

IN THE MATTER between **PAUL RIVARD**, Applicant, and **JULIE MARQUIS AND SHERRI MACDUFF**, 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, **HAL LOGSDON**, Rental Officer, regarding the rental premises at **NORMAN WELLS, NT**.

BETWEEN:

PAUL RIVARD

Applicant/Landlord

- and -

JULIE MARQUIS AND SHERRI MACDUFF

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondent, Julie Marquis, shall pay the applicant repair costs in the amount of four hundred dollars (\$400.00).

DATED at the City of Yellowknife, in the Northwest Territories this 12th day of May, 2010.

Hal Logsdon
Rental Officer

IN THE MATTER between **PAUL RIVARD**, Applicant, and **JULIE MARQUIS AND SHERRI MACDUFF**, Respondents.

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

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BETWEEN:

PAUL RIVARD

Applicant/Landlord

-and-

JULIE MARQUIS AND SHERRI MACDUFF

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: April 21, 2010

Place of the Hearing: Yellowknife, NT via teleconference

Appearances at Hearing: Paul Rivard, applicant
David James, witness for the applicant
Julie Marquis, respondent
Sherri MacDuff, respondent

Date of Decision: May 12, 2010

REASONS FOR DECISION

The applicant alleged that the respondents breached the tenancy agreement by failing to pay the full amount of rent and by failing to repair damages to the premises. The applicant sought an order requiring the respondents to pay the alleged rent arrears and repair costs.

This application was filed naming Julie Marquis and Sherri MacDuff as respondents. The tenancy agreement for the premises names only Ms Marquis as sole tenant. Although Ms MacDuff has signed other documents relating to this tenancy agreement such as an acknowledgement of changes to parking and laundry facilities and a notice to terminate the tenancy agreement, she is not named as a tenant on the tenancy agreement. In my opinion, Ms MacDuff was not a tenant, but an occupant, and is therefore not liable for any of the obligations of the tenant set out in the tenancy agreement.

The written tenancy agreement was made for a term commencing on April 1, 2009 and ending on September 30, 2010. The monthly rent for the premises is set out as \$1800 from April 1, 2009 to September 30, 2009 with an increase to \$2000 on October 1, 2009 for the remainder of the term. The tenancy agreement sets out a required security deposit of \$900 but the parties agreed that it was neither demanded nor paid.

On December 11, 2009 the parties mutually agreed in writing to terminate the tenancy agreement on February 28, 2010. Although the termination date shown on the document is February 28,

2009, the parties acknowledged that the year should have been noted as 2010. The premises were abandoned on December 18, 2009.

The applicant stated that the respondents failed to pay the following amounts resulting in rent arrears of \$5500.

Period	Monthly Rent	Rent due	Rent paid	Arrears
April 1/09 to September 30/09	\$1800	\$10,800	\$10,200	\$600
October 1/09 to December 31/09	\$2000	\$6000	\$5100	\$900
January 1/10 to February 28/10	\$2000	\$4000	\$0	\$4000
TOTAL		\$20,800	\$15,300	\$5500

The applicant also alleged that the respondents failed to repair holes in the walls which were the result of curtain installations and the installation of a shelf and other scratches and dents on the walls. The applicant also alleged that the wood flooring had been dented. The applicant provided quotations for the repair of the alleged damages totalling \$3302.25. Photographs were also provided by the applicant in evidence.

Ms Marquis acknowledged paying rent of only \$1700/month from April, 2009 to December, 2009 and paying no rent for January and February, 2010. She stated that the premises were previously rented to Mark Patrick for a rent of \$1500/month. She stated that the applicant offered Mr. Patrick a one-year tenancy agreement to commence on April 1, 2009 which included a rent increase to \$1700/month. Ms Marquis stated that Mr. Patrick elected to take the notice of rent increase as a notice of termination and vacated the premises on March 31, 2009. Ms Marquis

argued that the applicant was then obligated to rent the premises to her at \$1700 month and that the increase included in her tenancy agreement with the applicant was not in accordance with the *Residential Tenancies Act* and therefore of no effect. A statement signed by Mr. Patrick setting out the particulars of his tenancy agreement with the applicant was provided in evidence.

