

IN THE MATTER between **Northwest Territories Housing Corporation**, Applicant,
and **Zane Nessel**, 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, **Adelle Guigon**, Deputy Rental Officer,
regarding a rental premises located within the **Town of Hay River in the Northwest
Territories.**

BETWEEN:

NORTHWEST TERRITORIES HOUSING CORPORATION

Applicant/Landlord

- and -

ZANE NESSEL

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the Respondent shall pay to the Applicant rental arrears in the amount of \$524.05 (five hundred twenty-four dollars five cents).
2. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the Respondent shall pay the Applicant reasonable expenses directly associated to the repair of the rental premises known as 54-104 Street in Hay River, Northwest Territories, in the total amount of \$5,694.71 (five thousand six hundred ninety-four dollars seventy-one cents).

3. Pursuant to section 45(4)(d) of the *Residential Tenancies Act*, the Respondent shall pay the Applicant for utilities with respect to the rental premises known as 54-104 Street in Hay River, Northwest Territories, in the amount of \$1,634.11 (one thousand six hundred thirty-four dollars eleven cents).

DATED at the City of Yellowknife in the Northwest Territories this 25th day of July 2014.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Northwest Territories Housing Corporation**, Applicant,
and **Zane Nessel**, 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 **Adelle Guigon**, Deputy Rental Officer,

BETWEEN:

NORTHWEST TERRITORIES HOUSING CORPORATION

Applicant/Landlord

-and-

ZANE NESSEL

Respondent/Tenant

REASONS FOR DECISION

<u>Date of the Hearing:</u>	July 8, 2013 and July 15, 2013
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories, via Teleconference
<u>Appearances at Hearing:</u>	Mavis Blakely, representative for the Applicant Terry Piwowar, witness for the Applicant Frank Lafferty, witness for the Applicant Zane Nessel, the Respondent
<u>Date of Decision:</u>	July 22, 2013

REASONS FOR DECISION

Application

This Application to a Rental Officer submitted by the Applicant/Landlord, Northwest Territories Housing Corporation (NTHC), against the Respondent/Tenant, Zane Nessel, regarding the rental premises known as 54-104 Street in Hay River, Northwest Territories, was filed by the Rental Office on June 5, 2012. The Respondent was personally served with a copy of the filed application package by the Applicant on June 8, 2012.

In the application the Applicants requested payment of rental arrears in the amount of \$1,030 and compensation for tenant damages estimated to be \$8,450.

The following evidence was included in the application package:

Exhibit 1: Residential Tenancy Agreement for the term of November 1, 2011, to April 30, 2012

Exhibit 2: Termination Notice given by the Applicant dated March 26, 2012, for termination of the tenancy effective April 30, 2012

Exhibit 3: Statement of Account for July 17, 2009, to April 1, 2012

Exhibit 4: Written Authorization dated May 29, 2012, from Zane Nessel to dispose of personal property remaining at the premises, with an itemized list of things

Exhibit 5: Work Order #701 regarding removal of a boat

Exhibit 6: Work Order #701 regarding removal of garbage and changing of front door locks

Exhibit 7: Work Order #701 regarding cleaning up inside and outside the premises and doing necessary dump runs

Exhibit 8: Hay River Disposal's receipt #20017 dated May 7, 2012, for dumping fees

Exhibit 9: Check-in/Check-out Inspection Report reflecting a check in date of July 30, 2009, and a check out date of April 30, 2012

Further Applicant evidence received by mail December 12, 2012, included:

Exhibit 10: Statement of Account for July 17, 2009, to October 12, 2012

Exhibit 11: NTHC Invoice #13403 dated July 31, 2012, for charge-back of outstanding utilities paid to the Town of Hay River

Exhibit 12: Cost Summary of Tenant Damages

Further Applicant evidence received by mail June 6, 2013, included:

Exhibit 13: Cost Summary of Utilities Charges with attached invoices

Exhibit 14: Cost Summary of Work Order 346 with attached invoices

Exhibit 15: Cost Summary of Work Order 374 with attached invoices

Exhibit 16: Cost Summary of Work Order 433 with attached invoices

Exhibit 17: Cost Summary of Work Order 434 with attached invoices

Exhibit 18: Cost Summary of Work Order 151 with attached invoices

Exhibit 19: Cost Summary of Work Order 155 with attached invoices

Exhibit 20: Cost Summary of Work Order 240 with attached invoices

Exhibit 21: Cost Summary of Work Order 241 with attached invoices

Further Applicant evidence received by e-mail July 5, 2013, included:

