File #10-8546

IN THE MATTER between **YOLANDA LAFFERTY AND DAVID KOTCHEA**, Applicants, and **HARRY SATDEO**, 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 **HAY RIVER, NT.**

BETWEEN:

YOLANDA LAFFERTY AND DAVID KOTCHEA

Applicants/Tenants

- and -

HARRY SATDEO

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 32(4)(c) of the *Residential Tenancies Act*, the respondent shall pay compensation to the applicants for disturbing their possession of the rental premises in the amount of two hundred fifty dollars ($250.00).
2. Pursuant to section 18(5) of the *Residential Tenancies Act*, the respondent shall return the accrued interest on the security deposit to the applicants in the amount of eleven dollars and fourteen cents ($11.14).

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

Hal Logsdon
Rental Officer

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Applicants/Tenants

-and-

HARRY SATDEO

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing:	**September 6, 2005**
Place of the Hearing:	**Yellowknife, NT**
Appearances at Hearing:	**Yolanda Lafferty, applicant** **David Kotchea, applicant (by telephone)** **Paul James, representing the applicants** **Harry Satdeo, respondent (by telephone)**
Date of Decision:	**September 9, 2005**

REASONS FOR DECISION

The applicants and respondent entered into a written tenancy agreement for apartment #902 commencing on February 1, 2005. The applicants provided a security deposit to the respondent in the amount of $1000.

The applicants allege that the respondent told them in early March, 2005 that they had to move to apartment #308 and, believing that they had to comply, they moved at their own expense. The applicants stated that apartment #308 was not clean and was not in a good state of repair. They stated that they repaired a number of items and cleaned the apartment, including the steam cleaning of the carpets. No written tenancy agreement was executed for apartment #308. The security deposit for #902 was retained by the respondent and applied to #308. An inspection report was completed for #308 and signed by the applicants but not signed by the respondent.

The applicants vacated #308 on or about June 30, 2005 after giving written notice. The respondent retained the security deposit but has issued no statement. The application was filed on June 30, 2005.

The applicants seek compensation due to the alleged poor condition of apartment #308 of $750, moving expenses of $100, cleaning costs of $50, reconnection costs of telephone and electricity of $150 and the return of their security deposit.

The applicants provided photographs of the #308 and a condition report indicating what repairs had been done by themselves. They included steam cleaning of the carpets, general cleaning, wall repairs, painting and the installation of wall plug covers and a range hood.

The parties agreed that rent for March, 2005 for #902 had been paid in full and that no additional rent had been charged for #308 for that month. The parties also agreed that a rent credit of $1000 was applied to the applicants' account in April, 2005 for work that had been performed by the applicants on the premises. The parties agreed that rent was paid in full for May, 2005 and that no rent was paid in June, 2005. The applicant alleges that the respondent agreed to waive the rent for June, 2005. The respondent denies having waived the rent.

The respondent did not deny that apartment #308 required repairs but stated that the move was voluntary and that David Kotchea agreed to undertake the repairs. The respondent stated that there had been numerous disturbances caused by the applicants and offered to relocate them to another apartment rather than evict them. On questioning both parties, it appears that the applicants were offered a choice of moving or defending themselves against an application by the landlord to terminate the tenancy.

Section 34 of the *Residential Tenancies Act* obligates a landlord to not disturb a tenant's possession of the rental premises.

34. (1) No landlord shall disturb a tenant's possession or enjoyment of the rental premises or residential complex.

(2) Where, on the application of a tenant, a rental officer determines that the landlord has breached the obligation imposed by subsection (1), the rental officer may make an order

(a) requiring the landlord to comply with the landlord's obligation;

(b) requiring the landlord to not breach the landlord's obligation again;

(c) requiring the landlord to compensate the tenant for loss suffered as a direct result of the breach; or

(d) terminating the tenancy on a date specified in the order and ordering the tenant to vacate the rental premises on that date.

In my opinion, the ultimatum given by the landlord to the applicants to move to apartment #308 or face eviction proceedings is a disturbance of their rightful possession and a breach of section 34. To characterize the move as voluntary is exaggerated. Only the remedy outlined in section 34(2)(c) is now appropriate since the tenants have vacated. In my opinion, the moving and electrical and telephone charges of $250 sought by the applicants is reasonable compensation.

Section 30 obligates a landlord 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.

(2) Any substantial reduction in the provision of services and facilities shall be deemed to be a breach of subsection (1).

(3) Subsection (1) applies even where a tenant had knowledge of any state of non-repair before the tenant entered into the tenancy agreement.

(4) Where, on the application of a tenant, a rental officer determines that the landlord has breached an obligation imposed by this section, the rental officer may make an order

(a) requiring the landlord to comply with the landlord's obligation;

(b) requiring the landlord to not breach the landlord's obligation again;

(c) authorizing any repair or other action to be taken by the tenant to remedy the effects of the landlord's breach and requiring the landlord to pay any reasonable expenses associated with the repair or action;

(d) requiring the landlord to compensate the tenant for loss that has been or will be suffered as a direct result of the breach; or

(e) terminating the tenancy on a date specified in the order and ordering the tenant to vacate the rental premises on that date.

The evidence confirms that the premises were in need of repair and, notwithstanding that David Kotchea may have agreed to undertake some repairs himself, the landlord is still responsible. Since the tenants have vacated the premises, the only remaining relevant remedy is compensation pursuant to 30(4)(d). The applicants indicated on the inspection report the repairs and cleaning that were completed by them and I estimate the value of these as follows:

Steam Cleaning	**$200**
Wall Repairs	**500**
Painting	**250**
Cleaning (as per application)	**50**
Total	**$1000**

As the respondent has already provided compensation of $1000 to the applicants in the form of a rent credit for the month of April, 2005 no additional compensation is required. In my opinion, the remaining items noted as deficiencies are minor in nature and have not resulted in significant loss of enjoyment or expense.

In the matter of the security deposit, it is clear that no deductions were made regarding apartment

#902 and the parties agreed to transfer the deposit to #308. There is no evidence other than the applicants' testimony, which was disputed by the respondent, that the June, 2005 rent would be waived. The failure of the landlord to issue a statement of the deposit does not, in my opinion, disqualify him from retaining the deposit for rent arrears. In my opinion, the landlord is entitled to retain that part of the deposit and accrued interest for the June, 2005 rent. The interest on the deposit which I calculate to be $11.14 must be returned to the applicants.

An order shall issue requiring the respondent to pay the applicants compensation for moving and re-connection charges in the amount of $250 and to return the security deposit interest in the amount of $11.14. The amounts shall be payable forthwith.

Hal Logsdon
Rental Officer