

IN THE MATTER between **NPR LIMITED PARTNERSHIP**, Applicant, and **SOMBA KE FAMILY DENTAL**, 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, **HAL LOGSDON**, Rental Officer, regarding the rental premises at **YELLOWKNIFE, NT**.

BETWEEN:

NPR LIMITED PARTNERSHIP

Applicant/Landlord

- and -

SOMBA KE FAMILY DENTAL

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 23rd day of September, 2014.

Hal Logsdon
Rental Officer

IN THE MATTER between **NPR LIMITED PARTNERSHIP**, Applicant, and **SOMBA KE FAMILY DENTAL**, 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 **Hal Logsdon**, Rental Officer.

BETWEEN:

NPR LIMITED PARTNERSHIP

Applicant/Landlord

-and-

SOMBA KE FAMILY DENTAL

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: July 15, 2014

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Sara Thomson, representing the applicant
Aya Burshan, representing the applicant
Bachar Daher, representing the respondent
Ziad Daher, representing the respondent
Dr. Pankaj Kumar, witness for the respondent (by telephone)
Greg Cameron, witness for the respondent (by telephone)
Laura Lloy, witness for the respondent (by telephone)

Date of Decision: September 19, 2014

REASONS FOR DECISION

The applicant alleged that the respondent breached the tenancy agreement by failing to repair damages to the premises that were the result of the respondent's willful or negligent conduct and sought an order requiring the respondent to pay for costs directly associated with repairs of the premises.

The tenancy agreement between the parties was made in writing between the applicant and Somba Ke Family Dental who permitted Dr. Pankaj Kumar, an employee to occupy the apartment. On January 6, 2013 there was a significant escape of water in the apartment which caused damage to the apartment, hallway and several other apartments in the complex. The applicant provided alternate accommodation for affected tenants and undertook repairs to the flooded apartments. The applicant sought repair and accommodation costs totalling \$44,337.19.

The application was filed on March 11, 2014, some fifteen months after the flooding incident. However, it appears that the parties met and exchanged correspondence during this period. The applicant may have had some expectation that the dispute could be resolved without resorting to legal action. In my opinion it is not unfair to either party to extend the time limitation imposed by section 68(3) of the *Residential Tenancies Act*.

The applicant alleged that the water escape was due to the freezing and rupture of a sprinkler supply pipe in the apartment which was caused by the door to the outside balcony being left

open. The respondent disputed the allegation.

In order to succeed, the applicant must prove, on the balance of probabilities, that:

- a) the balcony door was left open by the tenant or an occupant that the tenant permitted in the premises and,
- b) the rupture of the pipe was directly caused by freezing and not by ordinary wear

The applicant provided a copy of a fire incident report created by Paul Grismer from the Yellowknife Fire Department. The report outlines that the fire department was dispatched to the residential complex due to an alarm ringing. The fire panel indicated a sprinkler flow on the fourth floor of the complex and an unnamed tenant in the complex led firefighter David Hamson to the respondent's apartment. The report states that they were unable to open the apartment door with the Knox keys. An employee of the applicant, Wayne Simms, then arrived but did not have a key either and the report notes that Hamson forced the apartment door open. The apartment was empty. The report notes that, "the patio door was noted to be wide open." Water was noted to be flowing from a wall in the laundry area below a sprinkler head and the water flow was stopped when the main sprinkler valve in the mechanical room of the complex was shut. The report notes that, "ice had formed on water in the sink." The fire report indicates that fire crew were at the scene for a total of 31 minutes.

The applicant also provided a handwritten, undated and unsworn note signed by Wayne Simms who was employed by the applicant as a maintenance man at the time of the incident. Mr. Simms

writes that he arrived at the apartment after the fire department had arrived. Mr Simms states that he entered the building with the firemen, went to the apartment and saw water flowing from under the door. He than states that "we unlocked the door and went inside and found that the sprinkler pipes were busted." Mr. Simms notes that "we....discovered the balcony door was open" and then concludes that it was the open door and resultant cold temperature that caused the pipes to rupture.

There are clearly inconsistencies between the fire report and Mr. Simms' account of the incident. The fire report indicates that Mr. Simms met the firemen at the apartment door while Mr. Simms' statement indicates that he met the firemen at the entry door to the residential complex and proceeded with them to the apartment. The fire report states that Mr. Simms did not have a key to the apartment, stating that the tenant had changed the locks (a fact that they could not have known) requiring Mr. Hamson to force the door. Mr. Simms reported that "we unlocked the door". Neither Mr Grismer or Mr. Hamson attended the hearing although both are still with the Yellowknife Fire Department. Mr. Simms was not present at the hearing. Neither of the applicant's representatives at the hearing had any direct knowledge of the incident.

