

IN THE MATTER between **Brenda Kowana**, Applicant, and **David Jorstead Accounting**, 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 **town of Inuvik in the Northwest Territories**.

BETWEEN:

BRENDA KOWANA

Applicant/Tenant

- and -

DAVID JORSTEAD ACCOUNTING

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to sections 30(4)(a) and 83(2) of the *Residential Tenancies Act*, the landlord must comply with his obligation to maintain the rental premises in a good state of repair during the tenancy by completing the following repairs to the rental premises by December 31, 2015:
 - (a) seal and finish the wall above the kitchen cabinet;
 - (b) repair the carpet transition seams;
 - (c) repair or replace the kitchen and bathroom linoleum;
 - (d) install baseboard in the bathroom and caulking around the shower stall and toilet;
 - (e) properly repair the fan; and
 - (f) replace the kitchen stove.

2. Pursuant to section 30(4)(b) of the *Residential Tenancies Act*, the landlord must not breach his obligation to maintain the rental premises in a good state of repair during the tenancy again.
3. Pursuant to section 30(4)(d) of the *Residential Tenancies Act*, the landlord must compensate the tenant for losses suffered as a direct result of failing to maintain the rental premises in a good state of repair in the total amount of \$392.07 (three hundred ninety-two dollars seven cents).
4. Pursuant to sections 32(1) and 83(2) of the *Residential Tenancies Act*, if the repairs specified under paragraph 1 of this order are not completed by December 31, 2015, the tenant may pay to the rental officer the monthly rent for January 2016 and each month thereafter until the repairs have been completed in full.
5. Pursuant to sections 33(3)(a) and 33(3)(b) of the *Residential Tenancies Act*, the landlord must comply with his obligation not to withhold or deliberately interfere with vital services to the tenant, and must not withhold or interfere with vital services to the tenant again.
5. Pursuant to sections 34(2)(a) and 34(2)(b) of the *Residential Tenancies Act*, the landlord must comply with his obligation not to disturb the tenant's enjoyment or possession of the rental premises or residential complex, and must not disturb the tenant's enjoyment or possession of the rental premises or residential complex again.

DATED at the City of Yellowknife in the Northwest Territories this 13th day of November 2015.

Adelle Guigon
Deputy Rental Officer

IN THE MATTER between **Brenda Kowana**, Applicant, and **David Jorstead Accounting**, 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,

BETWEEN:

BRENDA KOWANA

Applicant/Tenant

-and-

DAVID JORSTEAD ACCOUNTING

Respondent/Landlord

REASONS FOR DECISION

<u>Date of the Hearing:</u>	September 29, 2015
<u>Place of the Hearing:</u>	Yellowknife, Northwest Territories, by teleconference
<u>Appearances at Hearing:</u>	Brenda Kowana, applicant David Jorstead, respondent
<u>Date of Decision:</u>	November 6, 2015

REASONS FOR DECISION

An application to a rental officer made by Brenda Kowana as the applicant/tenant against David Jorstead Accounting as the respondent/landlord was filed by the Rental Office July 21, 2015. The application was made regarding a residential tenancy agreement for the rental premises known as 83B Wolverine in Inuvik, Northwest Territories. The applicant personally served a copy of the filed application on the respondent August 1, 2015.

The applicant alleged the respondent had failed to maintain the rental premises in a good state of repair and disturbed her enjoyment and possession of the rental premises and residential complex. Evidence submitted is listed in Appendix A attached to this order.

A hearing was scheduled for September 29, 2015, by three-way teleconference. Ms. Brenda Kowana appeared as applicant/tenant. Mr. David Jorstead appeared as respondent/landlord.

Tenancy agreement

The parties agreed at hearing that a verbal residential tenancy agreement was in place between them for the rental premises known as 83B Wolverine in Inuvik, Northwest Territories. The rental premises is a basement suite in the landlord's home and office premises. The tenancy began March 1, 2014. The rent was established at \$850 per month including all utilities except telephone, cable, and internet. I am satisfied a valid tenancy agreement is in place between the parties in accordance with the *Residential Tenancies Act* (the Act).

