File #10-14740

IN THE MATTER between **Tyler Oakoak and Becki Frise**, 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:

TYLER OAKOAK and BECKI FRISE

Applicants/Tenants

- and -

NPR LIMITED PARTNERSHIP

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 30(4)(d) of the *Residential Tenancies Act*, the respondent/landlord must compensate the applicants/tenants for loss suffered in the amount of $4,850.00 (four thousand eight hundred fifty dollars).

   DATED at the City of Yellowknife in the Northwest Territories this 20th day of July 2015.

Adelle Guigon
Deputy Rental Officer

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-and-

NPR LIMITED PARTNERSHIP

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing:	**June 24, 2015**
Place of the Hearing:	**Yellowknife, Northwest Territories**
Appearances at Hearing:	**Tyler Oakoak, applicant** **Becki Frise, applicant** **Metslal Mesgun, representing the respondent**
Date of Decision:	**July 20, 2015**

REASONS FOR DECISION

An application to a rental officer made by Tyler Oakoak and Becki Frise as the applicants/tenants against NPR Limited Partnership as the respondent/landlord was filed by the Rental Office May 28, 2015. The application was made regarding a residential tenancy agreement for the rental premises known as #24, 5605 - 50 Avenue, in Yellowknife, Northwest Territories. The applicants personally served a copy of the filed application on the respondent May 28, 2015.

The applicants alleged the respondent had failed to comply with their obligation to ensure the rental premises complies with all health, safety and maintenance standards required by law, and sought an order for financial compensation. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for June 24, 2015, in Yellowknife, Northwest Territories. Mr. Tyler Oakoak and Ms. Becki Frise appeared as applicants. Ms. Metslal Mesgun appeared representing the respondent.

The parties agreed the tenants had moved into the rental premises known as #24, 5605 - 50 Avenue, in Yellowknife, Northwest Territories, in March 2013. The parties agreed the current rent is $2,425 per month. The rental premises is a three-bedroom townhouse with a yard.

The applicants testified they had discovered mould growing in their bathroom and bedroom, and reported this to the landlord in January 2014. In February 2014 an environmental health officer conducted an inspection of the premises and confirmed the presence of mould; the officer reported that the mould could be cleaned, that remediation of the mould infested areas would need to be done, and that it was safe for the family to remain living in the rental premises until the remediation work began. The officer reiterated that the tenants could not live in the rental premises while the work to remediate the mouldy areas was being done.

Alternate accommodations were offered to the applicants which were refused as unsuitable for various reasons, including that the yard was not large enough for their trampoline. The applicants were denied a request that any transfer be temporary until the remediation of their unit #24 was complete, the respondent citing the reason for denial was due to the undetermined time frame for remediation to be completed.

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The applicants made arrangements for their father to paint the affected areas. He cleaned and painted the affected area, but the mould returned. During the winter months the bedroom window froze and collected frost, melting on the interior and leaking down the wall. The applicant notified the respondent, who inspected and acknowledged the problem. The respondent indicated the required repairs to the window could not be effected until later in the spring. The applicants were provided with a dehumidifier to attempt to keep moisture from the room freezing on the window, which the applicants claim did not help. The applicants had to use towels to soak up the leaking moisture. The moisture softened the drywall beneath the window to the point that it fell away from the wall, revealing further accumulated mould in the wall cavity. The respondent was notified. Repairs have not been effected because the respondent requires vacant possession of the premises before remediation work can commence and no suitable accommodations had become available to move the applicants to.

Although being assured it was safe to continue residing in the rental premises with the mould, in the interests of protecting the health of their children the applicants took it upon themselves to restrict their children's access to the affected bedroom and reduced the time permitted to shower in the bathroom. This has resulted in a substantial reduction in the usable space for the family of eight.

In April 2015, after noticing a neighbour's unit (#7) was being vacated, the applicants again formally requested a transfer. In consideration of the size of the applicants' family, a four-bedroom apartment at Lanky Court was offered by the respondent and refused by the applicants for having no yard. The respondent was disinclined to transfer the applicants to anything less than a four-bedroom unit citing occupancy standards setting a maximum of two persons per bedroom. The applicants disagreed the occupancy standards applied to children, arguing for a three-bedroom unit with a yard similar to the one they currently resided in. The Fire Marshal's office was contacted and confirmed that while occupancy standards do dictate two persons per bedroom in residential premises, "persons" are considered to be adults and the standards would not be breached by permitting three children per bedroom. By the time these matters were raised and addressed, the neighbour's unit that the applicants requested had already been rented out to new tenants. On June 4, 2015, another three-bedroom unit with a yard (#20) became unexpectedly available and was offered to the applicants, who agreed to this transfer upon completion of minor repairs to that premises, expected before the end of June.

