amount of \$25.00 per infraction for any Rent that is received after the greater of 1 day after the due date and any mandatory grace period required under the Act, if any. *The Act and Residential Tenancies Regulations (Regs) does not allow a landlord to charge a flat fee for missed rent payments. The landlord may only charge a penalty for late payment as set out in Section 3 of the Regs, which states 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.*

- Paragraph 15: During the term of this Lease or after its termination, the Landlord may charge the Tenant or make deductions from the Security Deposit for any or all of the following: *The Act only allows a security deposit to be used for damages to the rental premises or rental arrears accumulated at the end of the tenancy.*
- Paragraph 21: Upon giving written notice no later than 60 days before the expiration of the term of this Lease, the Tenant may renew this Lease for an additional term. All terms of the renewed lease will be the same except for this renewal clause and the amount of the rent. If the Parties cannot agree as to the amount of the Rent, the amount of the Rent will be determined by mediation. *Section 49 of the Act, allows a fixed term tenancy agreement to be renewed on a month-to-month basis should a fixed term tenancy agreement not be renewed. The rights and obligations as existing under the fixed term tenancy agreement remain the same. Section 47 of the Act dictates how and when a rent increase can be applied in relation to a tenancy agreement.*
- Paragraph 26: In the event that any action filed in relation to this Lease, the unsuccessful Party in the action will pay to the successful Party, in addition to all sums that either Party may be called to pay, a reasonable sum for the successful Party's attorney fee. *There is no specific provision in the Act for an Applicant to be awarded legal costs related to the filing of an application other than what is ordered by a Rental Officer. Costs incurred by either party would be at the sole cost of the party themselves.*
- Paragraph 34: Major maintenance and repair of the Property involving anticipated or actual costs in excess of \$100.00 per incident not due to the Tenant's misuse, waste, or neglect of that of the Tenant's employee, family, agent or visitor, will be the responsibility of the Landlord or the Landlord's assigns. *Paragraph 30(1)(a) and 30(1)(b) state the Landlord is to provide and maintain the rental premises and all services are in a good state of repair, whether or not in the tenancy agreement and must be fit for habitation. A dollar value cost for repairs does not relieve the Landlord of their responsibility.*
- Paragraph 44: At the expiration of the term of this Lease, the Tenant will quit and surrender the Property in as good a state and condition as they were at the commencement of this lease, reasonable use and wear and tear excepted. *Section 49 of the Act, allows a fixed term tenancy agreement to be renewed on a month-to-month basis should a fixed term tenancy agreement not be renewed. The rights and obligations as existing under the fixed term tenancy agreement remain the same. The Termination section of the Act dictates when and how a tenancy agreement can be terminated by either party in a fixed term tenancy.*

- Paragraph 46: If any dispute relating to this Lease between the Parties is not resolved through informal discussion within 14 days a dispute arises, the Parties agree to submit the issue before a mediator. The decision of the mediator will not be binding on the Parties. Any mediator must be a neutral party acceptable to both Parties. The cost of any mediations will be paid by the Tenant. *Section 79.1 permits a Rental Officer to mediate an agreement between parties and express the results in an order, provided the Rental Officer has the authority under the Act to make an order of that kind.*
- Paragraph 52: All sums payable by the Tenant to the Landlord pursuant to any provision of this Lease will be deemed to be additional rent and will be recovered by the Landlord as rental arrears. *Rent includes the amount of any considerations paid or required to be paid by a tenant to a landlord or their agent for the right to occupy rental premises and for any services and facilities, privilege, accommodations or thing that the landlord provides for the tenant in respect of his or her occupancy of the rental premises, whether or not a separate charge is made for the services and facilities, privilege, accommodation or thing. **"Rent does not include the cost of utilities placed or should have been placed in the name of a Tenant or damages caused to a rental premises by a tenant or their guests or pets".***
- Paragraph 56: If the Tenant moves out prior to the natural expiration of this Lease, a re-rent levy of \$4,950.00 will be charged to the Tenant. *Subsection 51(1) of the Act specifies that a tenant may only terminate a fixed-term tenancy agreement by giving the landlord at least 30 days' written notice for the last day of the fixed term. Subsection 5(2) of the Act specifies that where a tenant vacates or abandons rental premises other than in accordance with the Act or the tenancy agreement, the landlord must mitigate their losses by renting the rental premises again as soon as is practicable and at a reasonable rent. That means the landlord cannot delay in their efforts to find a new tenant.*

