

IN THE MATTER between **WARREN GIBB AND BEV GIBB**, Applicants, and
ALBERT BOURQUE, Respondent;

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 **HAY RIVER, NT.**

BETWEEN:

WARREN GIBB AND BEV GIBB

Applicants/Landlords

- and -

ALBERT BOURQUE

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicants rent arrears in the amount of one thousand four hundred forty eight dollars and sixty three cents (\$1448.63).
2. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondent shall pay the applicant cleaning costs in the amount of three hundred forty dollars (\$340.00).

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

Hal Logsdon
Rental Officer

IN THE MATTER between **WARREN GIBB AND BEV GIBB**, Applicants, and
ALBERT BOURQUE, 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 **Hal Logsdon**, Rental Officer.

BETWEEN:

WARREN GIBB AND BEV GIBB

Applicants/Landlords

-and-

ALBERT BOURQUE

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: July 15, 2015

Place of the Hearing: Yellowknife, NT via teleconference

Appearances at Hearing: Bev Gibb, applicant
Shawn Evans, witness for the applicants
Albert Bourque, respondent

Date of Decision: August 6, 2015

REASONS FOR DECISION

The parties entered into a verbal monthly tenancy agreement for premises located at 33-104 Street in Hay River commencing on October 1, 2011. The monthly rent for the premises was \$850 and the respondent paid a security deposit of \$850 on October 28, 2011. There was no inspection report completed at the commencement of the tenancy.

The applicant testified that the rent was increased to \$1000/month effective December 1, 2014. The respondent stated that the rent was increased on November 1, 2014. The applicant stated that written notice of the rent increase had been given but no evidence of the notice or the date of service was produced at the hearing.

The applicant stated that the respondent gave verbal notice to terminate the tenancy agreement to be effective on December 31, 2014. The applicant stated that the respondent moved to other premises but failed to give up possession of the rental premises. She stated that after attempts to contact the respondent, she entered the premises and was appalled by their condition. She stated that she had a locksmith change the locks and took possession, believing the premises were abandoned.

The applicant stated that most of the property in the premises was either worthless or unsanitary to store and was disposed of. She stated that there were a few items which were not destroyed which were sorted and put in the yard. No items were stored in accordance with the *Residential*

Tenancies Act nor was an inventory of goods provided to the respondent or filed with a rental officer.

The applicants retained the security deposit and accrued interest and sent a notice to the respondent dated April 15, 2015 that they were “holding” the security deposit for unpaid rent, lost rent and the inability to sell the unit due to damage.

The applicant alleged that the respondent failed to pay the full amount of the rent and stated that the amount of rent owed was \$2300. The applicants provided numerous receipts in evidence representing rent payments totalling \$33,845. The applicants offered no other accounting of the alleged rent arrears.

The applicants hired Mr. Shawn Evans to clean up the premises. In a written statement Mr. Evans described the premises as follows:

The first thing was the smell when I walked into the trailer - the smell of mould, dirt, garbage & feces & it was the most god-awful smell ever. It was like going to the dump on a hot day & it looked like a dump. There was garbage, food rotting on disposable plates, broken toys, piles of clothing and junk everywhere. There was feces in all the rooms & worst in master bedroom & child's bedroom.

Mr. Evans testified that he spent 3 days removing garbage and personal belongings from the premises and cleaning the premises with ammonia. He stated that he had charged the applicants \$340 for the work but on completion, the premises still had a strong and objectionable odour and in his opinion were not suitable for habitation. The applicant provided several photographs of the premises in evidence.

The applicant stated that they sought the advice of a local contractor, Northern Comfort Construction Ltd. In an undated and unsworn statement the contractor states,

Black mold was found on drywall and in cabinets of kitchen. Also black mold was found on drywall and around tub in main Bathroom. Overall condition of Trailer was appalling. Flooring was ruined du (sic) to Human waste, interior walls and doors were damaged to the point of requiring total gut and renovation.

