

IN THE MATTER between **Triton Property Management**, Applicant, and **Candy Champagne and Florence Brown**, 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 city of Yellowknife in the Northwest Territories**.

BETWEEN:

TRITON PROPERTY MANAGEMENT

Applicant/Landlord

- and -

CANDY CHAMPAGNE and FLORENCE BROWN

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 14.2(2)(a) of the *Residential Tenancies Act*, the respondents must pay to the applicant outstanding security and pet security deposits in the amount of \$200.00 (two hundred dollars).
2. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondents must pay to the applicant rental arrears in the amount of \$177.00 (one hundred seventy-seven dollars).
3. Pursuant to section 41(4)(b) of the *Residential Tenancies Act*, the respondents must pay their rent on time in the future.

4. Pursuant to section 41(4)(c) of the *Residential Tenancies Act*, the tenancy agreement between the parties for the rental premises known as 69 Gold City Court in Yellowknife, Northwest Territories, will terminate May 31, 2015, and the respondents must vacate the rental premises on or before that date.
5. Pursuant to section 45(4)(a) of the *Residential Tenancies Act*, the respondents must comply with their obligation to pay their utility bills in accordance with section 5 of their tenancy agreement.
6. Pursuant to section 45(4)(a) of the *Residential Tenancies Act*, the respondents must comply with their obligation to permit no more than three persons to occupy the rental premises in accordance with section 10 of their tenancy agreement.
7. Pursuant to section 63(4)(b) of the *Residential Tenancies Act*, the respondents must compensate the applicant for use and occupation of the rental premises at a rate of \$75.62 for each day they remain in the rental premises after May 31, 2015.

DATED at the City of Yellowknife in the Northwest Territories this 29th day of April 2015.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Triton Property Management**, Applicant, and **Candy Champagne and Florence Brown**, 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:

TRITON PROPERTY MANAGEMENT

Applicant/Landlord

-and-

CANDY CHAMPAGNE and FLORENCE BROWN

Respondents/Tenants

REASONS FOR DECISION

<u>Date of the Hearing:</u>	April 15, 2015
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories
<u>Appearances at Hearing:</u>	Dale Flesjer, representing the applicant
<u>Date of Decision:</u>	April 29, 2015

REASONS FOR DECISION

An application to a rental officer made by Triton Property Management as the applicant/landlord against Candy Champagne and Florence Brown as the respondents/tenants was filed by the Rental Office February 27, 2015. The application was made regarding a residential tenancy agreement for the rental premises known as 69 Gold City Court in Yellowknife, Northwest Territories. The applicant personally served a copy of the filed application on the respondents March 6, 2015.

The applicant alleged the respondents have been repeatedly late paying the full amount of rent when it is due, have not paid the full amount of security and pet security deposit, have permitted overcrowding of the rental premises, have caused damages to the rental premises, and have failed to comply with their obligation to pay for utilities. An order was sought for termination of the tenancy agreement and eviction. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for April 15, 2015, in Yellowknife, Northwest Territories. Mr. Dale Flesjer appeared representing the applicant. Ms. Candy Champagne and Ms. Florence Brown were served with notices of attendance by registered mail deemed served April 2, 2015, pursuant to section 71(5) of the *Residential Tenancies Act*. Ms. Champagne and Ms. Brown did not appear at hearing, nor did anyone appear on their behalf. The hearing proceeded in their absence pursuant to section 80(2) of the *Residential Tenancies Act*.

Mr. Flesjer testified to and provided evidence that the respondents have been tenants occupying the rental premises at 69 Gold City Court in Yellowknife, Northwest Territories, since September 1, 2014. The written tenancy agreement signed by the parties specified the monthly rent of \$2,300 was to be paid on the first of the month and that utilities were the respondents' responsibility. The agreement further specified a security deposit of \$2,300 and a pet security deposit of \$500, both to be paid within three months of taking occupancy of the rental premises. Additionally, the tenancy agreement specified the occupancy of the rental premises was not to exceed three people.

Mr. Flesjer reported that the respondents have been repeatedly late paying their rent since October and to date have not paid the full amount of the required security deposits. In February, the landlord was informed by the local electricity supplier that the respondents had failed to pay their power bill and as a consequence a load limiter would be installed to the premises. The landlord was also informed at approximately the same time that the respondents had not been paying their propane bill, as evidenced by invoices provided by Superior Propane. It further came to the landlord's attention that the water bill has not been paid since the respondents took occupancy of the rental premises.

During visits to the premises to discuss matters and to serve notices, including the application to a rental officer, Mr. Flesjer observed additional occupants to the three known occupants residing in the rental premises. Mr. Flesjer also observed several damages to the rental premises which raised concerns.