#### *Termination notice*

Entered into evidence was a Notice of Termination of Tenancy provided by the Landlords to the Tenant. The Notice of Termination of Tenancy did not provide a date for the termination or the reason for the tenancy to be terminated. As a result, the tenancy has not been terminated.

#### *Rent and security deposit arrears*

A rent statement entered into evidence represents the Landlords' accounting of the rent and payments received against the Tenant's rent account. The statement indicated the rent charged was \$1,650.00 per month from the start of the tenancy in December 2024. The statement also indicates the Tenant has failed to make any payments towards rent since the start of the tenancy.

The statement also indicates an unpaid security deposit for \$1,650.00 and a fuel charge for \$3,000.00. The security deposit and fuel charge are not considered rent.

Prior to the hearing, an updated rent statement indicated the Tenant had not made any payments towards the rental arrears and has failed to pay the \$1,650.00 in calculated rent for February 2025.

During the hearing, the Landlords testified the parties entered into a tenancy agreement for December 1, 2024. The Tenant advised they did not have the security deposit and first months rent. The Tenant was working with an organization and rent would be provided within a couple days of that week. As of the hearing date, no rent or security deposit payments had been made to date. The Landlords also stated the Tenant stopped communicating with them.

The Tenant did not dispute the non-payment of rent and arrears. The Tenant stated they were seeking assistance under the homelessness fund. The Tenant stated the homelessness fund would assist by January for up to 2-months rent plus security deposit but did not occur as the Landlords were not vendors with the Finance Department. The Tenant was requested and provided a message from the Homelessness Fund Coordinator advising payment information had been sent to the Finance Department on February 19, 2025, the Landlord was added to the payment system and the Landlord would receive payment by the end of the week (February 23, 2025), leaving \$1,650.00 owing. For the \$1,650.00, the Tenant had made an application to a government rental assistance program. They were also on a wait list for subsidized public housing.

The Tenant also stated they were employed through Jordan's Principle funding for the school to assist in the classroom. They were waiting for the funding to continue work.

The Rental Officer requested verification from the Landlords and received verification no payments had been received on behalf of the Tenant.

Paragraph 41(1) of the *Act*, requires a tenant to pay to the Landlord the rent lawfully required by the tenancy agreement on the dates specified on the tenancy agreement. Paragraph 11 of the tenancy agreement requires the Tenant to pay rent on or before the first (1<sup>st</sup>) day of each and every month of the term of the Lease to the Landlord at EFT, e-transfer or at such other pace as the Landlord may later designate by direct debit from a bank or other financial institution or e-transfer. I find the Tenant has breached their obligations to pay rent as required in accordance with the *Act* and tenancy agreement.

I am satisfied the Tenant has failed to pay rent from the start of the tenancy up to and including February 2025 resulting in the accumulation of rental arrears in the amount of \$4,950.00. I am also satisfied the Tenant failed to pay the \$1,650.00 security deposit as required by the tenancy agreement.

### *Utilities*

Subsection 45(1) of the *Act* specifies a tenant shall comply with the obligations under the tenancy agreement and with the rules of the landlord that are reasonable in all circumstances.

Paragraph 23 of the tenancy agreement between the parties states the Tenant is responsible for the payment of all utilities in relation to the property.

The Landlords testified the Tenant had not set-up their power or water accounts. As a result, the electrical company would place a load limiter on the rental premises. The Landlords stated as of the hearing date, they were unaware if a water account was set-up with the community. The Landlords also stated the Tenant is required to fill the heating fuel to determine the amount of fuel required when the Tenant vacates the rental premise at the end of the tenancy. The Landlords claims the Tenant did not provide proof of the oil filling. The Landlords are claiming the Tenant failed to pay for fuel and is requesting payment of \$3,000.00 for fuel.

