

IN THE MATTER between **Anne Leskiw-Mueller**, Applicant, and **Barney Norn and Kelly Lafferty-Norn**, Respondents;

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 hamlet of Enterprise in the Northwest Territories**.

BETWEEN:

ANNE LESKIW-MUELLER

Applicant/Landlord

- and -

BARNEY NORN and KELLY LAFFERTY-NORN

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 41(4)(a), 45(4)(d), and 62(2) of the *Residential Tenancies Act*, the respondents must pay to the applicant rental arrears, compensation for fuel charges, and compensation for lost future rent in the total amount of \$5,149.57 (five thousand one hundred forty-nine dollars fifty-seven cents).
2. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondents must compensate the applicant for the cost of repairs to the rental premises known as 216 Northern Lights Street in Enterprise, Northwest Territories, in the amount of \$3,093.15 (three thousand ninety-three dollars fifteen cents).

3. Pursuant to sections 45(4)(d) and 83(2) of the *Residential Tenancies Act*, if the respondents do not either return, or inform the applicant of the location of, the remote control door opener for the garage at the rental premises known as 216 Northern Lights Street in Enterprise, Northwest Territories, on or before January 31, 2015, the applicant is authorized after that date to replace the garage door opener and the respondents must compensate the applicant for the cost of replacement of the garage door opener.

DATED at the City of Yellowknife in the Northwest Territories this 16th day of January 2015.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Anne Leskiw-Mueller**, Applicant, and **Barney Norn and Kelly Lafferty-Norn**, 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 **Adelle Guigon**, Deputy Rental Officer.

BETWEEN:

ANNE LESKIW-MUELLER

Applicant/Landlord

-and-

BARNEY NORN and KELLY LAFFERTY-NORN

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	January 8, 2015
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories, by teleconference
<u>Appearances at Hearing:</u>	John Leskiw II, representing the applicant
<u>Date of Decision:</u>	January 8, 2015

REASONS FOR DECISION

An application to a rental officer made by Anne Leskiw-Mueller as the applicant/landlord against Barney Norn and Kelly Lafferty-Norn as the respondents/tenants was filed by the Rental Office September 26, 2014. The application was made regarding a residential tenancy agreement for the rental premises known as 216 Northern Lights Street in Enterprise, Northwest Territories. The applicant served a copy of the filed application on the respondents by registered mail signed for October 16, 2014.

The applicant alleged the respondents had accumulated rental arrears, caused damages to the rental premises, abandoned the rental premises, and left the rental premises in an unclean state. The applicant sought an order for payment of rental arrears, compensation for the cost of repairs and cleaning, and compensation for loss of future rent.

A hearing was originally scheduled for December 11, 2014, by teleconference. It was mutually agreed to reschedule the hearing to January 8, 2015, and this was confirmed by email to both parties. Mr. John Leskiw II appeared representing the applicant. Neither Mr. Barney Norn nor Ms. Kelly Lafferty-Norn appeared at hearing. The hearing proceeded in their absence pursuant to section 80(2) of the *Residential Tenancies Act* (the Act).

Mr. Leskiw testified the respondents had been tenants in the rental premises known as 216 Northern Lights Street in Enterprise, Northwest Territories, since April 15, 2009. The written tenancy agreement established the rent at \$850 per month, a security deposit of \$850, that appliances were included, and that heating fuel was the tenants' responsibility (among other things). The agreement further confirmed the owner's approval for the tenants to effect the following repairs to the rental premises at the tenants' own cost: replace the living room carpet and dining room floor, repaint all walls in tenants' choice of colour, and retile the kitchen, bathroom, and hallway.

In May 2014 the respondents telephoned Mr. Leskiw and advised him they intended to move out, but did not give a move-out date. No written notice to terminate the tenancy was given, nor was a termination date acknowledged by the applicant. Mr. Leskiw spoke with Mr. Norn in late June, at which time Mr. Norn advised Mr. Leskiw that he needed another month to move out of the

premises. Mr. Leskiw did not expect the respondents to vacate the rental premises until the end of July. In early July, Mr. Leskiw attended the rental premises to inquire about the outstanding rent and found the premises empty. He sent a written notice to the respondents by registered mail advising them of a date and time to complete a move-out inspection of the rental premises and to return the keys; the respondents did not respond and did not appear at the designated date and time for the inspection. Mr. Leskiw conducted the inspection in their absence.

