File #20-7971

IN THE MATTER between **ROBERT MELLETT**, Applicant, and **JAMES ANDERSON**, 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 **INUVIK, NT.**

BETWEEN:

ROBERT MELLETT

Applicant/Tenant

- and -

JAMES ANDERSON

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 14(6)(c) of the *Residential Tenancies Act*, the respondent shall pay the applicant compensation for loss directly related to the retention of the last months rent during the term of a tenancy in the amount of forty three dollars and eighty five cents ($43.85).

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

Hal Logsdon
Rental Officer

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BETWEEN:

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Applicant/Tenant

-and-

JAMES ANDERSON

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REASONS FOR DECISION

Date of the Hearing:	**August 18, 2004**
Place of the Hearing:	**Inuvik, NT via videoconference**
Appearances at Hearing:	**Robert Mellett, applicant** **Denize Mellett, tenant** **James Anderson, respondent** **Sheila Anderson, landlord**
Date of Decision:	**August 27, 2004**

REASONS FOR DECISION

The applicant alleged that a deposit other than a security deposit had been collected by the respondent and sought the return of the alleged overpayment. The applicant also sought compensation for improvements which were done to the rental premises and the return of, or compensation for, personal property which the landlord allegedly removed from the premises. The applicant also disputed the full retention of the security deposit and referred the matter to a rental officer for determination.

The tenancy agreement between the parties was made in writing and commenced on December 1, 2002. The agreement ran month-to-month and was terminated by the tenant by written notice on May 31, 2004. The agreement obligates the tenant to pay the first month's rent, last month's rent and a security deposit equal to one months rent at the beginning of the tenancy. The parties agreed that the deposit and the first and last month's rent had been paid at the commencement of the tenancy and that at the termination of the tenancy, the last month's rent held during the term had been applied to the May, 2004 rent.

Sections 14(5) and 14(6) of the *Residential Tenancies Act* prohibit certain deposits and set out remedies.

> **14.(5) No landlord shall require or receive any amount as a deposit for the amount of the first month's or the last month's rent from a tenant or any other amount from a tenant or prospective tenant other than a security deposit referred to in this section.**
>
> **(6) Where, on the application of a landlord or a tenant, a rental officer**

determines that an obligation imposed by this section has been breached, the rental officer may make an order

(a) where the tenant fails to pay the required security deposit, requiring the tenant to pay the security deposit to the landlord;

(b) where a landlord breaches this section, requiring the landlord to return any amount of the security deposit that is in excess of the amount permitted by this section; or

(c) requiring the person who breached the obligation to compensate the party affected for loss suffered as a direct result of the breach.

Although the collection of the last month's rent in advance is not permitted, the amount was applied to the last months rent. If the amount was ordered returned, the tenant would be in arrears of rent for May, 2004. Therefore, the only reasonable remedy available to the tenant, now that the tenancy agreement is over, is that of compensation. In my opinion simple interest at the statutory rate for security deposits is reasonable compensation. I find that amount to be $43.85. I also refer the respondent to section 91 of the *Residential Tenancies Act* and remind the respondent that contravention of section 14 are offenses under the Act.

The applicant expanded the porch on the premises and claimed that the landlord had agreed to permit the work and provide compensation for the improvements. The respondent denied that there was any agreement for compensation and stated that he had provided some materials and an abatement of rent in the amount of $400. The applicant sought compensation for additional material in the amount of $306.02. The respondent stated that the porch was not finished and that it was not built to acceptable standards. The respondent estimated the cost to complete or dismantle the porch to be $400.

There is nothing in the tenancy agreement regarding compensation for improvements made by the tenant and the Act does not contain such provisions. In my opinion, any agreement between the parties regarding compensation to the tenant for the porch materials is not part of the tenancy agreement and a rental officer has no jurisdiction in the matter. The applicant's request for compensation is denied.

The applicant alleged that some plywood shelving and metal shelving backs had been stored outside the premises and was disposed of by the landlord after the tenant vacated the premises. The applicant stated that he was unable to remove the items at the termination of the tenancy because they were frozen to the ground. The applicant estimated the value of the goods at $100. The respondent stated that he had disposed of the goods as he considered them worthless. He stated that the items had been left out in the weather during the tenancy and were deteriorated. He stated that he had seen the tenant in the yard of the premises the day before he disposed of the items and determined that the tenant had no interest in retrieving the items. In my opinion, the landlord was entitled to consider the items worthless and dispose of them. The applicant's request for compensation is denied.

On June 11, 2004, the respondent sent an e-mail to the applicant noting areas of damage and costs to repair. In the e-mail the respondent outlines the following costs of repair:

Carpet replacement (estimate carpet only, southern price, no labour)	$1718.00
Cleaning (estimate)	$300.00
Damage to door and screen (estimate)	$300.00
Completion of porch (estimate)	$400.00

Outstanding power bill	$92.03

In the e-mail the respondent also refers to damages to the walls that he intends to repair at no cost to the tenant and damage to the yard area for which costs are unspecified. While not exactly an itemized statement or estimate, it indicates that the landlord intends to withhold the entire security deposit. In the document, the landlord states,

> **"We are in the process of gathering all the information needed to document the damage to our unit. However you need to be aware that the damage will far exceed the amount you had agreed to place as a damage deposit."**

On August 17, 2004 the respondent filed a finalized statement of repairs with the rental officer which was also provided to the applicant. It included the following items:

Cost to complete or disassemble porch	$400.00
Cost of unpaid power	92.03
Cost of carpet (50% of $2827.74)	1413.87
Linoleum	N/C
Baseboards	N/C
Paint and repairs (10% of $2782.00)	278.20
Screen repairs and cleaning	400.00
Less interest (99.02)	
Less deposit	(1140.00)
Amount owing Landlord	$1342.08

The applicant conceded that some repairs were necessary but disputed the repair costs claimed. The applicant provided his own estimates of what he considered reasonable deductions which totalled $125.48.

