File #10-7516 & #10-7525

IN THE MATTER between **953711 NWT LTD.**, Landlord, and **STEPHEN KENNEDY AND TREVOR BOURQUE AND LEIGH BOURQUE**, 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:

953711 NWT LTD.

Landlord

- and -

STEPHEN KENNEDY AND TREVOR BOURQUE AND LEIGH BOURQUE

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 four hundred ninety four dollars and ninety cents ($494.90).

DATED at the City of Yellowknife, in the Northwest Territories this 19th day of August, 2003.

Hal Logsdon
Rental Officer

File #**10-7516 & #10-7525**

IN THE MATTER between **953711 NWT LTD.**, Landlord, and **STEPHEN KENNEDY AND TREVOR BOURQUE AND LEIGH BOURQUE**, Tenants;

AND IN THE MATTER of a Hearing before, **HAL LOGSDON**, Rental Officer, regarding the rental premises at **YELLOWKNIFE, NT.**

BETWEEN:

953711 NWT LTD.

Landlord

- and -

STEPHEN KENNEDY AND TREVOR BOURQUE AND LEIGH BOURQUE

Tenants

REASONS FOR DECISION

Date of the Hearing:	**August 12, 2003**
Place of the Hearing:	**Yellowknife, NT**
Appearances at Hearing:	**Stephen Kennedy, tenant** **Trevor Bourque, tenant** **Shane Clark, representing the applicant** **James Clark, representing the applicant**
Date of Decision:	**August 15, 2003**

REASONS FOR DECISION

The tenant Trevor Bourque filed an application against Shane Clark on July 17, 2003 seeking the return of a security deposit. 953711 NWT Limited filed an application against Stephen Kennedy, Trevor Bourque and Leigh Bourque seeking compensation in excess of the retained security deposit. These two matters relate to the same tenancy agreement which was made between 953711 NWT Limited and Stephen Kennedy, Trevor Bourque and Leigh Bourque as joint tenants. The order shall reflect the proper name of the landlord and all joint tenants. With the consent of the parties both matters were heard at a common hearing.

The parties agreed that the tenancy agreement was made for a term commencing on January 1, 2003 and ending on June 30, 2003. The tenants gave up possession on June 30, 2003 without giving the landlord written notice pursuant to section 51(1) of the *Residential Tenancies Act.* The tenants testified that they had verbally indicated to the landlord in March, 2003 that they did not intend to renew the tenancy agreement when it expired in June.

The former tenant assigned his right to occupancy and his security deposit without the landlord's permission or knowledge. The landlord initially attempted to gain possession of the premises but finally agreed to enter into a new tenancy agreement and prepared a written agreement. The agreement was signed by only Trevor Bourque although an attachment, appears to be signed by all parties. In my opinion, this tenancy agreement is not an assignment of the previous

agreement. The written agreement, although not properly executed was acknowledged by both parties to contain the elements of the tenancy agreement. The security deposit, however was assigned to the tenants. The landlord acknowledged that he had received 50% of the $1000 deposit on February 1, 2001 and the remainder on May 1, 2001 and had not made any refund or issued any statement to the former tenant. I find that interest has accrued on the deposit in the amount of $80.42.

On discovering that the former tenant had vacated the premises, the landlord also undertook and inspection of the premises, adding several areas of damage to the previous inspection report prepared at the commencement of the former tenancy. The report was not signed by the tenants.

After the tenants vacated the premises on June 30, 2003, the landlord retained the entire security deposit of $1000 and prepared a statement, indicating that an additional $1235.52 was due to the landlord. The landlord's application sought an order requiring the tenants to pay this amount.

The tenants did not dispute that a window had been broken and required replacement. They did question the claimed cost of $447.58, stating that they believed several quotations should have been sough by the landlord. The tenants did not dispute that the oil take was not filled at the termination of the tenancy or the costs of $137.94 claimed by the landlord to fill the tank.

Section 42 of the *Residential Tenancies Act* obligates a tenant to repair damages as a result of tenant negligence. In my opinion, if the tenant fails to make such repairs, the landlord is entitled

to do them and claim reasonable expenses. The landlord is not obligated to find the lowest cost, only to charge costs which are reasonable. The one quote for repair provided by the landlord is, in my opinion, reasonable.

The tenants disputed the charges for cleaning and locksmith expenses and the landlord withdrew his request for compensation for these items.

The tenants disputed the charges for repainting, stating that there were numerous nail holes in the walls at the commencement of the tenancy. They testified that the landlord had indicated to them that he intended to repaint the premises at the termination of their tenancy agreement. With that understanding, they filled numerous small nail holes, many of which were preexisting damages and prepared them for painting. The landlord stated that he did not recall saying that he intended to repaint and that the premises were repainted approximately four years ago. The landlord also stated that he had entered into a three year tenancy agreement to commence on September 1, 2003. There was no evidence presented to indicate the extent of the patched areas or to justify the expenses of $1400. The inspection report indicates numerous nail holes were present at the commencement of the tenancy. Given the circumstances, I believe the tenants were lead to believe that the premises would be repainted. Given the condition of the walls, the time which had elapsed since they were last repainted and the fact that the landlord is entering into a new long term tenancy agreement, I believe re-painting is or should be planned by the landlord. The request for compensation for repainting is denied.

The landlord claimed that he advertised the premises for rent on the internet and showed the premises to several prospective tenants who were not acceptable due to limited income. He entered into a new tenancy agreement on July 20, 2003 to commence on September 1, 2003. The landlord stated that he was unaware that the tenants planned to vacate until he received a voicemail message on July 1, 2003 indicated that they had left.

The current vacancy rate in Yellowknife is sufficiently low that most landlords are able to rent premises in a short period of time after advertising is placed. In my opinion, advertising on the internet is not particularly effective. Had the premises been advertised in the local newspaper, I believe an acceptable tenant could have been found within 10 days. This is also a reasonable amount of time to prepare the premises for rent. IN my opinion, the landlord did not take reasonable steps to mitigate his loss of July's rent and is not entitled to compensation. The request for compensation is denied.

An order shall be issued requiring the landlord to refund the tenants a portion of the retained security deposit in the amount of $494.90, calculated as follows:

Security deposit	$1000.00
Interest	80.42
Window repair	(447.58)
Refund of deposit	$632.84
Less cost of fuel	(137.94)
Balance owing tenants	**$494.90**

Hal Logsdon
Rental Officer