

IN THE MATTER between **Behchoko Ko Gha Kaodee**, Applicant, and **George Bailey**, Respondent;

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

AND IN THE MATTER of a Hearing before, **Adelle Guigon**, Deputy Rental Officer, regarding a rental premises within **the community of Behchoko in the Northwest Territories**.

BETWEEN:

BEHCHOKO KO GHA KAODEE

Applicant/Landlord

- and -

GEORGE BAILEY

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent must pay to the applicant rental arrears in the amount of \$6,419.79 (six thousand four hundred nineteen dollars seventy-nine cents).
2. Pursuant to sections 42(3)(e) and 45(4)(d) of the *Residential Tenancies Act*, the respondent must compensate the applicant for the cost of repairs and cleaning to the rental premises in the amount of \$5,895.00 (five thousand eight hundred ninety-five dollars).

DATED at the City of Yellowknife in the Northwest Territories this 7th day of July 2014.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Behchoko Ko Gha Kaodee**, Applicant, and **George Bailey**, 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:

BEHCHOKO KO GHA KAODEE

Applicant/Landlord

-and-

GEORGE BAILEY

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: May 29, 2014

Place of the Hearing: Behchoko, Northwest Territories

Appearances at Hearing: Michael Keohane, representing the applicant
Robert McCallum, witness for the applicant
Therese Migwi, witness for the applicant
George Bailey, respondent

Date of Decision: July 4, 2014

REASONS FOR DECISION

An application to a rental officer made by Behchoko Ko Gha Kaodee as the applicant/landlord against George Bailey as the respondent/tenant was filed by the Rental Office February 14, 2014. The application was made regarding a residential tenancy agreement for the rental premises known as Unit #687B in Behchoko, Northwest Territories. The applicant served a copy of the filed application on the respondent by personal service February 26, 2014.

The applicant alleged the respondent had accumulated rental arrears, had failed to pay for fuel for the rental premises, and had caused damages to the rental premises. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for May 29, 2014. Mr. Michael Keohane appeared representing the applicant; Mr. George Bailey appeared as respondent.

Mr. Keohane testified that Mr. Bailey had been a tenant with the Behchoko Ko Gha Kaodee since February 2012 in the rental premises known as Unit #687B in Behchoko, Northwest Territories. Mr. Bailey's tenancy agreement specified the monthly rent at \$725 and that all utilities were the tenant's responsibility, including that the tenant was responsible for ensuring a continuous supply of fuel to the rental premises.

Approximately Christmas Eve in December 2013 Mr. Bailey left a message on the applicant's emergency call line that his sewer was not draining and the bathtub, dishwasher, and toilet were full; he attempted to contact maintenance again the following Monday as well when no one responded to his message. He was not able to reside in the rental premises due to being unable to use the facilities during this time. During the same period the community was suffering from a massive freeze-up as a result of a series of power failures which took a lengthy period of time to resolve; the maintenance crew for the applicant was unable to respond to Mr. Bailey's dilemma immediately. Mr. Bailey stayed at his mother's place in the interim, claiming to have checked on the house regularly over the next couple of weeks.

On January 7, 2014, Mr. Bailey reported to the applicant that the fuel tank was going to run out and that he was not going to return to the rental premises. The applicant's maintenance foreman, Mr. Robert McCallum, appeared as a witness and testified that he responded the next day to Mr. Bailey's information and attended the residence. Upon entering the premises he observed frozen water on the floors of the entryway, kitchen, living room, bathroom, and utility room, the sewage in the toilet bowl and water in the toilet reservoir were frozen, the water pipes throughout the premises were frozen, the faucets and pipes for the sinks in the kitchen and bathroom were damaged as a result of the freezing, and the water tank was frozen. Mr. McCallum testified that the depth of frozen water indicated to him there had been no heat in the rental premises for several days already. Mr. McCallum secured the premises, reclaiming possession for the applicant and deeming the premises abandoned by Mr. Bailey.

The damages for which the applicant is claiming repair costs are those which are attributed to the freeze-up of the rental unit, which the applicant is claiming happened as a result of Mr. Bailey's failure to comply with his obligation to ensure the fuel tank is continuously filled. Mr. Bailey's failure to do so resulted in the loss of heat to the rental premises, which caused the water within the premises to freeze. Conservative estimates for the freeze-up repairs claimed are as follows, based on average local contractor labour fees. The work required could not be effected until the ice melted at any rate and the applicant indicated the work was out for tender to be completed by a contractor due to the backlog of repairs occupying the in-house maintenance staff's time; it was indicated the actual cost of these repairs are expected to be more than is being claimed here:

Replacement of ice damaged floors in the entryway, kitchen, living room, bathroom, and utility room	\$3,600.00
Replacement of taps, traps, and sinks in the kitchen and bathroom	\$410.00
Replacement of the flush toilet	\$250.00
Replacement of the water tank	\$250.00
Repair/replacement of the water pressure system	\$700.00
TOTAL FREEZE-UP REPAIRS COSTS	\$5,210.00

