

IN THE MATTER between **SIERRA DALEY AND JESSICA EASTMAN**,
Applicants, and **DON BARYLUK AND JANE BARYLUK**, 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, **HAL LOGSDON**, Rental Officer,
regarding the rental premises at **FORT MCPHERSON, NT.**

BETWEEN:

SIERRA DALEY AND JESSICA EASTMAN

Applicants/Tenants

- and -

DON BARYLUK AND JANE BARYLUK

Respondents/Landlords

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 25th day of March,
2015.

Hal Logsdon
Rental Officer

IN THE MATTER between **SIERRA DALEY AND JESSICA EASTMAN**,
Applicants, and **DON BARYLUK AND JANE BARYLUK**, 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.

BETWEEN:

SIERRA DALEY AND JESSICA EASTMAN

Applicants/Tenants

-and-

DON BARYLUK AND JANE BARYLUK

Respondents/Landlords

REASONS FOR DECISION

Date of the Hearing: March 10, 2015

Place of the Hearing: Yellowknife, NT via teleconference

Appearances at Hearing: Sierra Daley, applicant
Jessica Eastman, applicant
Don Baryluk, respondent
Jane Baryluk, respondent

Date of Decision: March 24, 2015

REASONS FOR DECISION

The applicants alleged that the respondents had breached their obligation to provide and maintain the rental premises in a good state of repair and sought an order requiring the respondents to make necessary repairs to the premises and to pay an unspecified amount of compensation for their loss of full enjoyment of the premises.

The applicants stated that they were being charged for an excessive amount of water by the hamlet because the premises did not have a water meter which they alleged was the landlord's obligation to provide. The house is serviced with water via a utilidor but there is no meter to measure the volume of water used. Because there is no meter, the hamlet charges the applicants a rate based on a fixed volume of water each month regardless of their actual water consumption. The applicants stated that the monthly amount charged to them was far in excess of what they paid in their previous unit where the consumption was metered.

The applicants also alleged that the boiler consumed excessive fuel as compared to their former unit and other similar houses in the community. The applicants stated that the house was comfortable and warm and did not have any excessive air infiltration, leading them to conclude that the boiler was not in good repair.

The applicants stated that after the application was filed, the carbon monoxide detector went off on several occasions. An addendum to the application was filed on February 26, 2015 regarding

the CO detector and the condition of the boiler and hot water heater flue. The applicants stated that the landlords arranged to have the system inspected and repaired and the CO alarm has not sounded since that work was completed.

The respondents stated that they purchased the house from the Hamlet in November, 2013 and undertook extensive renovations including new windows, additional insulation, and new bath and kitchen fixtures. Pictures of the renovations were provided in evidence. The parties entered into a tenancy agreement and the applicants took possession of the premises in March 2014. The tenancy agreement obligates the tenants to pay for heating fuel and water during the term of the agreement. In May, 2014 the tenants notified the landlord of the problem with the water bills.

The respondents stated that they had made numerous inquiries to the Department of Municipal and Community Affairs (MACA) about the absence of a water meter and had been assured that the meter was part of the municipal water system and therefore the provision and maintenance of the meter was the municipality's responsibility. Several emails from MACA were provided in evidence along with one email that stated that the work could not be done until warmer weather prevailed. I have confirmed with the Hamlet of Fort McPherson that the provision of the meter is their responsibility. I find no breach of the landlord regarding the water issue.

The applicants stated that they became concerned with the fuel consumption in November, 2014. They provided delivery slips for fuel purchased between November 17, 2014 and December 18, 2014 in evidence which indicated that they purchased a total of 1464 litres of fuel costing \$2400.

The applicants testified that they put \$400 worth of fuel in the tank each month in their previous unit and never ran out of fuel. They also stated that they consumed four times the amount of fuel as other tenants in the community occupying similar units and that the fuel supplier had told them that their unit consumed more fuel than any other unit in the community.

The respondents testified that the boiler was serviced prior to the commencement of the tenancy agreement and was found to be in good condition. The respondents stated that they were unaware of any problems with the boiler and hot water heater flue or the CO detector until they were served with the addendum to the application. The respondents stated that they acted promptly to have the system inspected and repaired as necessary. A work order from the plumbing and heating contractor describing the work undertaken on March 3, 2015 was provided in evidence.

The plumbing and heating contractors work order indicates that the boiler and hot water heater venting was sealed and screwed together and found to be in good condition otherwise. The chimney cap was missing and it was recommended that this be replaced when warmer weather permitted. The work order indicates that the hot water heater was serviced and the boiler burner nozzle replaced. The installed nozzle was found to be the incorrect size and the correct nozzle was installed. The boiler was found to be in good condition otherwise. The work order indicates that a .60 nozzle was replaced with a .85 nozzle with a different spray angle and different spray pattern.

The landlord's obligation to maintain the rental premises is set out in section 30 of the

Residential Tenancies Act.

30. (1) A landlord shall

- (a) provide and maintain the rental premises, the residential complex and all services and facilities provided by the landlord, whether or not included in a written tenancy agreement, in a good state of repair and fit for habitation during the tenancy; and**
- (b) ensure that the rental premises, the residential complex and all services and facilities provided by the landlord comply with all health, safety and maintenance and occupancy standards required by law.**

(2) Any substantial reduction in the provision of services and facilities is deemed to be a breach of subsection (1).

Over the last two decades there have been significant advances in energy conservation in building technology as well as changes to building codes to ensure better energy efficiency. Most building codes containing provisions for energy efficiency apply only to new construction. Older buildings may fall short of energy standards set for new construction but may nevertheless be maintained in a good state of repair.

The evidence in this matter suggests that the premises are in reasonably good condition. The tenants did not report any undue air infiltration, ill-fitting exterior doors, broken windows or the like and stated that the unit was warm and comfortable. They concluded that the fuel consumption was due to the failure of the landlords to properly maintain or repair the boiler and hot water heater, both of which are oil fired.

Unfortunately, the delivery slips provided in evidence are not much help in accurately determining the fuel consumption. While it is clear that the applicants purchased 366 litres of fuel on November 17th and 18th we do not know if this filled the tank or the size of the tank. The

applicant's practice of buying only a certain dollar value of fuel at a time makes it impossible to determine an accurate pattern of consumption. The applicant's have stated that the premises used more fuel than comparable units in the community but have provided no basis for this comparison. The statement from the fuel supplier is hearsay.

The boiler and hot water tank were considered to be in good working order by the heating and plumbing contractor. The change of nozzle or the sealing of the vent pipes would not have a significant effect on the fuel consumption. In fact, the replacement nozzle has a higher gallon/hour flow rate than the one that was replaced and could possibly result in higher, although insignificant fuel consumption.

While more concise information might indicate that the premises consume more fuel than previous units that the applicants have rented or more than other units in the community, I cannot find sufficient evidence to conclude that it is due to any breach of the landlord's obligation to maintain the heating system. For these reasons the application is dismissed.

Hal Logsdon
Rental Officer