

IN THE MATTER between **STEVE CUMMINGS**, Applicant, 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:

STEVE CUMMINGS

Applicant/Tenant

- and -

BARRY WILSON AND SHARON WILSON

Respondents/Landlords

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 14(6)(a) of the *Residential Tenancies Act*, the respondents shall return a portion of the retained security deposit to the applicant in the amount of five hundred eighty two dollars and eighty four cents (\$582.84).
2. Pursuant to section 30(4)(d) of the *Residential Tenancies Act*, the respondents shall pay compensation to the applicant for loss of full enjoyment of the premises related to the respondents' failure to repair in the amount of two hundred dollars (\$200.00).

DATED at the City of Yellowknife, in the Northwest Territories this 28th day of October, 2003.

Hal Logsdon
Rental Officer

IN THE MATTER between **STEVE CUMMINGS**, Applicant, 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.

BETWEEN:

STEVE CUMMINGS

Applicant/Tenant

-and-

BARRY WILSON AND SHARON WILSON

Respondents/Landlords

REASONS FOR DECISION

Date of the Hearing: October 24, 2003

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Steve Cummings, applicant
Jim Weller, representing the respondents

Date of Decision: October 28, 2003

REASONS FOR DECISION

The application was made naming Coldwell Banker as respondent. The tenancy agreement was made between Steve Cummings and Jackie Francois as tenants and Barry and Sharon Wilson, c/o Coldwell Banker (attn: Jim Weller). The parties agreed that Jim Weller of Coldwell Banker was the agent of the landlords for purposes of the tenancy agreement and that Barry and Sharon Wilson were the landlords. Mr. Weller indicated that he represented Barry and Sharon Wilson in this matter. The style of cause of the order shall be amended accordingly.

The tenancy agreement between the parties was terminated on August 31, 2003 when the applicant vacated the premises. The respondents' agent returned a portion of the security deposit to the applicant on September 17, 2003 with an itemized statement.

The applicant disputed the deductions for carpet cleaning stating that the carpet was cleaned prior to leaving and that the cat odour, which prompted the cleaning of the carpet by the landlord, was present at the commencement of the tenancy. He testified that he did not have a cat or other animal on the premises during the tenancy. The respondent's agent agreed that the carpet cleaning was not made necessary by any action of the applicant and the parties agreed that the costs of steam cleaning (\$313.30) and 50% of the labour (\$150.00) should be returned to the applicant. The respondent's agent provided receipts for cleaning supplies. My review of these receipts indicates that most of the expenditures were for carpet cleaning supplies or for items such as pails, window brushes and brooms which are not supplies but household items. I find that only

\$6.11 was actually spent on cleaning supplies used for items other than the carpet. I find that an additional \$119.54 should be returned to the applicant. An order shall issue requiring the respondents to return \$582.84 to the applicant calculated as follows:

Steam cleaner	\$313.30
Labour	150.00
Supplies	<u>119.54</u>
Total	\$582.84

The applicant also sought compensation for loss related to the late return of the security deposit. The respondents' agent did not dispute that the deposit was not returned within the ten day limit prescribed by the Act but noted that he had been out of town attending to an urgent family matter and had dealt with the deposit immediately upon his return. Section 18 of the *Residential Tenancies Act* permits either a landlord or a tenant to refer a security deposit matter to a rental officer for determination. The Act permits a rental officer to "render a decision on the matter". In my opinion, section 18 does not permit a rental officer to consider damages. The applicant's request for an order for compensation is therefore denied.

The applicant also alleged that the respondents had failed to repair the sewage holding tank, and the balcony in a timely manner and sought compensation for loss of the front yard and the balcony for a period of 12 weeks. The applicant also alleged that a portion of the premises, which he had rented to other tenants, was rendered uninhabitable due to moulds. He stated that the tenants were forced to move out due to allergic reactions and that he used the space only for storage for the remainder of the tenancy. He provided a note from a physician stating that the accommodation was medically unsuitable for the child of the applicant's tenant. The applicant

stated that none of his household members had any allergic reaction.

The respondents' agent stated that he had attended to the front yard and balcony problems as best he could given the current shortage of tradespersons. The parties agreed that a reduction of rent in the amount of \$200 had been provided to the applicant in consideration of the inconvenience caused by the failure of the sewage holding tank. In my opinion, the applicant did not enjoy the full use of the yard or the balcony for a period of 12 weeks due to the landlord's failure to repair the balcony or restore the yard area. Considering that the landlord has already provided some compensation, additional compensation in the amount of \$200 is, in my opinion, reasonable. The order shall require the respondents to compensate the applicant for loss of use of the balcony and yard in the amount of \$200. The compensation for loss of the "rental suite" area is denied. In my opinion, there is insufficient evidence to conclude that the allergic reaction of the tenant was directly related to any breach of the landlord to repair or maintain the premises. No member of the applicant's household was affected and therefore I fail to see what loss of use he sustained. There was no assurance made by the landlord of sustained rental revenue from the suite.

Hal Logsdon
Rental Officer