File #10-8622

IN THE MATTER between **DARRELL DEAN**, Applicant, and **CHRIS KIPLING**, 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:

DARRELL DEAN

Applicant/Landlord

- and -

CHRIS KIPLING

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicant rent arrears in the amount of four hundred thirty five dollars and fifty two cents ($435.52).

2. Pursuant to section 42(3)(c) of the *Residential Tenancies Act*, the respondent shall pay the applicant repair costs to the rental premises in the amount of nine thousand nine hundred ninety dollars ($9990.00).

3. Pursuant to section 62(2) of the *Residential Tenancies Act*, the respondent shall pay

compensation to the applicant for lost rent in the amount of eight hundred fifty dollars ($850.00).

DATED at the City of Yellowknife, in the Northwest Territories this 8th day of November, 2005.

Hal Logsdon
Rental Officer

File #**10-8622**

IN THE MATTER between **DARRELL DEAN**, Applicant, and **CHRIS KIPLING**, 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.

BETWEEN:

DARRELL DEAN

Applicant/Landlord

-and-

CHRIS KIPLING

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: **October 19, 2005**

Place of the Hearing: **Yellowknife, NT via teleconference**

Appearances at Hearing: **Darrell Dean, applicant**

Date of Decision: **November 8, 2005**

REASONS FOR DECISION

The respondent vacated the premises on or about June 30, 2005. The application was filed on August 2, 2005 and served on the respondent by registered mail which was confirmed delivered. A hearing date was set for September 14, 2005 but the respondent failed to pick up the Notice of Attendance and the hearing did not proceed. The rental officer contacted the respondent on one occasion and confirmed his mailing address. At that time the respondent indicated that he may wish to seek legal counsel and would contact the rental officer to indicate how he wished to proceed. The rental officer attempted on numerous occasions to contact the respondent but was unsuccessful. The hearing was scheduled for October 19, 2005 and Notices of Attendance were sent to both the respondent's current address and the address of the rental premises. