

IN THE MATTER between **Gordon Murray**, Applicant, and **NPR Limited Partnership**, 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, regarding a rental premises located within the **city of Yellowknife in the Northwest Territories**.

BETWEEN:

GORDON MURRAY

Applicant/Tenant

- and -

NPR LIMITED PARTNERSHIP

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 30(4)(a) of the *Residential Tenancies Act*, the respondent must comply with their obligation to provide to the applicant two exterior door security FOBs to the residential complex known as Hudson House located at 5023 - 48 Street in Yellowknife, Northwest Territories, at no extra cost to the applicant.

DATED at the City of Yellowknife in the Northwest Territories this 6th day of July 2015.

Adelle Guigon
Deputy Rental Officer

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REASONS FOR DECISION

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| <u>Date of the Hearing:</u> | June 24, 2015 |
| <u>Place of the Hearing:</u> | Yellowknife, Northwest Territories |
| <u>Appearances at Hearing:</u> | Gordon R. Murray, applicant Metslal Mesgun, representing the respondent |
| <u>Date of Decision:</u> | June 30, 2015 |

REASONS FOR DECISION

An application to a rental officer made by Gordon R. Murray as the applicant/tenant against Northern Property REIT as the respondent/landlord was filed by the Rental Office May 11, 2015. The application was made regarding a residential tenancy agreement for the rental premises known as #24, 5023 - 48 Street, Hudson House, in Yellowknife, Northwest Territories. The applicant personally served a copy of the filed application on the respondent May 11, 2015.

The applicant alleged that he only received one FOB from the respondent to replace the two keys he was assigned at commencement of the tenancy and that the respondent's requirement of a \$100 fee for a second FOB was unreasonable. He requested the second FOB at no extra charge. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for June 24, 2015, in Yellowknife, Northwest Territories. Mr. Gordon Murray appeared as applicant. Ms. Metslal Mesgun appeared representing the respondent.

Mr. Murray testified that his tenancy with the respondent commenced September 1, 2011, and that at the time he was issued two keys to the exterior building security doors and two keys to the interior apartment door. Earlier this year, the respondent improved security to the residential complex by replacing the keyed exterior doors with digital FOB security doors; this new security feature requires swiping a FOB device across a sensor to unlock the door and gain entry. The tenants were provided with FOBs to replace the keys. Mr. Murray was provided with only one FOB to replace the two keys he was initially provided with. Mr. Murray attended the respondent's office to request his second FOB and was informed he would be required to pay a \$100 fee for it. Mr. Murray's position is that he was provided with two keys at commencement of his tenancy and any replacement of those keys initiated by the landlord should be comparable and at not cost to him.

Ms. Mesgun began her testimony with identifying that since the filing of this application the tenancy agreement with Mr. Murray for the rental premises had been transferred from Northern Property REIT to Yellowknife Housing Authority. Northern Property REIT retains ownership of Hudson House and has rented Mr. Murray's unit to Yellowknife Housing Authority, who in turn has acquired Mr. Murray's tenancy agreement and is now Mr. Murray's landlord. Ms. Mesgun questioned whether Northern Property REIT remains liable for the issue Mr. Murray made the application about. Mr. Murray acknowledged his tenancy agreement had transferred to Yellowknife Housing Authority but only after the issue arose for the application to a rental officer to be filed.

Ms. Mesgun defended the respondent's issuance of one FOB to Mr. Murray as in compliance with the respondent's policy to issue only one FOB for each tenant named on a tenancy agreement. A fee of \$100 is charged for each additional FOB issued. The policy does allow in exceptional circumstances for the fee to be waived, such as when home care requires regular access. As the policy currently stands, the fee is non-refundable. Ms. Mesgun acknowledged that the implementation of the FOB security system is relatively new and the policies are still under development. Ms. Mesgun agreed to propose to her superiors that the fee should be refundable upon return of the FOB at the end of the tenancy, or even not be charged until or unless the FOB is lost or not returned at the end of the tenancy. The rationale for the fee was to cover the cost of the device. Ms. Mesgun confirmed that each FOB has its own digital identity and records were kept of who each FOB was assigned to. She also confirmed that each FOB could be programmed and re-programmed to permit access to specific buildings. Every time an FOB is used at any building with the FOB security system a digital record is created, whether entry is permitted or not. Ms. Mesgun acknowledged that until or unless a FOB is lost or not returned there is no financial or physical loss to the respondent; all FOBs are reusable because they are re-programmable. Lost FOBs can be deactivated once the loss is reported, thereby preventing any building access by unauthorized persons using the lost FOB.

