

IN THE MATTER between **BIRCHWOOD DEVELOPMENTS LTD.**, Landlord, and **JEFF HORN AND PATRICIA HORN**, Tenants;

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, regarding the rental premises at **YELLOWKNIFE, NT.**

BETWEEN:

BIRCHWOOD DEVELOPMENTS LTD.

Landlord

- and -

JEFF HORN AND PATRICIA HORN

Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18(5) of the *Residential Tenancies Act*, the landlord shall return a portion of the security deposit to the tenants in the amount of twenty five dollars and one cent (\$25.01)

DATED at the City of Yellowknife, in the Northwest Territories this 19th day of February, 2002.

Hal Logsdon
Rental Officer

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BETWEEN:

BIRCHWOOD DEVELOPMENTS LTD.

Landlord

-and-

JEFF HORN AND PATRICIA HORN

Tenants

REASONS FOR DECISION

Date of the Hearing: February 15, 2002

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Jeff Horn, tenant

Date of Decision: February 19, 2002

REASONS FOR DECISION

The landlord, Birchwood Developments filed an application against tenants, Jeff and Patricia Horn on November 8, 2001. The matter was set for hearing on January 22, 2002 but was adjourned as the tenancy agreement had been terminated and a statement of security deposit had only recently been provided to the tenants. The tenants filed an application on January 23, 2002 pursuant to section 18(5) of the *Residential Tenancies Act*, referring the security deposit matter to the rental officer. The matter was set for hearing on February 15, 2002.

The landlord was served with a notice of attendance on February 5, 2002 but did not appear at the hearing. The landlord notified the rental office administrator prior to the hearing that they did not intend to appear but wished the matter to be heard in their absence.

The tenancy agreement between the parties was terminated on November 30, 2001 when the tenants vacated the premises. The landlord deducted alleged rent arrears of \$1250, an alleged NSF cheque charge of \$20, carpet cleaning charges of \$61.63, general cleaning charges of \$262.50 and costs of wall repair of \$75 from the security deposit of \$1250, leaving a balance owing the landlord in the amount of \$419.13. The landlord sought an order requiring the respondents to pay that amount.

The tenants did not dispute the deductions for the rent arrears but did dispute the remainder of the deductions. The tenants denied that any cheques were returned NSF. The landlord provided

no physical evidence of any returned cheque. The tenant testified that any damage to the walls was the result of normal wear and tear. No evidence of damages, other than the landlord's check-out report, which was not acknowledged by the tenants, was provided by the landlord. I also note that wall damages were noted on the mutually acknowledged check-in report.

The tenant testified that the landlord forced them to vacate at noon on November 30, 2001 when they had arranged for cleaning to be done that afternoon. The tenant also testified that the carpet did not require steam cleaning. The tenancy agreement states, "the Tenant agrees to vacate the premises by 12:00 NOON on the LAST day of the final month of occupancy". In my opinion, this is a reasonable obligation as it does not conflict with the Act and is contained in a written agreement. Therefore the tenant had an obligation to leave the rental premises in a reasonable state of cleanliness and vacate by noon on November 30, 2001. The tenants failed to do so.

Where a tenant fails to leave premises in a state of cleanliness, a landlord is entitled to reasonable costs related to cleaning.

Notwithstanding the tenants' obligation to vacate by noon and leave the premises reasonably clean, the landlord has an obligation to not disturb the tenants' possession of the premises and this, in my opinion, extends to overholding tenants. From the evidence, I find the landlord did interfere with the tenants' possession albeit the tenants were overholding. Where a landlord disturbs a tenant's possession of premises, the tenant is entitled to compensation for loss.

The question therefore becomes, is the compensation due to the tenant equal to the compensation

due the landlord? In my opinion, it is. The landlord is clearly entitled to reasonable costs related to cleaning. There is no doubt that the tenant had not completed the cleaning. But I also find that the landlord acted to force vacant possession preventing the tenant from cleaning the premises. Surely the tenants' loss, directly related to the landlord's action, are the charges claimed by the landlord for cleaning. Therefore, in my opinion, the landlord's claim for cleaning costs must be denied. I also find insufficient evidence to support the deductions related to the wall repairs, carpet cleaning and NSF cheque charges.

I find that the landlord failed to apply interest to the security deposit. I calculate the interest to be \$26.01. An order shall be issued for the landlord to return that portion of the security deposit calculated as follows:

Security Deposit	\$1250.00
Interest	26.01
<u>Rent Arrears</u>	<u>(1250.00)</u>
Balance Owing Landlord	\$26.01

Hal Logsdon
Rental Officer