Upon inspection of trailer, it is my opinion the trailer can only be condemned. The cost of Mold Remediation and total renovation of structure far outweighs the worth of the trailer.

In another undated, unsigned and unsworn statement, the same contractor estimated the remediation would exceed \$30,000. The applicant decided to demolish the building rather than undertake any repairs and the premises were destroyed.

The applicant stated that when they rented the premises to Mr. Bourque, they had anticipated rental revenue for six or seven years, after which they planned to sell the property. The applicants alleged that the respondent's negligence had caused them to lose this rental revenue and that they should be compensated for loss of rent from May 1, 2015 to October 31, 2017. The applicant originally sought \$36,000 but acknowledged an arithmetic error and amended the claim to \$30,000 (30 months @ \$1000/month).

The applicants alleged that of the \$30,000 repair costs that would have been necessary to repair the premises, \$20,000 was directly attributable to the damages done by the respondent. The applicants provided no itemised calculation of the repair costs they felt were due to the respondent's negligence but stated that, in their opinion, the mould in the premises was

attributable to the respondent's negligence.

The applicants sought the following relief.

1. An order requiring the respondent to pay the alleged rent arrears of \$2300.
2. An order requiring the respondent to pay compensation of \$30,000 representing rents which the applicant anticipated would be realized between May 1, 2015 to October 31, 2017.
3. An order requiring the respondent to pay for a portion of the repair costs to the premises in the amount of \$20,000.
4. An order requiring the respondent to pay for the demolition of the premises and disposal costs of \$3500.

The respondent acknowledged that the full amount of rent had not been paid during the term of the tenancy but was uncertain of the amount that he owed. He provided an incomplete listing of bank records showing transfers to the applicant for rent and stated that he had not found any discrepancies between his records and the landlord's receipts.

The respondent acknowledged that the premises were in a very poor state of cleanliness when the landlord took possession. He stated that he had taken possession of another property and was in the process of sorting out a lot of personal effects at the rental premises intending to clean up before he gave up possession to the respondent. When the respondent continued to occupy the rental premises after December 31, 2014 the parties signed an agreement whereby the respondent agreed to give up possession no later than February 28, 2015.

The respondent testified that there had been several incidents of water escape in the premises during the term of the tenancy. The applicant acknowledged one of the incidents. The respondent also testified that the insulation and vapour barrier in the premises were substandard causing considerable condensation. The respondent stated that condensation was quite severe in the bathroom but also formed on the walls throughout the house. He did not agree with the applicants that the mould problem in the house was the direct result of his negligence.

My analysis of the rent account suggests rent arrears that are somewhat in excess of the \$2300 sought by the applicants but I shall accept that figure. I find the respondent in breach of his obligation to pay rent. Applying the retained security deposit and interest to the rent arrears, I find rent owing to the applicant of \$1448.63 calculated as follows:

Security deposit	(\$850.00)
Interest	(1.37)
Rent arrears	<u>2300.00</u>
Rent owing applicant	\$1448.63

In my opinion, there were reasonable grounds for the landlords to consider the premises vacated or abandoned. They were aware in mid-November, 2014 that the respondent had purchased another mobile home and the parties had agreed in writing that the respondent would return possession of the rental premises at the end of February. There is no evidence that the respondent had notified the landlords that he intended to continue occupying the premises after February 28 and the rent had not been paid.

Compensation for lost rent can be considered pursuant to section 62 of the *Residential Tenancies Act* when a tenant abandons the rental premises.

- 62. (1) Where a tenant abandons a rental premises, the tenancy agreement is terminated on the date the rental premises were abandoned but the tenant remains liable, subject to section 5, to compensate the landlord for loss of future rent that would have been payable under the tenancy agreement.**
- (2) Where, on the application of a landlord, a rental officer determines that a tenant has abandoned a rental premises, the rental officer may make an order requiring the tenant to pay to the landlord the compensation for which the tenant is liable by reason of subsection (1).**

Section 5 requires mitigation of loss.