State of repair

The tenant testified that when she moved into the rental premises she found it to be in a less than ordinary state of cleanliness requiring her to effect a significant amount of cleaning, including vacuuming and steam cleaning the carpets. The carpets alone required repeated efforts to clean, and the tenant maintains that while they certainly appear in better shape now than they were when she moved in, continued efforts to steam clean still result in extremely dirty water. The tenant estimated her costs to steam clean the carpets at \$300. Additionally, the carpet seams are worn and coming away from the edging; the linoleum flooring in the kitchen and bathroom is

pulling away from the sub-floor and curling at the edges; there is no baseboard installed in the bathroom, and the floor is not caulked where it meets the shower stall and toilet; the stove is old, missing racks, the oven heating coil is not secured, a knob is broken, and it overheats; and the fan wiring was repaired with a bandaid. Photographs were provided of the flooring showing the worn edges to the carpet, the pulling/curling linoleum, the missing baseboards, and lack of caulking.

A plumbing issue led to a sewage leak from the landlord's residence which caused damage and a health hazard in the tenant's rental premises by leaking onto the tenant's kitchen cupboards. When the landlord failed to do anything about it, the tenant called an environmental health officer in to inspect the premises in April 2015. The environmental health officer ordered the landlord to effect repairs to the pipe leak, to clean and disinfect the top of the kitchen cabinet, to fill in the wall, to paint the top outside and inside of the kitchen cupboard, to repair the toilet (which was not flushing properly), and to either open a vent to the fan or install a filter; this work was to be completed within 30 days. The tenant provided photographs showing the wall above the kitchen cabinet had not been filled in and sealed.

As a consequence of the leak and the time it took for the landlord to effect repairs, the tenant was uncomfortable staying at the rental premises due to the potential health risks and felt compelled to reside with her mother for six weeks. During this time she was unable to use her Internet account, costing her \$97.07 (for six weeks).

The landlord did not dispute any of these allegations. He confirmed that the carpets were now in better condition than his own thanks to the effort put in by the tenant. He additionally confirmed that all the work required by the environmental health officer was completed, except sealing in the wall above the kitchen cupboards. His attitude with respect to the tenant's dissatisfaction with the condition of the rental premises was if she didn't like it she could move out.

Section 30 of the Act sets out the landlord's obligations regarding maintenance of the rental premises and residential complex. It requires the landlord to keep the rental premises and residential complex in a state of good repair and fit for habitation, and requires the landlord to ensure the rental premises, residential complex, and all services and facilities comply with all health, safety and maintenance, and occupancy standards required by law.

The photographs provided by the tenant show what appear to be recently cleaned carpets. They do not appear to be stained, but they are certainly worn around the edges and appear to be pulling up from the transition trim. Also evident from the photographs is the condition of the linoleum in the bathroom and kitchen, both of which are lifting from the floor at their edges. In the bathroom, the linoleum is not caulked around either the toilet or shower stall, and there is no baseboard. The wall above the kitchen cupboards is clearly not filled or sealed as required by the environmental health officer. Although there are no photographs of the stove, the landlord did not dispute the tenant's description of its condition. All of these issues are the landlord's responsibility to address, which the landlord by his own admission has failed to and does not seem to have a desire to do.

I find the landlord has failed to comply with both his obligation to maintain the rental premises in a good state of repair and his obligation to ensure the rental premises complies with health and safety standards required by law.

Vital Services

The tenant testified that while both the rental premises and the landlord's premises have their own thermostats, those two thermostats control the heat for both premises jointly; any time either the tenant or landlord changes the thermostat in their respective premises it affects the temperature in both premises. The tenant indicated she is uncomfortable at lower temperatures, but when she turns the heat up for her premises the landlord finds it too hot in his premises and turns the heat back down or turns the furnace off entirely.