Subsequent to the hearing, the landlord's agent, Paula Smith, provided a statement of rent account reflecting the payments received against the respondents' rent and security deposits accounts, as well as charges for a payment with insufficient funds (NSF) and late payment penalties. This document was provided to support the landlord's claim that the respondents have been repeatedly late paying their rent, that they had accrued rental arrears consisting of late payment penalties, and had an outstanding amount of \$200 for the security deposits.

Tenancy agreement

The tenancy agreement entered into evidence establishes a residential tenancy between the parties for the rental premises identified as 69 Gold City Court in Yellowknife, Northwest Territories. Section 3 specifies the tenancy as a fixed-term from September 1, 2014, to August 31, 2015. I am satisfied a valid tenancy agreement is in place between the parties in accordance with the *Residential Tenancies Act* (the Act).

Damages

The landlord alleged in their application to a rental officer and at hearing that the tenants had caused damages to the rental premises. However, no evidence was provided either with the application to a rental officer or at hearing as to the nature and extent of the damages or to prove them as damages for which the respondents were responsible. As such, the alleged damages were not considered in this decision. The landlord retains the option to file another application to a rental officer for claims respecting damages to the rental premises.

Rental arrears

The statement of account provided into evidence represents the landlord's accounting of payments made against the rent and security deposit accounts and late payment penalties charged between September 2, 2014, and April 9, 2015. After making inquiries of the landlord to clarify the entries, I am satisfied the amounts paid as amended are accurately reported.

Section 4 of the tenancy agreement specifies the monthly rent of \$2,300 is due and payable the first of each month. Section 4 and Schedule A of the tenancy agreement both refer to the application of late payment penalties in accordance with the Act. Section 41(2) of the Act specifies that a tenant who pays their rent late is liable to a penalty calculated in accordance with the *Residential Tenancies Regulations* (the Regulations). Section 3 of the Regulations specifies the method for calculating late payment penalties as not greater than \$5 plus \$1 for each day after the due date that the rent is late to a maximum of \$65. I interpret section 3 of the Regulations to mean \$5 for the first day (i.e. first of the month) and \$1 for each subsequent day.

The landlord has applied a flat fee of \$35 as a late payment penalty. This amount is not specified in the tenancy agreement; rather the tenancy agreement only refers to applying late payment penalties "in accordance with the Rental Act." As such, the application of a flat fee for late payment penalties is contrary to the Regulations and the Act. In the chart which follows I have listed the dates the rent was paid in full for each month and the corresponding calculation of late payment penalties in accordance with the Regulations:

Month	Date Rent Paid in Full	Late Payment Penalties
September	September 2, 2014	\$0
October	October 10, 2014	\$5 + \$9 = \$14
November	November 14, 2014	\$5 + \$13 = \$18
December	December 9, 2014	\$5 + \$8 = \$13
January	January 12, 2015	\$5 + \$11 = \$16
February	March 16, 2015	\$5 + \$43 = \$48
March	March 16, 2015	\$5 + \$15 = \$20
April	April 9, 2015	\$5 + \$8 = \$13
TOTAL LATE PAYMENT PENALTIES:		\$142

I am satisfied the application of late payment penalties against the respondents' rent account is appropriate, as calculated above.

The above chart further illustrates the repeatedly late payment of rent experienced by the landlord with these respondents. Section 41(1) of the Act requires a tenant to pay the rent to the landlord on the dates specified by the tenancy agreement. As previously mentioned, section 4 of the tenancy agreement specifies the rent is payable the first of every month. I find the respondents have repeatedly failed to pay the full amount of their rent when it is due.

The rent for February was paid by two methods on February 13, 2015: \$1,600 in draft and \$700 in cheque; the cheque bounced, resulting in an NSF charge of \$35 in accordance with Schedule A of the tenancy agreement. I am satisfied the application of an NSF charge was made in accordance with Schedule A of the tenancy agreement. I am satisfied the amount of \$35 is not an unreasonable charge for NSF fees incurred by the landlord.

I find the respondents have accumulated rental arrears consisting of late payment penalties and the NSF charge in the total amount of \$177.

Utilities

The landlord provided into evidence a utility account transaction journal from the City of Yellowknife dated April 14, 2015, representing the water bill from September 30, 2014, to April 2, 2015. The account is identified as being for the rental premises and the account holder is identified as Florence-Cazon Brown. Penalties have been applied against the account by the City for each month from November 2014 to April 2015 in progressively increasing dollar amounts, indicating a failure on the part of the account holder to pay the water bill. There are no entries in the journal indicating payments against the account.

The landlord provided into evidence an invoice dated January 28, 2015, and a statement dated April 1, 2015, from Superior Propane, representing the fuel account. The account is identified as being for deliveries of propane to the rental premises and the account holders are identified as the property owner (Jimoh Akindele Morakinyo, whom the applicant represents as agent) and the tenants, F. Brown and C. Champagne. The invoice and statement indicate the tenants' failure to pay the propane bills since January 2015. Although a payment was made by the tenants to Superior Propane on March 16, 2015, a balance remains owing on the account as of April 1, 2015, in the amount of \$1,421.17.

