Files #10-7538 & #10-7539

IN THE MATTER between **LEONA BOURKE AND JOHN DINN**, Landlords, and **BRIAN MARTIN AND SARAH JOHNSON**, 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:

LEONA BOURKE AND JOHN DINN

Landlords

- and -

BRIAN MARTIN AND SARAH JOHNSON

Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 33(3)(c) of the *Residential Tenancies Act*, the landlord shall pay compensation to the tenants for failure to supply running water in the amount of five hundred dollars ($500.00).

DATED at the City of Yellowknife, in the Northwest Territories this 25th day of August, 2003.

Hal Logsdon
Rental Officer

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LEONA BOURKE AND JOHN DINN

Landlords

-and-

BRIAN MARTIN AND SARAH JOHNSON

Tenants

REASONS FOR DECISION

Date of the Hearing:	**August 22, 2003**
Place of the Hearing:	**Yellowknife, NT**
Appearances at Hearing:	**John Dinn, landlord** **Leona Bourke, landlord** **Sarah Johnson, tenant**
Date of Decision:	**August 25, 2003**

REASONS FOR DECISION

The tenants filed an application to a rental officer on July 31, 2003 requesting compensation related to an alleged breach of the landlord to provide a vital service and the return of their security deposit. On the same day, the landlords filed an application requesting compensation relating to alleged tenant damages to the premises. The applications relate to the same tenancy agreement. With the consent of the parties, the matters contained in both applications were heard at a common hearing.

The parties agreed on the following facts:

1. The tenancy agreement was oral in nature and was made between Leona Bourke and John Dinn as landlords and Brian Martin and Sarah Johnson as joint tenants. Any order should be made in that style.
2. The tenancy agreement was month-to-month and commenced on July 1, 2003.
3. The rent for the premises was $1000/month.
4. A security deposit of $1000 was required and was paid in full on July 1, 2003.
5. Tenants were to supply gas for the generator and heating fuel.
6. The rent for July was paid in full and no rent was paid for the month of August.
7. The tenants were still in possession of the premises.

The tenant alleged that the premises were advertised as having running water and provided a copy of the newspaper advertisement in evidence. She stated that on moving in, there was no

running water or hot water. The tenant claimed that the landlord had relied on a well to supply the water but it was not functional. She stated that the landlord instead provided a vehicle and a mobile tank so that they could get water from town and haul it to the premises, some 14 miles from the City of Yellowknife. The tenant also stated that there was no hot water tank installed. She testified that on or about July 15, 2003 the landlord took the keys to the vehicle and they were not able to get water for the premises.

The landlord stated that he told the tenants he expected them to use their own vehicle as soon as they had installed a proper trailer hitch. He stated that he paid for the water in full. He also stated that he had tried to install the hot water tank on one occasion but the tenants had not permitted him to do so, stating that they were expecting company.

The tenants contacted the Environmental Health Officer who inspected the property on July 30, 2003 and noted that there was no water provided to the rental premises and the keys to the landlord's truck could not be located. In a letter to the landlord dated August 5, 2003, the Environmental Health Officer writes,

> The complainant has informed us that John Dinn, as landlord, is no longer providing potable water to the rental property which is a violation of the Public Health Act. Mr. Dinn was informed of this issue on July 30th 2003, in a meeting in this office, and was told at the time that potable water must be provided to the premise immediately as long as it is being used as rental property.

The Environmental Health Officer provided copies of letters written to the parties to the rental officer who provided copies to both parties at the hearing and permitted them to respond.

Section 33(2) of the *Residential Tenancies Act* states:

> No landlord shall, until the date the tenant vacates or abandons the rental premises,
>
> (a) withhold or cause to be withheld the reasonable supply of a vital service that the landlord is obligated to supply under the tenancy agreement.

In my opinion the tenancy agreement between the parties clearly obligates the landlord to supply water to the premises. The advertisement for the premises notes that the premises have “running water”. Paying for the water but requiring the tenant to haul it some 14 miles to the premises does not, in my opinion, constitute supplying running water. The withholding of a reasonable supply of water caused the tenants to live elsewhere for much of the time after July 15, 2003. In my opinion, reasonable compensation for their loss is $500 or half of one month’s rent. This represents loss of full enjoyment between July 15-31. Compensation for August shall be equal to the full months rent. Since no rent has been paid for August, no further compensation is due.

The tenants also alleged that the roof leaked and the landlord was asked to repair it. The tenants claimed that during one rainstorm, their mattress and bedding were ruined. They sought compensation for the goods valued at $1000. The landlord questioned the value of the goods. The tenants stated that the mattress was new and was purchased for $1000 but provided no other proof of value.

The landlord alleged that the tenants had damaged the premises by painting the pre-finished panelling and by tearing out a wall between the two bedrooms. He provided photographs

showing the painted areas and the damaged bedroom wall. He also provided an estimate from a contractor estimating the repair costs to be $4340. He admitted that he had permitted the tenants to make alterations to the wall and sought compensation only for the replacement of the painted panelling and associated trim which was estimated at $3940. He also stated that the tenants had damaged the generator but did not seek compensation for any generator repairs.

The tenants stated that the landlord had permitted them to paint. The landlord strongly denied that he had given such permission, noting that pre-finished wall board was not intended to be painted. The tenants stated that they had used a good quality paint and a primer and had also installed a fabric covering on the top of the wall to hide the water pipes.

Pre-finished wall board is not intended to be painted and I doubt the landlord would have given his approval to paint the walls. However, with a primer and good quality paint, the finish will be reasonable. The photographs show a light yellow colour which is reasonably neutral and clearly show a primer around the borders. Although I am confident that the landlord does not like the painted surfaces, I do not think it is reasonable to require the tenants to pay for the full replacement of the panelling. In my opinion, the damages caused by the painting of the wall board and the damages caused to the mattress and bedding are equal and no compensation is due to either party.

Both parties acknowledged that they wished the tenancy agreement to be terminated at the end of August, 31, 2003. The parties mutually agreed at the hearing, in writing, to terminate the tenancy agreement on that day. The original document is on file at the Rental Office. Therefore there is no requirement to terminate the tenancy agreement by order. The tenants will be expected to vacate the premises and remove all of their possessions from the premises on August 31, 2003.

Since the landlord is entitled to hold the security deposit for ten days after the termination of the tenancy agreement, the tenants are not entitled to any refund of the deposit at this time. The landlord shall return the security deposit or issue a statement of the deductions in accordance with section 18 of the *Residential Tenancies Act* within ten days of the termination of the agreement. No deductions for the wall painting shall be made from the deposit as compensation for that item has already been considered in this order.

I note from the photographic evidence that the baseboards and trim in the living room and the trim around the wall between the bedrooms is missing. The tenants shall repair this damage prior to vacating the premises. Should they fail to do so, the landlord may deduct reasonable repair costs from the security deposit.

An order shall be issued requiring the landlord to pay compensation to the tenants for failure to supply running water in the amount of $500.

Hal Logsdon
Rental Officer