The respondent submitted that Dr. Kumar was on vacation from December 28, 2013 to January 10, 2014. Dr. Kumar testified under oath that he left for vacation in the early morning of December 28, 2013. He testified that he checked all of the doors before he left including the balcony door and that he did not go on the balcony that morning. Dr. Kumar testified that no one occupied the apartment during his absence and no one had keys to the premises except himself

and the landlord. Dr. Kumar testified that when he returned on January 10, 2014 his apartment key would not unlock the door and he called the landlord to let him in. On entering the apartment he found it dry but all of the carpet had been removed. The landlord's representative told him that there had been a flood. Mr. Kumar also testified that early in the tenancy, he had difficulty opening the door to his apartment. He contacted the landlord who replaced the lock and provided him with a key. He stated that there had not been any other change of locks.

On cross examination, the applicant submitted that Mr. Kumar had met with representatives of NPR Limited Partnership to discuss the incident and to arrange a repayment plan for the costs of the repairs. Dr. Kumar stated that he and Mr, Ziad Daher met with Lizaine Wheeler from NPR but had denied any responsibility for the damages and did not agree to any repayment plan.

The respondent called Mr. Greg Cameron as a witness. Mr. Cameron is a certified plumber who has considerable experience in Yellowknife with ruptured pipes due to freezing. Mr. Cameron testified under oath that an apartment with an open door to the outside during the winter months would freeze and rupture the water supply pipes in 48 hours or less. Although Mr. Cameron is employed by the respondent, I believe his testimony as an expert witness is credible and untainted by any bias in favour of the respondent. My own experience in northern housing leads me to the same conclusion as that of Mr. Cameron.

There is no evidence to rebut Dr. Kumar's sworn testimony that the apartment was unoccupied from December 28, 2013 to January 6, 2014 the day the water escape occurred. That is a period

of nearly ten days. If the door was left open by Dr. Kumar, one would have expected the freezing of the sprinkler pipe to have occurred much earlier than January 6 particularly considering that the fire department report noted that the door was wide open and there was ice in the sink. One would also expect other water supply pipes in the kitchen, bathroom and laundry to be damaged by freezing. Given the heavy flow of water observed on January 6, it is clear that the pipe had not been ruptured for any significant period of time before being noticed.

The evidence suggests that the balcony door was open on January 6, 2014 but it does not necessarily lead to the conclusion that it was left open by Dr. Kumar on December 28, 2013. There is no evidence to rebut Dr. Kumar's sworn testimony that he left the apartment on December 28 and that no one else was authorized by him to occupy the apartment during his absence.

I can not conclude that Dr. Kumar changed the locks as stated in the fire report making it impossible for any one else to gain entry to the apartment during his absence. None of the firefighters could have possibly known if Dr. Kumar changed the locks, Dr. Kumar's sworn testimony rebuts the allegation and Mr. Simm's statement contradicts it. Unfortunately neither Mr. Simms or any of the firefighters were at the hearing to submit to questions or cross examination and none of the applicant's representatives had any direct knowledge of the incident. In my opinion, there is not sufficient evidence to conclude that the door was left open or even ajar by Dr. Kumar or persons he permitted in the premises.

Although I need not consider what caused the pipe to rupture to dismiss this application, I shall nevertheless review the evidence. One can conclude from the fire report that the water was escaping from a sprinkler pipe because shutting off the supply to the sprinklers ended the flow of water. The fire report draws no conclusions regarding why the pipe ruptured. Mr. Simms' report concludes that the temperature in the apartment was cold and resulted in the freezing and rupture of the pipe although it is not clear how he came to this conclusion. There were no photographs or remnants of the ruptured pipe provided in evidence nor was it clear from evidence that Mr. Simms made the repairs to the ruptured pipe. The applicant provided time sheets for Mr. Simms indicating that he was on call on January 6 and worked for six hours in the apartment on January 7 but there were no work orders or other evidence to indicate the nature of the work done.

I find it unusual that a sprinkler supply pipe which is within an interior wall and protected somewhat from the effects of cold would freeze and burst before the more exposed and presumably smaller diameter water supply pipes in the kitchen and bathroom. Without the ability to question Mr. Simms or someone who has direct knowledge of the incident about the nature of the rupture or to view the pipes themselves or photographs, it is difficult to conclude with a reasonable degree of certainty that the water escape was the direct result of freezing.

The applicant bears the burden of proof. In my opinion they have not provided sufficient evidence to prove on the balance of probabilities that the respondent caused damage to the

premises that were the direct result of the respondent's willful or negligent conduct. For these reasons, the application is dismissed.

Hal Logsdon
Rental Officer