The landlord provided into evidence an email dated February 18, 2015, to the landlord from Northland Utilities (Yellowknife) Limited. Judicial notice is taken recognizing Northland Utilities (Yellowknife) Limited as the local provider of electricity. The email informs the landlord that a load limiter was installed to the rental premises that day. The landlord confirmed that the reason the load limiter was installed was as a consequence to the tenants' failure to pay their power bill.

Section 5 of the tenancy agreement specifies that power, water, and heat are the tenants' responsibility. Section 45(1) of the Act requires a tenant to comply with additional obligations undertaken in a written tenancy agreement. I find the respondents have failed to comply with their obligation to pay their utility bills.

Occupancy

Section 10 of the tenancy agreement specifies that the tenant is not permitted to allow more than three persons to occupy the rental premises on a continuing basis. Section 45(3) of the Act specifies that a tenant shall not permit such number of persons to occupy the rental premises on a continuing basis that results in a breach of the tenancy agreement. The landlord testified to direct observation of at least five people residing in the rental premises on a continuing basis. I have nothing before me to dispute that observation. I find the respondents have failed to comply with their obligation to have no more than three people residing in the rental premises.

Security and Pet Security Deposits

Section 6 of the tenancy agreement specifies a security deposit of \$2,300 and a pet security deposit of \$500 is required. Section 14(2) of the Act requires a security deposit to be paid in full within three months of commencement of the tenancy. Section 14.1(3) of the Act specifies a landlord shall not require or receive a pet security deposit from a tenant unless the tenant keeps or intends to keep a pet on the rental premises. The landlord testified to having direct knowledge of the respondents keeping a pet on the rental premises since commencement of the tenancy. The statement of account indicates payments were received from the respondents against their security deposits account as follows: \$800 on September 2, 2014; \$800 on February 13, 2015; \$300 on March 16, 2015; and \$700 on April 9, 2015. The total amount received to date against the security deposits is \$2,600. The total amount required for security deposits is \$2,800, payable in full by December 1, 2014. I find the respondents have failed to pay the full amount of security and pet security deposits.

Termination and eviction

Section 54(1)(g) of the Act specifies a landlord may give a tenant a minimum of 10 days' notice to terminate the tenancy where the tenant has repeatedly failed to pay the full amount of the rent or to pay the rent on the dates specified in the tenancy agreement. The landlord in this case has not given notice to the tenant under this section. However, including the repeated failure to pay the full amount of rent or to pay it on the dates specified in the tenancy agreement as a circumstance under which the landlord could give 10 days' written notice suggests the nature of such a circumstance as being a substantial breach warranting termination of the tenancy.

The Canadian Oxford Dictionary defines *repeated* as “frequent; done or said again and again.” As previously noted, the tenancy agreement specifies the monthly rent is due and payable the first of each month and the Act specifies that the rent must be paid on the dates specified by the tenancy agreement. The statement of account clearly indicates the repeated failure of the tenants to pay the full amount of rent on the first of the month throughout their eight-month tenancy.

Section 41(4)(c) of the Act recognizes termination of the tenancy as a viable remedy where the tenant has been found to have failed to pay the rent in accordance with the Act. Section 45(4)(e) of the Act also recognizes termination of the tenancy as a viable remedy where the tenant has been found to have failed to comply with an additional obligation – in this case two of them: paying the utilities and not overcrowding.

Having found that the respondents have repeatedly failed to pay the full amount of rent when it is due, and that they have failed to comply with their obligations to pay the utilities and have no more than three people residing in the rental premises, I find justification for termination of the tenancy agreement under sections 41 and 45, and eviction under section 63 of the Act.

An order will issue requiring Ms. Candy Champagne and Ms. Florence Brown to pay the outstanding security and pet security deposits in the amount of \$200, to pay rental arrears in the amount of \$177, to pay their future rent on time, terminating their tenancy agreement on May 31, 2015, to comply with their obligation to pay their utilities bills, to comply with their obligation to permit no more than three persons to reside in the rental premises, evicting them from the rental premises June 1, 2015, and to compensate the landlord for use and occupation of the rental premises at a rate of \$75.62 for each day they remain in the rental premises after May 31, 2015. The eviction order will follow under separate cover.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

Exhibit 1: Superior Propane invoice number 10126 dated January 28, 2015

Exhibit 2: Email from Danielle Normandin of Northland Utilities (Yellowknife) Ltd. to rentals@tritonyk.com dated December 18, 2015

Exhibit 3: Tenancy agreement dated August 29, 2014

Exhibit 4: Superior Propane statement dated April 1, 2015

Exhibit 5: City of Yellowknife utility account transaction journal dated April 14, 2015

Exhibit 6: Detail rent and damage/pet deposit report (statement of account) received April 29, 2015