Sections 18(3) and 18(4) of the *Residential Tenancies Act* set out the landlord's obligations when

a security deposit is retained.

> **18. (3) Where a landlord objects to returning all or a part of the security deposit on the grounds that a tenant has caused damage to the rental premises and repairs to the rental premises are necessary or the tenant is in arrears of the rent, the landlord shall, within 10 days after the tenant vacates or abandons the rental premises,**
>
> **(a) send a notice to the tenant and a rental officer of the intention of the landlord to withhold all or part of the security deposit;**
>
> **(b) give the tenant an itemized statement of account for the security deposit;**
>
> **(c) give the tenant an itemized statement of account for the repairs or arrears of the rent; and**
>
> **(d) return the balance of the security deposit with interest to the tenant.**
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> **(4) Where the landlord objects to returning all or part of the security deposit, but is unable to determine the correct amount of the repairs within 10 days after the tenant vacates or abandons the rental premises, the landlord shall**
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> **(a) deliver to the tenant, within 10 days after the tenant vacates or abandons the rental premises,**
>
> **(i) an estimated itemized statement of account for the repairs, and**
>
> **(ii) the estimated balance of the deposit; and**
>
> **(b) within 30 days after the tenant vacates or abandons the rental premises**
>
> **(i) deliver a final itemized statement of account for the repairs, and**
>
> **(ii) return the final balance to the tenant.**

Rather than providing the itemized statement required by the Act, the respondent noted, in an e-mail, a number of items which, in his opinion, required repair. The respondent provided estimates for some items, such as the porch repair, but not others, such as the yard damages. The final statement was not produced until August 17, 2004 and contained repairs which were not in the e-mail, albeit not charged to the tenants either. It appears that both documents were produced in order to demonstrate that there were more than adequate grounds to retain the security deposit

rather than the intended purpose of providing the tenant with an itemized accounting of the deposit, interest and deductions.

In order to determine the matter of the security deposit deductions I have reviewed the evidence regarding each deduction contained in the respondent's e-mail of June 11, 2004 and the final statement of August 17, 2004 and make the following findings.

1. Completion of porch

   A tenant is required to repair damages to the premises which are caused by the tenant. The evidence suggests that the porch was not finished and was not competently constructed. In my opinion, this constitutes damages to the premises. The parties agreed that the estimate of $400 to complete the porch was reasonable. In my opinion, it is a reasonable deduction from the security deposit

2. Cost of unpaid electricity

   The tenant was obligated to pay for electricity during the term of the tenancy. The applicant had the electrical service disconnected prior to the end of the term. In my opinion, the landlord was entitled to reconnect the service to the premises to protect the property from damage and charge the tenants for amounts paid on their behalf. Charges for services provided by the landlord are considered rent and can be deducted from the security deposit. I find the electrical charges of $92.03 a reasonable deduction from the security deposit.

3. Carpet replacement

Testimony from the respondent and statements from two contractors support the respondent's claim that the carpet was damaged beyond repair due to urine from the applicant's dog. However, the cost of replacement charged to the applicant is, in my opinion, unreasonable as the carpet was 9.5 years old at the termination of the tenancy agreement. A carpet contractor's statement indicated that the carpet was good quality. In my opinion, the useful life of a good quality carpet in a rental premises is approximately 12 years. As the landlord had enjoyed approximately 80% of the useful life of the carpet, the tenant should be responsible for 20% of the replacement cost or $565.55.

4. Door repair

The door and frame were both significantly damaged by the applicant's dog. In my opinion, the damage warrants replacement of the door and frame and the respondent's costs to repair of $278.20 is reasonable. The applicant's suggestion of applying a kick plate to cover the damages is not satisfactory, given the damage.

5. Cleaning

The photographic evidence provided by both parties does not support the requirement to undertake any significant amount of cleaning to bring the premises to a state of reasonable cleanliness. The oven can not be expected to be as new

after a year and a half of use. The photographs do not indicate other than normal wear and tear in my opinion. Similarly the dust under the refrigerator is the result of normal accumulation. In my opinion, tenants are not expected to move heavy appliances in order to clean behind them, particularly when doing so risks damaging the floor surfaces. The deduction for cleaning is not reasonable.

6. Screen repair

Photographic evidence and the applicant's testimony support the requirement for repairs to the screen. The applicant's estimate for repair and the respondent's documentation of material cost support a reasonable repair cost of $10.

In my opinion, the respondent is entitled to retain the security deposit and interest as the repairs and electrical costs exceed the retained deposit and interest as follows:

Security deposit	$1140.00
Interest on deposit	46.48
TOTAL	**$1186.48**

Porch repair	400.00
Electrical costs paid on behalf of tenants	92.03
Carpet replacement @ 20% of cost	565.55
Door repair	278.20
Screen repair	10.00
TOTAL	**$1345.78**

Consequently, the applicant's request for the return of a portion of the security deposit is denied. The respondent has not filed an application requesting relief in addition to the retained security

deposit for damages to the premises and consequently no order shall issue in that regard.

I find the respondent in breach of section 14(5) of the *Residential Tenancies Act* by requiring last months rent in advance. I find reasonable compensation in the amount of $43.85. An order shall issue requiring the respondent to pay compensation to the applicant in that amount.

Hal Logsdon
Rental Officer