Mr. Keohane and Mr. McCallum further testified that the rental premises was in a less than ordinary state of cleanliness and had additional damages not attributable to the freeze-up damage when Mr. Bailey vacated it; photographs provided into evidence corroborated this claim. In addition to the freeze-up repairs costs claimed above, the applicant is also seeking compensation for damages and cleaning costs conservatively estimated as follows:

Cleaning the bedroom carpet	\$150.00
Cleaning the kitchen appliances, cabinets, and counters	\$120.00
Cleaning the bathroom vanity, bathtub, and tub surround	\$90.00
Repairing/replacing the bedroom and bathroom doors	\$280.00
Replacing the bathroom towel rack	\$45.00
Repairing holes in the bedroom and bathroom walls	\$240.00
TOTAL REPAIRS AND CLEANING COSTS	\$925.00

The applicant had requested the cost of replacing two missing smoke detectors, however, the check-in inspection report provided into evidence indicated the smoke detectors were not installed when Mr. Bailey moved into the rental premises.

Mr. Keohane testified that as of January 9, 2014, Mr. Bailey had accumulated rental arrears of \$6,050; the last payment received on Mr. Bailey's account was made October 17, 2013. Mr. Keohane testified that Mr. Bailey had been accumulating rental arrears throughout the tenancy, making semi-regular payments of insufficient amounts to cover the rent. The applicant confirmed they had received a security deposit of \$725 at the commencement of the tenancy on February 17, 2012, which they would like applied to the rental arrears. The applicant also requested the cost to refill the fuel tank in the amount of \$1,095.49 – for which an invoice from FC Services was entered into evidence – citing the tenant's obligation to fill the fuel tank as per the tenancy agreement. The rental arrears claimed are \$6,050 plus \$1,095.49 less the security deposit including interest of \$725.70 for a total of \$6,419.79.

Mr. Bailey did not specifically dispute the amount of rental arrears being claimed, however, he did indicate he could not confirm that all of the payments he has made during the tenancy were reflected in the lease balance statement provided into evidence. He testified that he had most, if not all, of his receipts and bank statements in storage in Yellowknife and could provide them to verify the calculation of his rental arrears. When asked why those documents were not available at hearing, Mr. Bailey indicated he did not have the opportunity to retrieve the documents in time.

Mr. Bailey also suggested that the fuel tank was not full when he took occupancy of the rental premises, that there was approximately a weeks' worth of fuel in the tank and he had to get it filled. Mr. Keohane disputed this was the case, indicating it was the landlord's practice to provide a full tank of fuel when new tenants took occupancy of their units and that in the instances where this is not done a written confirmation of the amount of fuel in the tank is made in the tenant's file; Mr. Bailey was challenged to prove there was not a full tank of fuel when he moved in, to which Mr. Bailey indicated he had a receipt for filling the fuel tank shortly after moving in. Mr. Bailey stated this receipt was also in storage with his other documents in Yellowknife.

In the interests of fairness, the hearing was adjourned *sine die* pending receipt from Mr. Bailey of the rent payment receipts and the fuel fill receipt; Mr. Bailey was given until 4:00 p.m. on June 30, 2014, to provide copies of those documents to the rental officer and the applicant, after which I would make my decision on this matter based on the information received. None of these documents were received by the set deadline.

Tenancy agreement

The tenancy agreement entered into by the parties was made February 17, 2012, regarding the rental premises known as Unit #687B in Behchoko, Northwest Territories. Neither party disputed that a valid tenancy agreement was in place and I am satisfied this is the case.

Freeze-up repairs

Ms. Therese Migwi, the tenant relations officer also a witness for the applicant, confirmed the rental premises was kept secure since Mr. McCallum's attendance on January 8th and that she took the photographs submitted into evidence on January 21, 2014. Mr. McCallum viewed the photographs and confirmed that they accurately represented the condition of the rental premises when he attended on January 8th. I am satisfied the photographs accurately represent the condition of the rental premises on January 8th.

Section 14 of the tenancy agreement specifies the tenant's obligation to pay all costs in effecting repairs to the premises in each instance where necessary repairs result from the wilful or negligent act or omission of the tenant and that the tenant must immediately notify the landlord of any such damages. While it could be argued that Mr. Bailey immediately notified the landlord of the sewer drains backing up, it is apparent from the photographic evidence submitted and the testimony of Mr. McCallum that Mr. Bailey failed to immediately notify the landlord of the loss of heat and subsequent freeze-up of the rental premises.

Section 2(b) of the tenancy agreement specifies the tenant's obligation to pay for utilities directly, including heating fuel, and section 19 of the tenancy agreement specifies the tenant's obligation to ensure the continued supply of heating fuel and electrical services at all times in order to prevent damage to these systems and that the cost of repairing such damages will be paid for by the tenant. Mr. Bailey clearly failed to comply with his obligation to fill the fuel tank, which directly resulted in damages to the rental premises significantly beyond that which the backing up of the sewer drains may have caused.