The question was raised as to whether Mr. Murray's new landlord, Yellowknife Housing Authority, would be implementing the same policy respecting issuance of FOBs. If not, Mr. Murray's request for a second FOB may be met by the Yellowknife Housing Authority. The hearing was adjourned *sine die* pending Mr. Murray's confirmation with Yellowknife Housing Authority of their policy in this respect. Mr. Murray did contact Yellowknife Housing Authority and was informed they would be practicing essentially the same policy as Northern Property REIT: one FOB issued to each occupant of a rental premises. Mr. Murray remains of the position that the issue he has made application about is with Northern Property REIT and not at the moment with Yellowknife Housing Authority.

Tenancy agreement; change of landlord

The lease agreement entered into evidence by the applicant establishes a residential tenancy agreement between NPR Limited Partnership and Gordon Murray. NPR Limited Partnership is also recognized as Northern Property REIT. The application form identifies the applicant as Gordon R. Murray and the respondent as Northern Property REIT. The style of cause will be amended to reflect the names of the landlord and tenant as they appear on the lease agreement: Gordon Murray v. NPR Limited Partnership.

The tenancy agreement commenced September 1, 2011, for the rental premises identified as #24, 5023 - 48 Street, Hudson House, in Yellowknife, Northwest Territories. The parties did not dispute the tenancy. I am satisfied a valid tenancy agreement is in place between the parties in accordance with the *Residential Tenancies Act* (the Act).

Testimony was provided and the parties concurred that the applicant's tenancy agreement has been transferred to Yellowknife Housing Authority. However, no evidence was provided as to when that transfer took effect other than both parties acknowledging it was after the application to a rental officer was filed. Section 20(b) of the Act specifies that where there is a change of landlord the former landlord is liable to the tenant for any breach related to the period before the change of landlord. The change to the security system occurred prior to the change of landlord, as did the denial of the second FOB. As such, the responsibilities related to the matter applied for are appropriately applied against the former landlord, NPR Limited Partnership.

Change of security system, provision of FOB

Section 5.14 of the lease agreement specifies that a tenant must deliver up to the landlord all keys to the premises upon termination of occupancy and that if the keys are not all returned the tenant is liable for the associated costs. The matter at hand is not about returning the keys at the end of the tenancy or about the loss of the keys. The matter at hand is about replacing keys with FOBs after the upgrade to the security system. As such, there are no associated costs as defined by the terms of the tenancy agreement for which the applicant could be held liable.

Section 30(1)(b) of the Act requires the landlord to ensure that the rental premises, residential complex, and all services and facilities provided by the landlord comply with all health, safety and maintenance, and occupancy standards required by law. Section 30(2) recognizes any substantial reduction in the provision of services and facilities as a breach of section 30(1). The landlord ensured the security of the residential complex and provided the tenant with two keys authorizing the tenant's access to the residential complex. The landlord's upgrades to the security of the residential complex with the installation of the FOB security system is to be applauded. However, by replacing two keys with one FOB the landlord has effectively reduced the provision of services to the tenant, resulting in a breach under section 30(1) of the Act.

Charging of fees

The charging of non-refundable fees for a device that is expected to be returned and reused at the end of a tenancy is unreasonable. What is reasonable is setting out a fee to be charged only if and when the device is lost or not returned upon termination of the tenancy. The loss of the device or failure to return the device constitutes damage in that the landlord would be required to replace the device. Section 45(1) requires tenants to comply with additional reasonable obligations undertaken in a written tenancy agreement. Section 5.14 of the tenancy agreement reasonably holds the tenant responsible for the keys he is provided with and sets out the tenants liability should he fail to return them. The applicable fee or charge in that instance would reasonably be charged at the time of the loss or at the end of the tenancy.

The charging of a refundable fee or deposit is prohibited under section 14.2 of the Act where it states that the landlord shall not require or receive from a tenant any amount as a deposit for damages other than a security deposit and pet security deposit. Therefore, even the proposed refundable \$100 charge for the issuance of additional FOBs would be contrary to the Act.

An order will issue requiring NPR Limited Partnership to provide Mr. Murray with two FOBs at no additional cost.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

Exhibit 1: Lease agreement made August 30, 2011