- 5. (1) Where a landlord or tenant is liable to the other for damages as a result of a breach of a tenancy agreement or this Act, the landlord or tenant entitled to claim damages shall mitigate his or her damages.**
- (2) Without limiting subsection (1), where a tenant terminates a tenancy agreement, contravenes a tenancy agreement, or vacates or abandons rental premises, other than in accordance with this Act or the tenancy agreement, the landlord shall rent the rental premises again as soon as is practicable and at a reasonable rent in order to mitigate the damages of the landlord.**

In my opinion, the applicants are not entitled to compensation for lost rent due to the abandonment of the premises. The landlords' decision to destroy the building eliminated any efforts to mitigate loss. In any case, the tenancy agreement was only monthly and had the applicants decided to repair the unit, the respondent would have only been liable for one month's lost rent. I find no grounds to consider compensation for lost rent.

The applicants' request for compensation of \$20,000 for repair costs must be considered pursuant to section 42(3)(c) of the *Residential Tenancies Act*.

- 42. (1) A tenant shall repair damage to the rental premises and the residential complex caused by the wilful or negligent conduct of the tenant or persons who are permitted on the premises by the tenant.**
- (2) Ordinary wear and tear of rental premises does not constitute damage to the premises.**
- (3) Where, on the application of a landlord, a rental officer determines that a tenant has breached the obligation imposed by this section, the rental officer may make an order**
- (a) requiring the tenant to comply with the tenant's obligation;**
 - (b) prohibiting the tenant from doing any further damage;**
 - (c) requiring the tenant to compensate the landlord for loss suffered as a direct result of the breach;**
 - (d) authorizing any repair or other action that is to be taken by the landlord to remedy the effects of the tenant's breach;**
 - (e) requiring the tenant to pay any reasonable expenses directly associated with the repair or action; or**
 - (f) terminating the tenancy on the date specified in the order and ordering the tenant to vacate the rental premises on that date.**

The applicants spent \$340 cleaning the premises after they were abandoned by the respondent.

There is no evidence of any other expenditures for cleaning or repair. However, in my opinion, the loss of value of the premises that is directly related to the wilful or negligent conduct of the tenant can certainly be considered.

The \$30,000 estimated cost to renovate the rental premises was provided by Northern Comfort Construction Ltd. The contractor's documents refer to damage to the floor and damaged doors but do not provide any estimate for the repair of these items. The \$30,000 estimate appears to be entirely related to the remediation of the mould problem in the premises. The photographic evidence provided by the applicant indicates a rather appalling mess in the premises but shows no clear evidence of mould or damage to doors or flooring.

While I can accept on the evidence of both parties that the premises suffered from mould, I find no evidence that the mould was the result of the respondent's wilful or negligent conduct. The key factor in the development of mould is moisture and the evidence suggests that there was a significant problem with moisture in the building both from water escape and condensation. The applicants have submitted that of the estimated \$30,000 repair costs, \$20,000 should be attributed to the wilful and negligent conduct of the tenant but the applicants have provided no justification for this proportion of the costs or what they relate to. Without sufficient detail as to the alleged damage to floors or doors, I am unable to determine if compensation for these items is warranted or what quantum of compensation is reasonable. Clearly the applicants are entitled to \$340 for the cleaning costs but I find insufficient evidence to support any other compensation related to the loss of value of the building.

Similarly, I find no evidence to support the allegation that the demolition of the building was due to the wilful or negligent conduct of the tenant. This was, in my opinion, a decision that was made by the applicants made primarily due to the remediation costs of the mould problem which was caused by water escape and condensation.

An order shall issue requiring the respondent to pay the applicants rent arrears net of the security deposit in the amount of \$1448.63 and cleaning costs of \$340.

Hal Logsdon
Rental Officer