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The applicants alleged their children have suffered ill health effects due to living in unit #24 with mould, although no specific supporting evidence was provided. The applicants claimed that as a result of the substantial reduction in usable space due to the mould in the rooms and the respondent's failure to adequately respond to the issues in a reasonable period of time that they should receive compensation equivalent to one-third of the rent for 17 months (the time since the respondent was first notified of mould), or $13,741.61.

Decision

I am not satisfied that there has been a substantial breach of the landlord's obligations under section 30 of the *Residential Tenancies Act* (the Act). That is not to say there has not been a breach, only that it has not been substantial.

The rental premises has remained in a relatively good state of repair and fit for habitation. The presence of mould in the premises is contrary to environmental health standards and has been identified by an environmental health officer as requiring remediation, but has also been identified by the environmental health officer as being of an amount the tenants could safely continue living with until the remediation work begins.

The landlord has attempted on at least four occasions to transfer the tenants to alternate accommodations as a result of the necessary remediation work. All were refused by the tenants as being unsuitable for various reasons, including requiring renovations or not having a large enough yard. A less expensive four-bedroom apartment was refused because it did not have a yard and a three-bedroom townhouse with a yard was requested in its place. The recently-accepted transfer to a three-bedroom townhouse with a yard was conditional on minor repairs being completed first, at the request of the tenants.

The tenants at one point requested a guarantee that they could move back in to unit #24 after it was remediated as a condition of agreeing to transfer. The landlord refused on the grounds that they did not know how long the remediation work would take. In my opinion, it would not have been unreasonable for the landlord to agree to give the tenants right of first refusal on the remediated unit #24, regardless of how long it took to complete the remediation, if that's all it would have taken to secure the tenants' transfer to another unit.

On the other hand, unit #24 was deemed by the environmental health officer as livable until the remediation work began and the tenants' refusal to use the full premises was a choice they made, not one that was imposed on them. It was also their choice to remain in the unit they knew had a health-related deficiency rather than transfer to a unit that might have minor material defects or require the sacrifice of a yard.

There would have been no financial loss to either party in transferring to another unit and/or entering into a right of first refusal agreement. The tenants have been very good tenants and have paid their rent in full and on time. The landlord would have received rent for an occupied unit and the tenants would have continued paying the same or less for rent.

While I do find the landlord has breached their obligation to comply with health standards as required by law, I am satisfied they have made adequate attempts to resolve the problem by repeatedly offering alternate accommodations to the tenants so that the remediation work could commence and the risk to the tenants' health could cease.

I will not hold the landlord accountable for the tenants' choice to remain in the rental premises for as long as they have. However, in light of the deficiency occurring and putting the tenants at risk at all, and the associated lost peace of mind from concern for the health and safety of the tenants' family, I am satisfied some compensation is due to the tenants. The tenants have requested one-third of their rent for the last 17 months equal to $13,742.61. I find that amount to be unreasonable under the circumstances. In consideration that the tenants were offered suitable alternate accommodation shortly after notifying the landlord and confirming the presence of mould, which was refused because the yard was not large enough for their trampoline, I am satisfied reasonable compensation is the equivalent of two months' rent equal to $4,850. An order will issue requiring NPR Limited Partnership to compensate the applicants in that amount.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

Exhibit 1: Resident ledger dated June 24, 2015

Exhibit 2: Set of three photographs

Exhibit 3: Email from Wendy Hackett to Elyssa Allen dated February 13, 2014

Exhibit 4: Email from Steven Shen to Wendy Hackett dated February 12, 2014

Exhibit 5: Email from Connie Lane to Elyssa Allen dated February 13, 2014

Exhibit 6: Written statement from Connie Lane dated June 24, 2015

Exhibit 7: Email from Tracy Heslep to Metslal Mesgun dated June 25, 2015