

IN THE MATTER between **DOROTHY WESTERMAN**, Tenant, and **JAMES MICHAEL JONES**, Landlord;

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:

DOROTHY WESTERMAN

Tenant

- and -

JAMES MICHAEL JONES

Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18(5) of the *Residential Tenancies Act*, the landlord shall return a portion of the retained security deposit in the amount of one hundred ninety-one dollars and seventy-eight cents (\$191.78).

DATED at the City of Yellowknife in the Northwest Territories this 18th day of February 2004.

Hal Logsdon
Rental Officer

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AND IN THE MATTER of a Hearing before **Hal Logsdon**, Rental Officer.

BETWEEN:

DOROTHY WESTERMAN

Tenant

-and-

JAMES MICHAEL JONES

Landlord

REASONS FOR DECISION

Date of the Hearing: February 11, 2004

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Dorothy Westerman, tenant
James Michael Jones, landlord (via teleconference)

Date of Decision: February 18, 2004

REASONS FOR DECISION

The tenant filed an application on November 12, 2003 seeking the return of her security deposit. The landlord filed an application on November 18, 2003, seeking compensation for damages to the premises. The two matters deal with the same tenancy agreement and same premises. With the consent of the parties, both matters were heard at a common hearing.

The tenant rented a room from the landlord and provided a security deposit in the amount of \$300 on or about August 15, 2003. When the landlord, who rented the apartment from a head landlord, gave notice to quit, the tenant made arrangements to enter into a tenancy agreement with the head landlord for the premises. On October 31, 2003 the landlord gave the tenant a cheque for the \$300 security deposit. The landlord vacated the premises on November 1, 2003 making an arrangement with the tenant to keep his personal items in the apartment until November 3rd when movers would remove the goods.

When the landlord returned to supervise the movers on November 3, 2003 there were disagreements between the parties concerning several items. The landlord left the items in dispute in the apartment and subsequently put a stop payment on the cheque for the security deposit. The tenant seeks the return of the deposit and the landlord seeks compensation for the loss of the items.

The alleged items consist of a vacuum cleaner, a cast iron shelf unit, a toolbox with assorted tools, a bookshelf and a plastic garbage can. The landlord estimated the value of the goods at \$270 not including the cast iron shelf. The tenant testified that the landlord gave her the items with the exception of the bookshelf which she stated was never in the apartment.

Section 18 of the *Residential Tenancies Act* sets out what deductions may be made from a security deposit:

“A landlord may, in accordance with this section, retain all or part of the security deposit for repairs of damage caused by the tenant to the rental premises and for any arrears of rent.”

The landlord has not issued any statement of the security deposit in accordance with section 18 itemizing any deductions from the security deposit. Although he has stopped payment on the cheque issued to the tenant, he has not provided the reasons for doing so in accordance with the Act.

Section 42 of the *Residential Tenancies Act* obligates a tenant to repair any damage to the premises or complex:

“A tenant shall repair damage to the rental premises and the residential complex caused by the wilful or negligent conduct of the tenant or persons who are permitted on the premises by the tenant.”

In order to consider compensation, the damage must be to the premises or residential complex.

““Rental premises” means a living accommodation or land for a mobile home used or intended for use as rental premises and includes a room in a boarding house or lodging house.”

“Residential complex” means a building or group of buildings or mobile home park, in which one or more rental premises are located and includes all common areas, services and facilities available for the use of tenants of the building, buildings or park.”

“Services and facilities” includes furniture, appliances and furnishings, parking and related facilities, laundry facilities elevator facilities, common recreational facilities, garbage facilities and related services, cleaning or maintenance services, storage facilities, intercom systems, cable television facilities, heating facilities or services, air conditioning facilities, utilities and related services and security services or facilities.”

In my opinion, the metal shelf unit, vacuum cleaner and garbage can are services and facilities as they appear to have been in the common areas of the apartment and available for use by the tenants. The toolbox appears to be the personal property of the landlord and not a service or facility under the Act, therefore I have no jurisdiction to determine its disposition. There is some question as to whether there was a bookshelf in the apartment. Taking into consideration reasonable depreciation of these items, in my opinion, a fair value of \$100 calculated as follows:

Metal shelf unit (based on tenant's estimated value)	\$15.00
Vacuum cleaner	85.00
Garbage can	<u>10.00</u>
TOTAL	<u>\$110.00</u>

The parties disagreed as to the current ownership of these items, the tenant claiming that the landlord gave them to her. I find no evidence, other than her testimony, which is contrary to that of the landlord, to support her statements.

An order shall issue requiring the landlord to return a portion of the security deposit to the tenant in the amount of \$191.78, calculated as follows:

Security deposit	\$300.00
Interest	1.78
Value of goods	<u>(110.00)</u>
Total	<u>\$191.78</u>

Hal Logsdon
Rental Officer