The applicant submitted that the premises rented to Mr. Patrick were in fact different premises. The applicant stated that during the tenancy agreement with Mr. Patrick he lived in the garage and shared the bathroom on the top floor of the house with Mr. Patrick. The applicant stated that the tenancy agreement with Ms. Marquis included the entire top floor of the two story house and gave her sole possession of the bathroom that was previously shared. Therefore, he argued, the entire top floor was rented for the first time to Ms. Marquis allowing him to charge any rent he wanted.

Mr. Patrick's written statement disputes Mr. Rivard's statement that their tenancy agreement included a shared bathroom. Although Mr. Patrick acknowledged that he did agree with Mr. Rivard making "intermittent use of the suite" while Mr. Rivard "adjusted to living in the attached garage" and permitted Mr. Rivard to store some of his personal possessions in the suite, he notes that he paid \$1500/month for each month he was in possession and considered the rental premises to consist of the entire second floor of the house.

"Rental Premises" are defined as follows in the *Residential Tenancies Act*:

"rental premises" means a living accommodation or land for a mobile home

used or intended for use as rental premises and includes a room in a boarding house or lodging house.

The common notion of a boarding house or lodging house is a collection of rooms in a building, other than a hotel which are rented for accommodation. The tenants pay rent for sole possession of the room or rooms while usually sharing some common facilities, like a bathroom or kitchen, with other tenants. In my opinion, the top floor of the house including the attached garage does not constitute a boarding house or lodging house. According to Mr. Patrick's statement, the tenancy agreement did not set out the premises as a boarding or lodging house but rather the top floor of the house. Mr. Patrick's agreement to permit the applicant to use the bathroom from time to time and to store some of his possessions on the top floor of the house do not appear, from the evidence, to be part of their tenancy agreement. In my opinion, the rental premises rented to Mr. Patrick were the same premises as those rented to Ms. Marquis.

Section 47 of the *Residential Tenancies Act*, sets out provisions respecting rent increases.

- 47.(1) Notwithstanding a change in landlord, no landlord shall increase the rent in respect of a rental premises until 12 months have expired from**
 - (a) the date the last increase in rent for the rental premises became effective; or**
 - (b) the date on which rent was first charged, where the rental premises have not been previously rented.**
- (2) The landlord shall give the tenant notice of the rent increase in writing at least three months before the date the rent increase is to be effective.**
- (3) An increase in rent by a landlord is not effective until three months have expired from the date of the notice of the rent increase.**
- (4) Where a tenant receives a notice of a rent increase, the tenant**
 - (a) may elect to treat the notice as a notice of termination of the tenancy to be effective on the day immediately preceding the**

- day on which the rent increase is to be effective; and**
 - (b) shall inform the landlord in writing of his or her intent to treat the notice as a notice of termination.**
- (5) Where a landlord has given a tenant notice of a rent increase and the tenant terminates the tenancy agreement, the landlord shall**
 - (a) give a new tenant a copy of the notice before the parties agree to a tenancy agreement; and**
 - (b) rent the rental premises at the rent stated in the notice.**
- (6) This section does not apply to subsidized public housing.**

Mr. Patrick elected to take the applicant's notice of rent increase as a notice of termination and vacated the premises on the day before the rent increase became effective. Therefore, pursuant to section 47(5), the applicant was obligated to rent the premises to Ms Marquis for \$1700/month. As the premises were rented to Mr. Patrick for \$1500/month, April 1, 2009 becomes the date of the last increase, making the rent increase from \$1800 to \$2000 on October 1, 2009 inconsistent with the Act and of no effect. As Ms Marquis paid \$1700 for each month she was in possession of the premises (April to December, 2009), there are no rent arrears.

