

IN THE MATTER between **JOHN DINN AND LEONA BURKE**, Applicants, and
SARAH JOHNSON AND BRIAN MARTIN, 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 near **YELLOWKNIFE, NT** .

BETWEEN:

JOHN DINN AND LEONA BURKE

Applicants/Landlords

- and -

SARAH JOHNSON AND BRIAN MARTIN

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 42(3)(c) of the *Residential Tenancies Act*, the respondents shall pay the applicants costs related to the repair of tenant damages to the rental premises in the amount of eight hundred ten dollars (\$810.00).
2. Pursuant to section 45(4)(c) of the *Residential Tenancies Act*, the respondents shall pay the applicants costs of propane fuel consumed during the tenancy in the amount of fourteen dollars and sixty five cents (\$14.65).

DATED at the City of Yellowknife, in the Northwest Territories this 10th day of May,
2004.

Hal Logsdon
Rental Officer

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-and-

SARAH JOHNSON AND BRIAN MARTIN

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REASONS FOR DECISION

Date of the Hearing: May 4, 2004

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: John Dinn, applicant
Leona Burke, applicant
Louis Walsh, representing the applicant
Brian Martin, respondent

Date of Decision: May 10, 2004

REASONS FOR DECISION

The tenancy agreement between the parties was terminated by mutual agreement on August 31, 2003. The landlords' application was filed on February 13, 2004 seeking compensation for the cost of repairs of tenant damages to the rental premises and compensation for propane fuel paid for on the respondent's behalf. The applicants retained the security deposit of \$1000 at the termination of the tenancy agreement but failed to provide any statement of the deposit pursuant to section 18(3) of the *Residential Tenancies Act*. On the application of the tenants, the landlords were ordered to return the security deposit and accrued interest.

The applicants alleged that the respondents had damaged numerous areas of the premises and had failed to pay for propane fuel they used during the tenancy. The applicants sought compensation in the amount of \$5720. The following allegations and responses were made by the parties.

1. The applicant alleged that three sets of blinds were removed from the premises. The applicant provided photographs of the premises prior to the tenancy agreement showing the blinds. He supplied a quotation of \$18.49/set for the replacement of the blinds and estimated that the installation costs would cost an additional \$60.00. The respondent testified that the blinds were removed and stored in the applicant's storage shed on the property. The respondent stated that he had not looked in the storage shed and could not confirm if they were there or not.

2. The applicant alleged that a one hundred pound bottle of propane was supplied at the commencement of the tenancy agreement. The applicant testified that the bottle was empty at the termination of the tenancy and the cost to fill the bottle was \$58.60. The parties agreed at a previous hearing regarding this tenancy agreement that the tenants were responsible for propane gas during the tenancy. The respondent testified that the propane bottle was 25% full at the commencement of the tenancy.
3. The applicant alleged that a wood cabinet had been taken apart and used as a wood box and provided a photograph of the cabinet at the termination of the tenancy agreement. The applicant estimated the value of the cabinet at \$150. The respondent testified that the cabinet was found outside in a pool of water and they assumed it was of no value to the landlord. The respondent testified that they had rented the premises unfurnished as they had their own furniture and that the landlord had moved the existing furnishings in the premises to a storage shed on the property. The respondent testified that he found the cabinet “in a drainage ditch along the right hand side of the property”. He stated that he “figured it was garbage” as it had “been left out in the rain in a big puddle.”
4. The applicant alleged that the air filtre on the generator had been removed and a securing bolt broken. He estimated the repair costs to be \$150. The respondent denied taking the air filtre off the generator.

5. The applicant alleged that the water pump had been damaged and estimated the repair costs to be \$200. He stated that the pump was plugged in and speculated that the pump had been left to operate without water. The respondent denied running the pump without water. He stated that the pump was working when they had water and it was not plugged in under the house. He noted that the landlord had interfered with the supply of water and he was unable to confirm if the pump was operating at the termination of the tenancy agreement.

6. The applicant alleged that the floor and cupboards had numerous paint spills and smears on them caused by the tenants and provided photographs in evidence. The applicant provided an estimate for repairs in the amount of \$750. The respondent testified that there was some paint on both the cupboards and the floor when the tenancy commenced. He acknowledged that some of the damages were the result of their painting activities but stated that it was difficult to clean up after painting when the landlord failed to supply water.