Exhibit 22: Lease Balance Statement of Account for July 17, 2009, to July 5, 2012

Further Applicant evidence received by e-mail July 10, 2013, included:

Exhibit 23: Set of 24 digital photographs taken of the premises on April 30, 2012

Further Applicant evidence received by e-mail July 15, 2013, included:

Exhibit 24: Set of 25 digital photographs taken of the premises on March 8, 2012

Hearing

A hearing was scheduled for July 8, 2013, by teleconference at which Ms. Mavis Blakely, representing the Applicant, and Mr. Zane Nessel, the Respondent, appeared. Several questions arose at this hearing regarding the alleged tenant damages for which Ms. Blakely did not have personal knowledge. As a consequence, the hearing was adjourned to July 15, 2013, to permit Ms. Blakely to obtain the necessary information regarding the damages to be properly considered.

On July 15, 2013, at the recommencement of the hearing, Ms. Blakely was present representing the Applicant, along with two witnesses who could speak directly to the questions which were raised previously. The Respondent did not appear, nor did anyone appear on his behalf. The hearing proceeded in the Respondent's absence.

Submissions

At the hearing on July 8, 2013, the Applicant reiterated that there had been no further payments received from the Respondent since April 1, 2012, at which point the Respondent had accumulated rental arrears totalling \$1,030. This amount owing for rental arrears has not changed.

The Applicant further reiterated that there were extensive damages to the rental premises. The premises in question was itself a brand new home when the Respondent moved in, the Respondent being the first tenant to that premises. At the time of the application being made, the Applicant had not yet received all invoices for the repairs required to the premises, hence the estimate of \$8,450. Having now received all relevant invoices and calculating those repairs for which the Applicant believes the Respondent is responsible for, the Applicant submits the Respondent is liable for \$10,717.01, which comprises repairs to the premises and outstanding utilities.

In summary, the tenant damages alleged consisted of the following:

- lack of care of the outside yard;
- abandoning deteriorated personal property in the outside yard, including vehicles;
- abandoning personal property throughout the inside of the house;

- damage caused by pets to door trims and floor transition strips;
- damages to interior doors, frames, and trims;
- damages to the exterior door, frame, and trim;
- damages to the walls throughout the interior of the house;
- missing receptacles, receptacle plates, switches, and switch plates; and
- leaving the premises in an unclean condition.

Further, the Applicant alleged that the tenant failed to pay:

- a utility bill to the Town of Hay River which the Applicant paid in the amount of \$531.46;
- a heating oil bill to Bluewave Energy which the Applicant paid in the amount of \$1,175.07; and
- a water delivery bill to Keith's Water Service which the Applicant paid in the amount of \$90.77.

The Respondent specifically acknowledged the damages to the transition strips, that originally only the bathroom had a locking door, and that the HRV control and the garden door screen had never actually been installed. The Respondent did not speak to any of the other items that were discussed.

At the continuation of the hearing on July 15, 2013, the Applicant's witnesses were able to confirm the extent of the damages caused, referencing the photographs that were submitted, and how much of the total costs to return the unit to a habitable state were actually being brought against the Respondent and how they came to those calculations.

Determinations

Tenancy Agreement

I accept that a valid tenancy agreement was in place between the parties regarding the rental premises in question. I further accept, based on the Check-in/Check-out Inspection Report, that the tenant took occupancy of the premises July 30, 2009, and the tenant vacated the premises April 30, 2012.

Rental Arrears

The lease balance statements submitted reflect payments and/or credits applied to the tenant's account. I accept that they reflect, as the Applicant indicated, that the Respondent has not made any payments against his account since April 2012. I find the tenant has rental arrears owing in the amount of \$1,030.

Security Deposit

The statements also reflect the application of the security deposit plus interest against the Respondent's account in the amount of \$506.54. As I have no documentation suggesting otherwise, I accept that the security deposit of \$500 was received by the landlord at the commencement of the tenancy agreement, August 1, 2009. Section 2 of the *Residential Tenancies Regulations* (the Regulations) specifies how interest on security deposits is to be calculated. Applying this calculation to the Respondent's security deposit in this instance results in interest of \$5.95, for a total security deposit returnable to the tenant of \$505.95. This amount will be applied against rental arrears owing pursuant to section 18(4) of the *Residential Tenancies Act* (the Act).

