

IN THE MATTER between **TREVOR LEDUC AND STEPHENIE JORGENSEN**, Applicants, and **BARRY WILSON AND SHARON WILSON**, Respondents;

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:

**TREVOR LEDUC AND STEPHENIE JORGENSEN**

Applicants/Tenants

- and -

**BARRY WILSON AND SHARON WILSON**

Respondents/Landlords

**ORDER**

IT IS HEREBY ORDERED:

1. Pursuant to section 18(5) of the *Residential Tenancies Act*, the respondents shall return a portion of the security deposit to the applicants in the amount of twenty five dollars and ninety three cents (\$25.93).

DATED at the City of Yellowknife, in the Northwest Territories this 12th day of July, 2002.

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Hal Logsdon  
Rental Officer

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-and-

**BARRY WILSON AND SHARON WILSON**

Respondents/Tenants

**REASONS FOR DECISION**

**Date of the Hearing:** July 9, 2002

**Place of the Hearing:** Yellowknife, NT

**Appearances at Hearing:** Trevor Leduc, applicant  
Stephenie Jorgensen, applicant  
Barry Wilson, respondent  
Sharon Wilson, respondent

**Date of Decision:** July 12, 2002

**REASONS FOR DECISION**

I note that the name of respondent Barry Wilson is misspelled on the application. The order shall be made with the correct spelling of his name.

The applicants testified that they vacated the premises on or about May 31, 2002 and that they had paid rent to the end of that month. They testified that they had left the premises in a reasonable state of cleanliness and that there were no damages to the premises. The applicants testified that they had provided the respondents with a \$500 security deposit and that the deposit had not been returned. The applicants sought the return of their security deposit and accumulated interest.

The applicants indicated that no condition report was completed at the commencement of the tenancy that would establish the condition of the premises or the contents. The applicants also indicated that the respondents had told them on May 8, 2002 that the premises were to be sold and that they would have to vacate the premises by July 1, 2002. The applicants testified that the respondents had told them after they vacated the premises in May that their security deposit would be retained as compensation for the June rent. The applicants indicated that they had given the respondents verbal notice on May 23, 2002 that they would be vacating the premises at the end of that month.

The respondents acknowledged that there was no written tenancy agreement or condition report

and that no statement of the security deposit had been issued. The respondents filed a defence directly with the rental officer on July 8, 2002 outlining reasons why the security deposit was retained. In this defence they listed six items which they alleged were damaged or missing and requested that compensation of \$832.66 be awarded in addition to the security deposit. The respondents indicated that the values claimed were based on new replacement value of comparable items sold by Sears.

1 wall clock missing	\$20.00
2 end tables missing	\$199.98
2 night tables missing	\$299.98
2 camp-type folding chairs missing	\$70.00
Computer missing	\$500.00
GST on furniture	\$42.70
Repainting of bedroom wall	\$200.00

Section 18 of the *Residential Tenancies Act* sets out what may be deducted from a security deposit at the end of a tenancy and the landlord's obligation to provide an itemized statement.

18. (1) Subject to this section, where a landlord holds a security deposit the landlord shall, within 10 days after the tenant vacates or abandons the rental premises,
  - (a) return the security deposit to the tenant with interest; and
  - (b) give the tenant an itemized statement of account for the security deposit.
- (2) A landlord may, in accordance with this section, retain all or part of the security deposit for repairs of damage caused by a tenant to the rental premises and for any arrears of the rent.
- (3) Where the landlord objects to returning all or part of the security deposit on the grounds that a tenant has caused damages to the rental premises and repairs to the

- rental premises are necessary or the tenant is in arrears of rent, the landlord shall, within 10 days after the tenant vacates or abandons the rental premises,
- (a) send a notice to the tenant and a rental officer of the intention of the landlord to withhold all or part of the security deposit;
  - (b) give the tenant an itemized statement of account for the security deposit;
  - (c) give the tenant an itemized statement of account for the repairs or arrears of the rent; and
  - (d) return the balance of the security deposit with interest to the tenant.

Although the respondents' July 8, 2002 document filed with the rental officer could serve as a statement of the security deposit, there is no indication that the applicants received a copy from the respondents. Clearly the respondents have failed to comply with the provisions of section 18. At the hearing, the applicants were provided with the respondents' July 8, 2002 document and indicated that they were prepared to speak to the matter. In the interest of resolving this matter, I believe it is prudent to consider the document as the statement of security deposit which has been provided to the tenants, albeit late and by the rental officer. I urge the respondents to familiarize themselves with the obligations of landlords in the NWT should they continue to rent residential property and remind them that contravention of section 18 is an offense under the Act.

After careful consideration of the evidence provided at the hearing I find the following:

1. The repainting of the bedroom wall is reasonable. The respondent did give permission to repaint the room but did not intend the type of handpainted decoration provided by the tenant. The applicants' allegation that the respondents declined their offer to repaint the wall was disputed. In my opinion \$200 is not a reasonable cost to repaint a wall. Given the respondents' estimate of four hours labour plus materials and considering the existing paint was one year old I

believe reasonable compensation is \$108.

2. The applicants admitted that they had taken the wall clock by accident and the two end tables and two night tables with the intention of purchasing them from the respondents. The respondents' indicated that they had told the applicants that if they wanted to purchase any of the furnishings they should specify what pieces they were interested in. There was no evidence of any offer or expression of interest by the applicants. In my opinion, the depreciated replacement value of the furniture is reasonable compensation. Using 15 year straight line depreciation, replacement costs including GST provided by the respondents, and accepting the testimony of the respondents that the furniture was five years old, reasonable compensation, in my opinion, is \$371. The applicants offered to return the furniture but no arrangement could be agreed upon at the hearing. The parties are free to negotiate the return of the furniture.
3. The applicants disputed that the folding camp chairs were in the rental premises at the commencement of the tenancy. There is no evidence to support that they were part of the furnishings provided by the tenancy agreement. Compensation is denied.
4. The applicants disputed that the computer was in the rental premises at the commencement of the tenancy. They indicated it was located in the other rental suite in the complex. There is no evidence to support that the computer was included in the facilities provided under the tenancy agreement. Compensation is denied.

I also note that although the respondents did not justify the retention of the security deposit because of lost rent for the month June, 2001 it was mentioned by the respondents and was perceived by the applicants as the principal reason. As outlined in section 18 of the Act only costs of repairs of damage caused by a tenant to the rental premises and arrears of the rent can be deducted from a security deposit. As the applicants had paid rent to May 31, 2002 and vacated on or before that date, there are no rent arrears. Any claims for lost rent must be the subject of an application by the landlord.

In summary I find that certain deductions from the security deposit are justified but that a portion of the security deposit must be returned to the applicants. I find that amount to be \$25.93 calculated as follows:

Security deposit	\$500.00
Interest	4.93
Compensation for furniture	(371.00)
Costs related to repainting	<u>(108.00)</u>
<b>Amount owing applicants</b>	<b>\$25.93</b>

An order shall be issued requiring the respondents to return a portion of the security deposit to the applicants in the amount of \$25.93.

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Hal Logsdon  
Rental Officer