7. The applicant alleged that the respondents had painted the pre-finished panelling in the premises and removed a wall. He acknowledged that he had given permission to remove the wall but had not expected them to damage the materials removed. He stated that he had not given the tenant permission to paint. Photographs of the areas were provided in evidence. The applicant provided a quotation for the replacement of the panelling, door and window trim, and the replacement of the wall in the amount of

\$4340. A deduction of \$400 would apply if the wall replacement was omitted. The respondent stated that the issue of the panelling and the wall had been determined at a previous hearing.

Section 42 of the *Residential Tenancies Act* obligates a tenant to repair damages to the premises.

- 42. (1) 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.**
- (2) Ordinary wear and tear of rental premises does not constitute damage to the premises.**

The Act defines “residential complex” which includes all services and facilities.

"residential complex" means a building, related 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; (*ensemble d'habitation*)

"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; (*services et installations*)

I find the respondents failed to repair the blinds which were removed from the windows. From the evidence it appears that the blinds are still in the landlord's possession and the request for replacement cost is denied. However, the applicant is entitled to installation costs and I find his estimate of \$60 to be reasonable.

In my opinion, the cabinet was not a furnishing made available to the tenants by the landlord.

Although there was a security deposit required and provided, the parties did not complete any document outlining the condition of the premises at the commencement of the tenancy agreement. Consequently, any furniture that may have been provided and its condition is undocumented. The parties agreed that the tenants had their own furniture and that the landlord removed the existing furnishings to a shed on the property. The applicants' request for compensation is denied.

The evidence concerning the generator is contradictory. The applicant alleged at a previous hearing regarding the premises held in August, 2003 that the generator had been damaged but did not seek compensation. There is no additional evidence to this date to support the allegation of damage. The onus is on the applicant to provide the burden of evidence. I have no more than his testimony, contradicted by the respondent. The request for compensation is denied.

The evidence concerning the water pump is also contradictory. The parties agree that the pump was working at the commencement of the tenancy. The landlord has had nine months to provide further evidence regarding the malfunction of the pump. His statement that it was run without water is speculative. The respondent testified that it was running satisfactorily before the landlord interfered with the supply of water. The onus is on the applicant to provide the burden of proof. The request for compensation is denied.

In my opinion, the paint damage to the cupboards and floor is the responsibility of the tenants. The paint smears and spatters are clearly the result of their painting. If there were pre-existing

paint marks on the cupboards and floor they were minor in my opinion and not evident from the photographic evidence. The cost estimate provided by the applicant of \$750 is reasonable.

The damage to the wall panelling was determined at a previous hearing and outlined in my order and reasons for decision. (Files #10-7538 and #10-7539, filed August 26, 2003). The applicant can not bring the issue to me again for determination. The previous order could have been appealed by the applicant pursuant to section 87 of the *Residential Tenancies Act*.

At the previous hearing regarding this tenancy agreement (Files #10-7538 and #10-7539, filed August 26, 2003), the applicant noted the removal of the wall but sought only compensation for the panelling, using the same quotation as evidence. The parties agree that the tenants were given permission to remove the wall. The applicant stated that it should have been removed in a manner that preserved the materials used in it's construction, so it could have been reassembled. I find no evidence of any specific instructions being given as to it's removal or the disposition of the materials. A photograph was provided by the applicant in evidence showing some of the removed material outside the premises. The landlord testified that some of it was destroyed. I also note that the remaining material shown in the photograph is lying outside in the snow. It does not appear that the applicant has made any effort to salvage the material or protect it from damage from the elements. In my opinion, compensation for the replacement of the wall is not reasonable and is denied.

In the matter of the propane use, the parties agreed at a previous hearing that the supply of propane fuel during the tenancy was the responsibility of the tenants. The tenants should have therefore, left as much propane at the termination of the tenancy as was supplied at the commencement of the tenancy. The parties disagree as to the volume at the commencement of the tenancy. The tenancy commenced on July 1, 2003 and was terminated two months later on August 31, 2003. The reasons for decision written with the previous order indicate that the propane hot water heater was not operational during the tenancy and that for much of the time after July 15, 2003 the tenants lived elsewhere due to the landlords' failure to supply running water. The photographic evidence provided by the landlord indicates propane lighting which was unnecessary during most of the time the tenants were in possession. In my opinion, the consumption of 100 pounds of propane, essentially for cooking, during this short period is not usual. The testimony of the respondent that the tank was approximately 25% full is more plausible and compensation for \$14.65 is reasonable.

In summary, an order shall issue requiring the respondents to pay the applicants costs of repair of tenant damages and costs of propane fuel in the total amount of \$824.65. The applicant indicated that the previous order requiring the applicants to return the security deposit (File #10-7661, filed February 23, 2004) had not been satisfied. This order may be set off against the previous order.

Hal Logsdon
Rental Officer