The Tenant testified they received \$5,000.00 in assistance for fuel from their Land Corporation and waiting for a receipt from the office. The Tenant stated the oil is in their name since December.

They also testified the community was in a state of emergency and not required to set-up a water account immediately. Once the state of emergency is over, they would make arrangements to obtain a water account with the community. The Tenant also claimed the power account was set-up. The Rental Officer verified the community was in a state of emergency and from November 2024 through January 2025, after this time, utility charges would recommence.

Entered into evidence was proof of the electricity account and on December 17, 2025, the Tenant had received 747.7 of heating fuel for a cost of \$1,547.72 which works out to \$1.9714 plus GST for a total of \$2.07 per litre. The Tenant also claimed the fuel tank was not filled when they took occupancy. With this information and using another unit, the Landlords worked out the fuel for the rental premises was 11.71 Litres per day. From December 1 through December 17, 2024, the Tenant utilized 199.07 litres of the Landlords' heating fuel over 17 days which equated to  $199.07 \times \$2.07 = \$412.07$ .

I am satisfied the Tenant has heating utility arrears in the amount of \$412.07.

*Tenant concerns*

In the summations, the Tenant stated they only had cold water and the washing machine did not function. They had brought this forward to the Landlords and it had not been addressed. They had a person look at it and determined a part was missing for it to run to the shower. They did not want it touched as they did not want to cause damages. The Tenant requested a two week time to address the issue. The Landlords disputed the Tenant's claim, and they never received any complaints regarding the issued brought forward by the Tenant at the hearing.

*Termination of the tenancy agreement and eviction*

Based on the evidence and testimony of the Landlords' representative, the Tenant has repeatedly breached their obligation to pay rent in full when due, accumulated rental arrears and breached their obligation of maintaining a utility account in accordance with paragraph 23 of the tenancy agreement, I am satisfied termination of the tenancy agreement and eviction is justified. The Landlords were willing to enter into a conditional order for termination of the tenancy agreement and eviction.

*Orders:*

An order will be issued

- requiring the Tenant to pay to the Landlords rental arrears in the amount of \$4,950.00 (p. 41(4)(a));
- requiring the Tenant to pay future on time (p. 41(4)(b));
- requiring the Tenant to pay to the Landlord the outstanding security deposit in the amount of \$1,650.00 (p. 14.2(2)(a));
- requiring the Tenant to pay to the Landlord the outstanding utility costs in the amount of \$412.07 (p. 45(4)(c));
- requiring the Tenant to maintain their obligation to pay their utilities, and not breach that obligation again (p. 45(4)(a), p. 45(4)(b));

- terminating the tenancy agreement:
  - (a) March 31, 2025, unless \$1,650.00 is paid towards the rental arrears, \$137.35 is paid towards utility arrears, and \$550.00 is paid towards the security deposit for a total of \$2,337.35, and the monthly rent for March is paid in full;
  - (b) April 30, 2025, unless \$1,650.00 is paid towards the rental arrears, \$137.35 is paid towards utility arrears, and \$550.00 is paid towards the security deposit for a total of \$2,337.35, and the monthly rent for April is paid in full; or
  - (c) May 31, 2025, unless \$1,650.00 is paid towards the rental arrears, \$137.37 is paid towards utility arrears, and \$550.00 is paid towards the security deposit for a total of \$2,337.37, and the monthly rent for May is paid in full (p. 41(4)(c), ss. 83(2));
- Evicting the Tenant from the rental premises:
  - (a) April 1, 2025, if termination of the tenancy agreement becomes effective March 31, 2025;
  - (b) May 1, 2025, if termination of the tenancy agreement becomes effective April 30, 2025; or
  - (c) June 1, 2025, if termination of the tenancy agreement becomes effective May 31, 2025 (p. 63(4)(a), ss. 83(2)).

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Jerry Vanhantsaeme  
Rental Officer