Utilities

The tenancy agreement clearly states under section 8 that the tenant is responsible for paying all utilities provided to the premises, including fuel oil, wood, electricity, water, sewer services, and garbage disposal.

The utility bill from the Town of Inuvik for \$531.46 includes charges applied by the Town after April 30, 2012. As the Respondent vacated the rental premises on April 30, 2012, he is not responsible for charges which occurred after he left. I find the Respondent owes \$459.04 to the Applicant for outstanding utilities charges accumulated to April 30, 2012.

The fuel bill from Bluewave Energy for \$1,175.07 reflects charges for fuel oil delivered March 8, 2012. The Respondent was still in occupancy of the premises at this time, therefore, he is responsible for these charges. I find the Respondent owes \$1,175.07 to the Applicant for outstanding fuel oil charges.

The water delivery bill from Keith's Water Service for \$90.77 reflects charges for water delivered June 13, 2012. The Respondent vacated the rental premises on April 30, 2012, therefore, he is not responsible for charges occurring after he left. I find the Respondent is not responsible for this water delivery charge.

Damages

In thoroughly reviewing the extensive documentation regarding the damages to the rental premises for which the Applicant is alleging the Respondent is responsible, I have come to the following determinations:

1. Toilet Bolt Covers: Replacement of the toilet bolt covers (caps) in my opinion is a result of normal wear and tear and, therefore, not the responsibility of the tenant.
2. Light Bulbs and Tubes: The light bulbs and tubes were provided in the premises at the time the tenant commenced occupancy. Several of the bulbs and tubes were missing at the end of the tenancy. The tenant is obligated to leave the unit in as close to the same condition as when they took occupancy, notwithstanding normal wear and tear. In my opinion, the light bulbs in question – being fluorescent – have an average life expectancy of 8,000 hours, which I translate to at least three years of use. Further, I do not consider use of light bulbs as 'normal wear and tear' and I do consider they are a component that needs to remain in the premises upon vacating it. I find the Respondent owes the Applicant \$62.93 for replacement of missing light bulbs and tubes.
3. Cleanliness: As supported by the photographs submitted by the Applicant which were taken at the time of the Check-Out Inspection, the interior and exterior of the premises were left in substantial disarray. Clothing and other personal property were left throughout the property. Non-operational vehicles and parts were left in the yard. The landscaping had not been taken care of. The interior premises had not been cleaned upon leaving. The charges for cleaning, cleaning supplies, and disposal requested by the Applicant are not unreasonable considering the extent of work required to rehabilitate the premises. I find the Respondent owes the Applicant \$718.11 for cleaning and cleaning supplies and \$231.31 for disposal fees, for a total amount of \$949.42.

4. Doors: The Applicant's witnesses spoke to the extent of damages to the steel exterior door and four of the interior doors. The steel exterior door, frame, and trim was damaged and dented to such an extent as it could not be repaired. This type of damage cannot be attributed to normal wear and tear, considering the age of the premises as of April 2012 was approximately 33 months. There were holes in some of the interior doors while the others were 'delaminating', meaning they had been twisted or forced in such a manner that the panelling on the door was lifting away. The manner of these damages contributed to the door handles (locks) not functioning properly, as well. These damages also cannot be attributed to normal wear and tear. Responsibility for the replacement of the one exterior and four interior doors, frames, and trim lies with the Respondent.

In reviewing the charges assessed by the Applicant regarding these door replacements, I have determined that the average reasonable time it takes to replace a damaged exterior door would be six hours and the average reasonable time it takes to replace a damaged interior door would be two hours. The invoice provided by the contractor hired to do these, as well as several other repairs throughout the premises, indicates an hourly rate of \$75 per hour for the contractor and \$50 per hour for the labourer. As door installations are normally performed by one experienced person, I believe it is reasonable to assess the contractor's rate towards the costs of door, frame, and trim replacement for one exterior door and four interior doors. Further costs associated with the replacement of the doors are for the materials themselves, consisting of the new doors, hinges, shims, frames, and trim, for which the Respondent is also responsible. I find the Respondent owes the Applicant labour and materials costs for replacement of one exterior door and four interior doors totalling \$1,856.78.