The "rent" claimed by the applicant is not rent at all but compensation for lost rent as the tenant gave up possession, abandoning the premises, on December 18, 2009. Pursuant to section 5 of the *Residential Tenancies Act*, a landlord must take reasonable steps to mitigate loss following the abandonment of rental premises by a tenant.

- 5.(1) Where a landlord or tenant is liable to the other for damages as a result of a breach of a tenancy agreement or this Act, the landlord or tenant entitled to claim damages shall mitigate his or her damages.**
- (2) Without limiting subsection (1), where a tenant terminates a tenancy agreement, contravenes a tenancy agreement, or vacates or abandons**

rental premises, other than in accordance with this Act or the tenancy agreement, the landlord shall rent the rental premises again as soon as is practicable and at a reasonable rent in order to mitigate the damages of the landlord.

The applicant stated that following the abandonment of the premises, he contacted only one party who had previously expressed interest in renting the premises. He stated that he did not advertise the premises for rent nor did he contact anyone else regarding renting the property. In my opinion, the applicant did not make reasonable attempts to mitigate the loss of the January and February, 2010 rent.

The applicant's request for relief regarding rent arrears and compensation for lost rent is denied.

Ms. Marquis disputed the allegations concerning repair costs. She acknowledged drilling holes in the walls and using drywall anchors to hang curtains and a shelf and acknowledged that they were not patched. She stated that the other marks and dents on the walls and the dents on the floor could have easily been done by former tenants and noted that there was no inspection report completed at the commencement of the tenancy agreement. Ms Marquis also noted that the applicant was well aware that she planned on hanging curtains and provided e-mail correspondence between the parties in evidence discussing measurements for the windows for that purpose. She stated that the applicant never expressed any opposition to the curtains and she assumed he had approved of the installation.

Ms Marquis stated that she had experience in the painting and patching business and considered

the quotations for that work to be unreasonable. She stated that in her opinion the patching of the curtain hanger and shelf holes would take no more than five hours and should not cost more than about \$300.

The applicant stated that he expected the respondents would either leave the curtains and shelf or repair the holes that were created to hang them. The applicant's witness testified that he had viewed the premises after the last tenant had vacated and found the walls and flooring in good condition.

Section 42 of the *Residential Tenancies Act* sets out a tenant's obligation to repair damages.

42.(1) A tenant shall repair damage to the rental premises and the residential complex caused by the wilful or negligent conduct of the tenant or persons who are permitted on the premises by the tenant.

(2) Ordinary wear and tear of rental premises does not constitute damage to the premises.

Viewing the photographs submitted by the applicant, the alleged damage to the walls appears extremely minor and could have easily been unnoticed by the applicant's witness. In any case, I consider the minor scuffs and dents on the walls to be normal wear and tear. Similarly, I find the small dent on the flooring to be the result of normal wear and tear. I note that the flooring is yellow birch, which is a softwood very prone to dents and scrapes caused by everyday living. The applicant's request for relief for these items is denied.

In my opinion, the repair of the holes created to hang the curtains and the shelf are not normal

wear and tear and regardless of the landlord's approval to hang the curtains the holes should have been repaired by the tenant at the end of the tenancy agreement. However, I must agree with Ms Marquis that the repair costs are far in excess of what I would consider reasonable material and labour costs to restore the area to it's original condition. The material cost of \$250 to remove the wall anchors, fill the holes, and paint the area is completely unreasonable. The drywall mud cost is negligible and it is not necessary to paint the entire wall after patching a few small anchor holes. Any competent painter should be able to match the colour and paint the patched areas using a minimum amount of paint. The quoted labour of \$1520 is equally as unreasonable. I must agree with Ms Marquis that the labour to complete the patching and painting should not require more than five hours of labour. Even considering the higher hourly costs for labour in Norman Wells and other small communities, the costs of these repairs should not exceed \$400.

I find the respondent Julie Marquis in breach of her obligation to repair damages to the rental premises and find reasonable repair costs to be \$400. An order shall issue requiring the respondent Julie Marquis to pay the applicant repair costs in the amount of \$400.

Hal Logsdon
Rental Officer