The move-out inspection revealed extensive damages to the rental premises. The costs of repairs for which the applicant has made a claim include:

Labour:	\$2,325.00	Materials:	\$768.15
Replace light fixtures		Exterior storm door - \$329	
Repair bathroom fixtures		Baseboard - \$69.72	
Repair thresholds		Cabinet knobs - \$24.43	
Repair drywall holes		Cleaning supplies - \$24.43	
Cleaning throughout		Closet door and knobs - \$84.97	
Replace cabinet knobs		Cover plates - \$8.75	
Replace/repair baseboards		Door stops - \$13.47	
Replace cabinets		Drywall compound - \$5.15	
Replace broken cover plates		Floor and fresh air vents - \$40.45	
Remove staples from ceiling		Light bulbs - \$5.00	
Remove coax cable throughout		Drain pipe parts - \$6.98	
Replace floor vents		Deadbolts - \$54.48	
Remount interior doors		Sink aerators/plugs - \$7.00	
Repair interior door frames		Toilet parts - \$16.25	
Replace damaged closet doors		Transition bar - \$31.50	
Remove of old hot water tank			
Repair dryer vent flap			
Replace hot water tank pressure vent			
Repair broken drain pipe			
Lawn care			
Repair damaged siding			

Replace exterior storm door			
Repair window screens			
Replace exterior stair railing			
Replace exterior door deadbolts			
Repair interior stair bannister			
Repair exterior garbage bin			
		Total Cost of Repairs Claimed	<u>\$3,093.15</u>

The repairs were required prior to permitting new tenants to occupy the rental premises and were not completed until approximately mid- to late-August. During the summer months use of the furnace was not required and as such it was not until early September, when new tenants moved in, that it was discovered the fuel tank had not been filled when the respondents vacated the rental premises. The applicant refilled the fuel tank at a cost of \$1,238.07. The applicant provided further testimony that from December 2012 to February 2013 the respondents were unable to refill the heating fuel tank. The respondents' housesitter notified the applicant of these instances and in the interest of preventing freeze-up damage to the rental premises the applicant provided and paid for fuel over the period in the total dollar amount of \$1,378.17. The applicant did request recovery of those costs from the respondents in February 2013, to no avail. The applicant is requesting compensation for fuel costs in the total amount of \$2,616.24.

Mr. Leskiw testified that the respondents had failed to pay the rent for the months of May and June. He provided receipts for the rent paid for January to April 2014 to substantiate the consistent practice of the applicant to issue receipts upon payment. In conceding that the respondents appear to have abandoned the rental premises in June, the tenancy is deemed to have ended June 30, 2014. Not having learned of the abandonment of the premises until early July and finding the premises in such a state as to not be re-rentable until September, Mr. Leskiw requested compensation for lost rent for the months of July and August. The total amount of rental arrears claimed is \$3,400. Mr. Leskiw acknowledged the total security deposit of \$866.67 was retained by him against the rental arrears and as such the remaining rental arrears claimed is \$2,533.33.

Mr. Leskiw further advised that the respondents had been granted permission to store their ATV in the garage. The respondents were provided with a garage door remote to gain access to the ATV. The garage door remote has not been returned. Mr. Leskiw testified he has his own personal property of value stored in the garage as well, and he is concerned for the security of his property, what with not knowing where the only other garage door remote is. The garage door opener itself is an older model which he is unable to re-program the remote frequency for. If he is unable to retrieve the respondents' garage door remote he will be forced to replace the entire garage door opener at some cost in order to secure the garage. Mr. Leskiw requested an order either for the return of the garage door remote or notification of its whereabouts by a specific date in order to establish a deadline from which he can then replace the garage door opener if necessary.

Tenancy agreement

The residential tenancy agreement entered into evidence by the applicant establishes the agreement made between the parties for the rental premises identified as 216 Northern Lights Street in Enterprise, Northwest Territories. Occupancy is noted to have been granted April 15, 2009. I am satisfied a valid tenancy agreement was in place between the parties in accordance with the Act.

Abandonment

Section 1(3)(a) sets out the conditions upon which a tenant has abandoned a rental premises where the landlord has reasonable grounds to believe the tenant has left the rental premises. The applicant's representative attended the rental premises in early July seeking payment of rent due and determined by observing the condition of the property that the respondents were no longer residing in the rental premises. Based on previous conversations between the applicant's representative and the respondents, it is not unreasonable to deem the rental premises was abandoned by the respondents on or before June 30, 2014.