5. Flooring: The Applicant spoke to the damages to the flooring transition strips throughout the house, to which the Respondent admitted. I find the Respondent owes the Applicant \$127.50 for replacement of the flooring transition strips throughout the premise.
6. HRV Control Unit: The Respondent disputed that the HRV control unit had been removed as he argued that it was never installed in the first place. He stated at hearing that he was told when he moved in that it would be installed. However, the Check-in Inspection Report, which the Respondent signed, did not make note of the lack of the HRV control unit. I must, therefore, accept the documented evidence suggesting the HRV control unit was installed at the time the tenant took possession of the premises. I find the Respondent owes the Applicant \$150 for the replacement of the HRV control unit.

7. Door Handles/Locks: I heard that the damages to the doors already discussed (steel exterior door and four interior doors) were of such degree as to render the deadbolt lock and door handles inoperable. I further heard that the deadbolt lock to the garden door and the door handle to the bathroom door were also not functioning properly. It was submitted at hearing that the garden door frame had been damaged resulting in the damage to deadbolt and that the bathroom door handle (which had a privacy lock) had been forced to such a degree that it no longer closed properly. As none of these damages can be attributed to normal wear and tear, the responsibility for replacing them lies with the Respondent. I find that the Respondent owes the Applicant \$276.32 for replacement of two deadbolt locks, five door handles, and one privacy lock door handle.
8. Patching/Painting: The Applicant provided evidence and testimony regarding the extent of damages to the walls and ceilings throughout the premises, including holes, partially patched holes, and drawings. The Respondent did not dispute this and admitted to attempting to do some patching prior to vacating the premises. The Applicant further claims the costs of repainting the interior doors and trim throughout the premises.

The invoices submitted into evidence by the Applicant regarding the painting and patching labour and materials (including the paint) total \$4,512.23. It has been established that the premises is 33 months old. I must consider normal wear and tear into my calculations of what the Respondent is responsible for. At hearing the Applicant indicated they normally repaint their rental premises once every four years. As they were required to paint the premises 15 months earlier than they normally would due to tenant damage, the Respondent becomes liable for 31.25 percent of the repainting costs. However, the holes in the walls are not normal wear and tear and repairing them results in additional labour and materials costs which are included in the total costs claimed by the Applicant. I am able to separate the costs for the materials from the total to determine them at \$80.71 for the drywall repairs and \$431.52 for the paint. The labour costs for the actual patching and painting have been submitted as a whole, totalling \$4,000. In my estimation, the time it would take to complete the patching or drywall repair that needed to be done prior to the repainting represents one-quarter of the total labour costs; therefore, \$1,000. The remaining \$3,000 of the labour costs represents the repainting of the walls, ceilings, interior doors, and trim. I find the Respondent owes to the Applicant \$1,080.71 for the patching and drywall repair labour and materials and \$1,072.35 for the repainting labour and materials, totalling \$2,153.06.

9. The Applicant submitted at hearing that approximately 75 percent of the light switches, receptacles, and their respective plate covers were missing or broken. The Respondent did not dispute this. It was not established exactly how many switches and receptacles there are throughout the house, so I extrapolated estimating there would be 28 receptacles and 9 switches in the average three-bedroom home. Based on 75 percent of those receptacles, switches, and their plate covers needing to be replaced, I find the cost for materials for which the Respondent is responsible to pay to the Applicant to be \$107.01.
10. It was found at the time of the Check-out Inspection that the smoke detector was removed from its base on the ceiling. Standard practice of the landlord for safety reasons is to replace the unit as a whole when this is found to have occurred. As I believe it to be unreasonable to consider the removal of the unit from the ceiling base – in any fashion – by the tenant as normal wear and tear, I find the Respondent owes the Applicant \$11.69 for the replacement of the smoke detector.

The rental arrears and costs of repair or replacement for tenant damages of which I have found the Respondent liable are totalled as follows:

Description	Cost
Rental Arrears (less the Security Deposit)	\$524.05
Utilities	\$1,634.11
Damages	\$5,694.71
Total	\$7,852.87

Order

An order will issue requiring the Respondent to pay to the landlord rental arrears in the amount of \$524.05, compensation for utilities in the amount of \$1,634.11, and compensation for repair of tenant damages in the amount of \$5,694.71.

Adelle Guigon
Deputy Rental Officer