The landlord confirmed that the two thermostats were tied together, affecting the heat in both premises when adjusted. He complained that the tenant does not need to have the heat set higher than 22 degrees, and that the amount of power she's using to heat her premises was excessive, resulting in increased costs to him. He confirmed that he has turned the furnace off at his convenience, and would continue to do so, but said the tenant has a key to his apartment and could turn the heat back on when she needs to. He indicated he has blocked the vents in his premises in an effort to ensure the heat generated is directed to the tenant's premises.

Contributing to the electricity costs, the landlord complained that the tenant leaves her bathroom fan on for lengthy and unnecessary periods of time, which he can hear from his premises. The landlord provided a copy of his July electricity statement, which includes a graph comparing the current year's electricity usage to the previous year.

Section 33 of the Act sets out the landlord's obligation not to withhold or deliberately interfere with the supply of a vital service to the tenant. The tenancy agreement between the parties indicated that utilities were included in the rent. The tenant has a right to use the utilities in their rental premises at their comfort levels. It is not the landlord's right to dictate how warm a tenant needs to be. Nor am I satisfied that the tenant's premises is necessarily getting the same amount of heat that the landlord's premises is getting, regardless of whether the landlord has blocked his vents to redirect the heat flow or not. Because the landlord's and tenant's premises share the heat regulator for the building, by turning off the furnace entirely, the landlord is deliberately interfering with the supply of a vital service to the tenant's rental premises. If the rent the landlord is charging is insufficient to accommodate increased utilities costs, he has the option to increase the rent in accordance with section 47 of the Act.

I find the landlord has failed to comply with his obligation not to withhold or deliberately interfere with the supply of a vital service to the rental premises.

Disturbances

The tenant complained of being harassed and threatened by the landlord's guests, one in particular. Complaints made to the landlord regarding his guest's behaviour towards her were rarely followed up on, and the negative behaviour by this guest towards the tenant has continued.

The landlord did not dispute having guests occasionally staying with him in an effort to offer what help he could to them. He acknowledged being aware of the animosity between the one guest in particular and his tenant, but has taken no action of significance to remedy the situation.

Section 34 of the Act specifies a landlord shall not disturb a tenant's possession or enjoyment of the rental premises or residential complex. Unlike for tenants under section 43(2), section 34 does not specify that a landlord is responsible for their guests' behaviour. As such, the dispute between the tenant and the landlord's guest is not one that can be addressed under the Act. However, the landlord's behaviour and attitude regarding the condition of the rental premises and utilities has certainly resulted in reduced enjoyment of the rental premises for the tenant and it is under that circumstance that I find the landlord has failed to comply with his obligation not to disturb the tenant's possession or enjoyment of the rental premises.

Orders

An order will issue requiring the landlord to comply with his obligation to maintain the rental premises in a good state of repair by effecting repairs by December 31, 2015; if the repairs are not effected by that date the tenant will have the option to pay her rent to the rental officer until the repairs are completed. Additionally, the landlord will be required not to breach his obligation to maintain and repair the rental premises again; to compensate the tenant for loss suffered as a result of failing to maintain the premises in the amount of \$392.07; to comply with his obligation not to withhold or deliberately interfere with vital services to the tenant and not breach that obligation again; and comply with his obligation not to disturb the tenant's enjoyment or possession of the rental premises or residential complex and not breach that obligation again.

Adelle Guigon
Deputy Rental Officer

APPENDIX A

Exhibits

- Exhibit 1: Environmental Health inspection report dated April 13, 2015
- Exhibit 2: Applicant's Northwestel invoice number 4436296 dated June 2, 2015
- Exhibit 3: Applicant's receipt dated June 16, 2015, issued by NorthMart for payment against Northwestel invoice number 4436296
- Exhibit 4: Respondent's correspondences to respondent dated; September 29, 2015; July 30, 2014
- Exhibit 5: Respondent's Northwest Territories Power Corporation statement dated August 10, 2015
- Exhibit 6: Unsigned rental agreement
- Exhibit 7: Respondent's accounting report
- Exhibit 8: Respondent's invoice number 240 dated September 22, 2015
- Exhibit 9: Set of 25 photographs
- Exhibit 10: Written Submissions for Applicant dated October 1, 2015