

IN THE MATTER between **TODD STEWART AND SEANA STEWART**, Applicants,
and **DEEPAK KUMAR AND KUSHALINI KUMAR**, 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 **EDZO, NT**.

BETWEEN:

TODD STEWART AND SEANA STEWART

Applicants/Landlords

- and -

DEEPAK KUMAR AND KUSHALINI KUMAR

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 42(3)(c) of the *Residential Tenancies Act*, the respondents shall pay the applicant costs related to the repair of damages to the rental premises in the amount of two hundred sixty dollars and seventy five cents (\$260.75).

DATED at the City of Yellowknife, in the Northwest Territories this 27th day of May,
2004.

Hal Logsdon
Rental Officer

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-and-

DEEPAK KUMAR AND KUSHALINI KUMAR

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: May 20, 2004

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Todd Stewart, applicant
Seana Stewart, applicant
Deepak Kumar, respondent
Kushalini Kumar, respondent

Date of Decision: May 26, 2004

REASONS FOR DECISION

The tenancy agreement between the parties was terminated on March 5, 2004. The applicants alleged that the respondents failed to repair damages to the premises which were the result of their negligence and sought an order requiring the respondents to pay compensation related to the repair of those damages. The applicants provided an itemized list of repair costs totalling \$3334.99 and stated that additional repairs to two countertops would require an additional \$315, bringing the total compensation requested to \$3649.99.

The majority of the repair costs were related to a fire which occurred in the premises on February 4, 2004. The applicants stated that the fire was caused by the respondents and claimed that smoke damage to the premises necessitated repainting of walls and ceilings and the replacement of light fixtures. The combined costs of these repairs was estimated to be \$2473. The applicants provided photographs and a burnt stand which they claimed was the area where the fire started.

The respondents denied that the fire was due to their negligence and testified that both the battery operated smoke detector and the fire extinguisher were inoperable at the time of the fire. The respondents provided an affidavit stating that the extinguisher in the premises was last inspected in 1996 and that the fire was extinguished using an extinguisher borrowed from a neighbour. The affidavit also stated that the smoke detector was not in working order. Neither party produced any report from a fire official indicating the cause of the fire. The respondents stated that they cleaned the premises and repainted the area where most of the smoke damage occurred prior to vacating.

Section 42 of the *Residential Tenancies Act* sets out a tenant's responsibility to repair.

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.

In my opinion there is not sufficient evidence to conclude that the fire was caused by the wilful or negligent conduct of the tenant. Without the benefit of some assessment by a fire official, which should have been available to the landlord, I am not able to determine the cause of the fire or if a negligent act of the tenant contributed to the damage.

Section 30 of the *Residential Tenancies Act* sets out a landlord's obligation to maintain rental premises.

30. (1) A landlord shall

- (a) provide and maintain the rental premises, the residential complex and all services and facilities provided by the landlord, whether or not included in a written tenancy agreement, in a good state of repair and fit for habitation during the tenancy; and**
- (b) ensure that the rental premises, the residential complex and all services and facilities provided by the landlord comply with all health, safety and maintenance and occupancy standards required by law.**

The National Fire Code requires smoke alarms in premises. The NWT Fire Marshall requires that all required smoke alarms be hard wired and not battery operated (Technical Bulletin FM-06-88).

The National Fire Code does not require portable fire extinguishers in dwellings. The applicants claimed that since the fire extinguisher was not listed in section 3 of the tenancy agreement, they were not responsible for it's maintenance. I disagree. If a fire extinguisher is provided in the premises, the landlord has an obligation to maintain it, pursuant to section 30. There is no

requirement, in my opinion, to list each removable fixture in section 3 of the tenancy agreement and the omission of any such item in the agreement does not relieve the landlord of the obligation to maintain it. In my opinion, the failure of the landlord to provide an approved smoke detector or to maintain the fire extinguisher contributed to the extent of the loss. Had the fire been detected and extinguished without delay, the damage could have been minimized. The applicants' request for costs related to painting and replacement of the light fixtures is denied.

The applicants alleged that the front storm door damper was damaged by the tenants which in turn caused damage to the main door. The applicant provided photographs of the door and a piece of the door frame where the damper had been connected. The applicants sought compensation in the amount of \$643.99.

The respondents denied that the damage had been caused by their negligence, testifying that the door became difficult to shut and that they notified the landlord of the problem. The applicants stated that the landlord failed to repair the storm door, informing them by e-mail to "tighten the screws" on the door. The applicants testified that a heavy wind blew the door open, pulling the damper from the frame and allowing the damper to impact against the door.

Section 30 obligates the landlord to repair items such as the door. Subsections (5) and (6) obligate the tenant to notify the landlord of required repairs and obligate the landlord to attend to the repair in a timely manner.

30. (5) A tenant shall give reasonable notice to the landlord of any substantial

breach of the obligation imposed by subsection (1) that comes to the attention of the tenant.

(6) A landlord shall, within 10 days, remedy any breach referred to in subsection (5).

The e-mail evidence provided by both parties indicates that the landlord was made aware of the problem. The applicants stated that the tenants should have disconnected the damper to prevent further damage to the main door. In my opinion, the repair was the sole responsibility of the landlord and had he or his agent in the community attended to it in accordance with the Act, the damage would have been averted. The applicants' request for compensation for replacement of the door is denied.

The applicants alleged that the wall surface in one bedroom had been damaged due to pinning the curtain back from the window. The applicants also alleged that two larger holes had been drilled in another wall. The applicants provided photographs in evidence. The applicants sought compensation in the amount of \$150.

The respondents did not deny the allegations.

The damage to the walls is minor but not, in my opinion, due to normal wear and tear. In my opinion, \$150 is not a reasonable estimate of repair. In my opinion, repair costs of \$50 is reasonable.

The applicants alleged that the patio door trim was damaged when the respondents repainted the room. The applicants sought compensation for replacement of the trim in the amount of \$68.00. The applicants provided a piece of the trim in evidence as well as photographs of the patio door.

The respondents did not dispute the allegations.

The unfinished pine trim has considerable yellow paint on it. It is obvious that the respondents failed to remove or mask the trim when they repainted the area. Replacement is reasonable as the removal of the paint would be labour intensive. The trim is available locally at a cost of \$1.59/foot. In my opinion, the replacement of the trim should not exceed \$35.75.

Although not included in the application, the applicants alleged at the hearing that two counter tops had burn marks on them. The applicants provided photographs in evidence and sought compensation in the amount of \$315. One counter top was wood and had burn marks which appeared to have been made from a hot pot. The other was Formica or some similar material and appears to have several small burns on it.

The respondents did not dispute the allegations.

The wooden counter top can be refinished. In my opinion, reasonable compensation is \$100. The small burns in the other counter top do not warrant replacement of the counter top but the damage represents a loss of value which, in my opinion, should be compensated. In my opinion

compensation of \$75 is reasonable.

In summary, I find the respondents breached their obligation to repair damages to the premises which were a result of their negligence and find reasonable compensation to be \$260.75, calculated as follows.

Wall repair	\$50.00
Trim	35.75
Wooden counter	100.00
Other counter	<u>75.00</u>
Total	\$260.75

The applicants did not collect a security deposit. An order shall issue for the respondents to pay the applicants compensation in the amount of \$260.75.

Hal Logsdon
Rental Officer