

IN THE MATTER between **JOHN B. ZOE**, Applicant, and **WALTER CHAN**,
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:

JOHN B. ZOE

Applicant/Tenant

- and -

WALTER CHAN

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18(5) of the *Residential Tenancies Act*, the respondent shall return the remainder of the security deposit to the applicant in the amount of seven hundred forty eight dollars and sixty nine cents (\$748.69).

DATED at the City of Yellowknife, in the Northwest Territories this 9th day of May,
2005.

Hal Logsdon
Rental Officer

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JOHN B. ZOE

Applicant/Tenant

-and-

WALTER CHAN

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: May 5, 2005

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: John B. Zoe, applicant
Walter Chan, respondent

Date of Decision: May 9, 2005

REASONS FOR DECISION

The tenancy agreement between the parties was terminated on July 31, 2004. The applicant alleges that \$700 of the security deposit was retained by the respondent and sought an order requiring the respondent to return the remainder of the deposit.

The application was filed on April 11, 2005. Section 68 of the *Residential Tenancies Act* sets out a time limit for the making of an application but permits a rental officer to extend the limit.

- 68. (1) An application by a landlord or a tenant to a rental officer must be made within six months after the breach of an obligation under this Act or the tenancy agreement or the situation referred to in the application arose.**
- (2) A landlord or a tenant making an application to a rental officer for an order or a decision under this Act must file the application with the rental officer and serve a copy of the application on the other party within at least 14 days after the filing of the application.**
- (3) A rental officer may extend the time for the making of an application to the rental officer, whether or not the time for making the application to a rental officer has expired, where the rental officer is of the opinion that it would not be unfair to do so.**

The applicant testified that the respondent returned \$1000 of the security deposit on August 20, 2004, retaining the remaining \$700 for the repair of a window. The landlord indicated that he did not have complete costs of the repair at that time. The applicant testified that he contacted the respondent in October, 2004 to inquire about the deposit and was informed that the replacement window had been broken and the work was still not complete. In my opinion, there was a reasonable expectation on the part of the applicant that the landlord would attend to the matter of the deposit without resort to legal action and the application was made only after it became

apparent that might not be the case. There was communication between the parties concerning the deposit and I do not feel it is unfair to either party to extend the time limit and consider the matter.

The applicant disputed the retention of the deposit and stated that only the outside pane of the window (the window was a dual thermopane) was cracked. The applicant also disputed the costs associated with a broken screen and noted that the inspection report completed at the commencement of the tenancy agreement noted a torn screen. The applicant stated that he was willing to pay for the window regardless but did not feel it was broken as a result of his negligence.

The respondent submitted an invoice for the window and testified that he had not had the window replaced and did not know the labour costs of the installation. He also alleged that the applicant had failed to fill the fuel tank at the end of the tenancy agreement and provided an invoice for fuel oil. The respondent stated that the window costs, labour for the installation of the window and the fuel costs justified the retention of the \$700.

Section 18 of the *Residential Tenancies Act* obligates a landlord to provide a final statement of the security deposit in a timely manner.

- 18. (1) Subject to this section, where a landlord holds a security deposit the landlord shall, within 10 days after the tenant vacates or abandons the rental premises,**
- (a) return the security deposit to the tenant with interest; and**
 - (b) give the tenant an itemized statement of account for the security**

deposit.

- (2) A landlord may, in accordance with this section, retain all or part of the security deposit for repairs of damage caused by a tenant to the rental premises and for any arrears of the rent.**
- (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.**
- (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**
 - (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.**

Section 42 of the Act sets out a tenant's obligation to repair damages to the rental 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 does not permit the retention of a security deposit for more than 30 days after the tenancy agreement has been terminated without a statement of the deductions being issued and any remainder returned to the tenant. Even if the window was not replaced, a quotation could have been obtained for the installation. I see no reason why the landlord could not have issued a final statement within the prescribed time period. Furthermore, I am not convinced from the evidence, that the window was broken due to the negligence of the tenant or person he permitted on the premises. The crack in the outside pane indicates the window was struck from the outside or possibly stressed. For these reasons, the deduction of the window repair costs is denied.

As noted above, section 18(2) of the Act permits only the deductions of rent arrears and repair costs from a security deposit. The costs of fuel, paid by a tenant directly to a supplier and not to the landlord is not rent or a repair. It is therefore not a permissible deduction from a security deposit. As the matter of the deposit is the only one before me, I can not consider the matter of the fuel costs.

I find the interest on the deposit to be \$48.69. An order shall issue requiring the respondent to return the remainder of the security deposit to the applicant in the amount of \$748.69.

Hal Logsdon
Rental Officer