

IN THE MATTER between **SUSIE KAPOLAK**, Applicant, and **809656 ALBERTA LTD.**, Respondent;

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:

SUSIE KAPOLAK

Applicant/Landlord

- and -

809656 ALBERTA LTD.

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 30(4)(c) of the *Residential Tenancies Act*, the respondent shall pay compensation to the applicant for the replacement cost of a refrigerator in the amount of eight hundred dollars (\$800.00).

DATED at the City of Yellowknife, in the Northwest Territories this 22nd day of October, 2004.

Hal Logsdon
Rental Officer

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SUSIE KAPOLAK

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-and-

809656 ALBERTA LTD.

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REASONS FOR DECISION

Date of the Hearing: October 14, 2004

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Susie Kapolak, applicant
John Lemouel, representing the applicant
Trena Scott, representing the respondent

Date of Decision: October 14, 2004

REASONS FOR DECISION

The applicant left the premises, an apartment in a multi-unit apartment building, unoccupied from June 18, 2004 to September 11, 2004. The applicant notified the landlord that they would be out of town for that period, prior to leaving. During their absence the landlord received complaints of a foul odour in the building and entered the applicant's premises finding spoiled meat in the refrigerator. The landlord disposed of the spoiled contents of the refrigerator and cleaned it to the best of their ability but was unable to remove the odour from the appliance. The landlord purchased a new refrigerator and charged the applicant \$800, which she paid in full on September 14, 2004.

The applicant sought an order requiring the respondent to compensate her for the cost of the refrigerator or declare that the refrigerator rightly belonged to the applicant. Although not contained in the application, at the hearing the tenant also requested compensation for the spoiled food.

The respondent referred to sections 45(2) and section 31 of the *Residential Tenancies Act* as justification for the landlord's right to compensation for the refrigerator.

- 45.(2) A tenant shall maintain the rental premises and all services and facilities provided by the landlord of which the tenant has exclusive use in a state of ordinary cleanliness.**
- 31.(1) Notwithstanding section 30, where a residential complex is composed of one rental premises, a landlord and tenant may agree that any or all of the obligations set out in subsection 30(1) may be performed by the**

tenant except for repairs required as a result of reasonable wear and tear or as a result of fire, water, tempest or other act of God.

As well, the respondent referred to the following tenant covenants contained in the tenancy agreement between the parties:

Fixtures - To pay all costs of repairing and replacing windows, light fixtures, fuses, light bulbs, florescent tubes, all appliances, including refrigerator and stove, car plug-ins, irrespective of the cause of such breakdown and the Landlord shall not be responsible to the Tenant for any damages arising from the breakdown of any of the mechanical, electrical, plumbing or other fixtures and appliances within the leased premises.

Appliances - The tenant covenants and agrees that he shall maintain the stove refrigerator, electrical lighting fixtures, heating and plumbing fixtures in good condition and repair and will return them to the Landlord in good working order and condition.

Refrigerators - Refrigerators may require defrosting regularly to prevent frost build-up on the freezing compartment. The Tenant shall not use any type of instrument to pick or scrape off ice. This action can easily puncture the coil causing a loss of refrigerant and requiring expensive replacement chargeable to the Tenant. The Landlord shall not be responsible for any food left in the refrigerator and/or loss of food in the event of malfunction of the refrigerator, or electricity stoppage.

The respondent sought additional compensation for checking and cleaning the suite as well as delivery charges for the refrigerator in the amount of \$493 and submitted an itemized statement of the claim. The respondent had offered to waive these charges if the applicant withdrew the application to a rental officer and drew up a written agreement to that effect. The applicant did not sign the agreement.

The parties agreed that the refrigerator was not turned off, but had ceased to operate.

In my opinion, the landlord is responsible for any repair or replacement of the refrigerator, notwithstanding anything that appears the tenancy agreement between the parties. Section 30 of the *Residential Tenancies Act* outlines a landlord's obligation to repair:

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.**

Section 1(1) of the Act defines "services and facilities" and includes appliances in the definition:

"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;

Section 31(1) of the Act, cited by the respondent, does not apply as the premises are an apartment in a multi-unit complex. The landlord can not contract out of his obligation to repair.

In my opinion, the applicant has not breached section 45(2) of the Act. The uncleanliness was not due to the tenant's failure to maintain the premises in a clean state but due to a failure in the services and facilities provided by the landlord.

Section 42 of the Act obligates a tenant to repair damages:

- 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.**

In my opinion, there is no evidence to suggest that the tenant did anything that could be considered negligent leading to the failure of the refrigerator. The respondent suggested that perhaps some of the items in the refrigerator were blocking the flow of cool air or that the tenant should have arranged for someone to check the premises periodically while they were away. In my opinion, these do not constitute negligence on the part of the tenant. A tenant should have a reasonable expectation that items placed in a refrigerator will not cause it to cease functioning. Similarly, a tenant should reasonably expect a refrigerator to work over a period of three months without inspection or oversight.

The articles in the tenancy agreement pertaining to "fixtures" and "appliances" can not have the effect of obligating the tenant to repair the refrigerator in all cases as it is inconsistent with the provisions contained in section 30 of the Act. The "refrigerators" section of the tenancy agreement does not obligate the tenant to repair as there is no evidence of damage due to improper defrosting.

In summary I find no evidence that the refrigerator was damaged by the tenant and find the required repairs or replacement costs to be the responsibility of the landlord. As the applicant has paid for the replacement of the refrigerator an order shall issue requiring the respondent to

compensate the applicant in the amount of \$800. The compensation may be paid by means of a rent credit. The respondent's request for compensation is denied. In my opinion, the costs incurred were not a result of tenant negligence but directly related to the failure of services and facilities provided by the landlord. The applicant's request for compensation for the spoiled food is also denied. The failure of the refrigerator is not something the landlord could have reasonably foreseen or prevented.

Hal Logsdon
Rental Officer