Costs of repairs and cleaning

The applicant's representative provided detailed testimony and photographic evidence of the condition of the rental premises at the end of the tenancy. A thorough review at hearing of the costs claimed satisfies me of the respondents' liability for them. I find the respondents liable for the costs of repairs and cleaning to the rental premises in the total amount of \$3,093.15.

Rental arrears, lost future rent, fuel costs, and security deposit

The applicant claimed at hearing outstanding rent for the months of May and June, citing the applicant's consistent practice of issuing receipts for paid rent throughout the tenancy and not having issued said receipts for May and June as evidence that the rent was not paid. I am satisfied the rent was not paid for May and June 2014 in the total amount of \$1,700.

The applicant also claimed lost rent for the months of July and August. Having determined, first, that the respondents abandoned the rental premises without proper notice on or about June 30, 2014, and having determined the extent of repairs required to the rental premises could not be completed until mid- to late-August, it is not unreasonable that the applicant was unable to rent the premises to new tenants until September 2014. Section 62 of the Act specifies a tenant's liability for loss of future rent where the rental premises were abandoned. I am satisfied the respondents are liable for the lost rent for the months of July and August 2014 in the total amount of \$1,700.

Section 5(3) of the tenancy agreement specifies the tenants are responsible for heating fuel. Testimony was provided indicating the respondents' failure to keep enough fuel in the fuel tank between December 2012 and February 2013 to keep the rental premises heated. Evidence was provided documenting the costs the applicant incurred to ensure enough fuel was provided during this period to prevent the rental premises from freezing up, totalling \$1,378.17. The applicant's representative also testified the fuel tank was full when the respondents took occupancy of the rental premises in April 2009 and was expected to be left full at the end of the tenancy; this was not done and as such the applicant incurred the cost of refilling the fuel tank in the amount of \$1,238.07 for which a receipt was provided as proof. I am satisfied the respondents are liable for the cost of heating fuel in the total amount of \$2,616.24.

Interest on the security deposit of \$850 is calculated to be \$16.67, for a total security deposit payable of \$866.67. Section 18(4) permits a landlord to retain the total security deposit for rental arrears. I am satisfied the applicant's retention of the security deposit in this case is in accordance with the Act. I find the respondents have rental arrears in the total amount of \$5,149.57 calculated as follows:

Rental arrears for May and June	\$1,700.00
Lost rent for July and August	\$1,700.00
Cost of heating fuel	\$2,616.24
Sub-total	\$6,016.24
Less total security deposit	(\$866.67)
Total remaining rental arrears	\$5,149.57

Garage door opener and remote

Testimony was given that the garage within which the respondents were permitted to store their ATV was located on the property of the rental premises and as such constituted part of the rental premises. I would note with reference to the detailed accounting of materials required for repairs that the deadbolts were replaced specifically because the respondents failed to return the keys to the rental premises. In the same vein, the respondents failed to return the garage door remote – the garage door ‘key’ – resulting in a similar breach to the security of the garage as there was to the house. Having his own property stored in the garage further validates the applicant’s representative’s security concerns. The applicant’s representative has asked for an order that the respondents either return the garage door remote or notify him of its location by January 31, 2015. I am prepared to go one step further and order that if the garage door remote is not returned or found by January 31, 2015, the applicant is authorized to replace the garage door opener at the respondents’ expense.

An order will issue requiring Barney Norn and Kelly Lafferty-Norn: to pay rental arrears, compensation for lost rent, and fuel costs in the total amount of \$5,149.57; to pay compensation for the cost of repairs and cleaning in the total amount of \$3,093.15; and if the garage door remote is not returned to the applicant or the applicant is not notified of where the garage door remote can be located by January 31, 2015, the applicant is authorized to replace the garage door opener at the respondents’ expense.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

Exhibit 1: Residential tenancy agreement signed March 13, 2009

Exhibit 2: Statement for labour to repair damages

Exhibit 3: Statement for materials to effect repairs

Exhibit 4: Statement of other expenses

Exhibit 5: Statement of total restitution sought

Exhibit 6: Photocopies of receipts for rent payments for January to April 2014

Exhibit 7: Statement of fuel costs

Exhibit 8: Set of 53 digital photographs of rental premises

Exhibit 9: Bluewave Energy invoice dated September 17, 2014