I am satisfied the damages claimed as caused by the freeze-up in the rental premises occurred as a result of Mr. Bailey's failure to fill the fuel tank and ensure the premises remained heated. I am further satisfied that the costs claimed by the applicant for the repair of above identified freeze-up repairs a reasonable. I find Mr. Bailey liable for freeze-up repairs costs in the amount of \$5,210.

Damages repairs and cleaning costs

A check-in report dated February 17, 2012, was included as Schedule B, Part A, of the tenancy agreement and was signed by the landlord's agent and Mr. Bailey. It reflects the condition of the rental premises at the time as generally good, with only a few minor defects noted. There was no dispute between the parties regarding this document. I am satisfied it accurately represents the condition of the rental premises at the commencement of the tenancy.

A condition rating report completed January 21, 2014, for the rental premises was entered into evidence by the applicant. This report reflected in writing the condition of the rental premises on that date and I am satisfied it is an accurate accounting of the current condition of the rental premises.

The applicant's claim for replacing the smoke detectors is denied based on the indication in the check-in report that one of the smoke detectors was missing and the other was damaged at the time Mr. Bailey took occupancy of the rental premises.

The applicant's claims for repairing a small hole in the bedroom wall and a small hole in the bathroom wall are both denied based on the indication in the check-in report that dents existed behind both rooms' doors when Mr. Bailey took occupancy of the rental premises; it is not unreasonable to project the dents evolving into small holes over time.

The applicant's remaining claims for cleaning and repairs as follows in my opinion are reasonable:

Cleaning the bedroom carpet	\$150.00
Cleaning the kitchen appliances, cabinets, and counters	\$120.00
Cleaning the bathroom vanity, bathtub, and tub surround	\$90.00
Repairing/replacing the bedroom and bathroom doors	\$280.00
Replacing the bathroom towel rack	\$45.00
TOTAL REPAIRS AND CLEANING COSTS	\$685.00

Rental arrears and security deposit

The tenant ledger submitted into evidence by the applicant is the landlord's accounting of monthly rent and payments received. I am satisfied this ledger accurately reflects the payments received by the landlord for Mr. Bailey's rent account. I find Mr. Bailey has accumulated rental arrears in the amount of \$6,050.

Section 1 of the *Residential Tenancies Act* (the Act) defines rent as including an amount required to be paid by the tenant for any services and facilities whether or not a separate charge is made for the services and facilities. Services and facilities are further defined as including heating facilities or services and utilities and related services.

As previously mentioned, sections 2(b) and 19 of the tenancy agreement specify the tenant's obligation to directly pay for utilities including heating fuel and to keep the fuel tank full. Although there was some dispute between the parties regarding how much fuel was in the fuel tank when Mr. Bailey took occupancy of the rental premises, there is agreement that there was fuel in the tank. I am satisfied that Mr. Bailey was obliged to ensure the fuel tank was kept full and he failed to do that upon vacating the rental premises.

The applicant submitted into evidence a receipt from FC Services for delivery of fuel to the rental premises indicating the cost of filling the tank to be \$1,095.49. I find Mr. Bailey has additional rental arrears for the cost of filling the fuel tank in the amount of \$1,095.49.

A tenant ledger card for the damage (security) deposit was submitted into evidence by the applicant reflecting the landlord's accounting of the receipt of the security deposit in the amount of \$725 and the application of interest in accordance with the *Residential Tenancies Regulations* (the Regulations); the total amount of the security deposit calculated as of January 9, 2014, is \$725.70. I am satisfied the security deposit plus interest has been properly accounted for in the tenant ledger card and can be appropriately applied against the rental arrears.

I find Mr. Bailey has accumulated rental arrears of \$6,050 plus \$1,095.49 less \$725.70 for a total amount of \$6,419.79.

An order will issue for Mr. Bailey to pay rental arrears in the amount of \$6,419.79 and to compensate the applicant for repairs and cleaning costs in the total amount of \$5,895.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Applicant's (Unit #687B) - termination of tenancy for abandonment correspondence to respondent dated January 10, 2014
- Exhibit 2: Tenancy agreement made February 17, 2012
- Exhibit 3: Applicant's rental arrears per MRU#687B correspondence to respondent dated December 19, 2013
- Exhibit 4: Lease balance statement for rent from April 1, 2012, to January 9, 2014
- Exhibit 5: Tenant ledger card for damage deposit from February 17, 2012, to January 15, 2014
- Exhibit 6: Tenant ledger as of May 9, 2013
- Exhibit 7: Applicant's George Bailey - Unit #687B hand-written correspondence to respondent dated February 17, 2012
- Exhibit 8: Condition rating report dated January 21, 2014
- Exhibit 9: Set of five photographs
- Exhibit 10: FC Services receipt number 41238 for fuel delivery on January 28, 2014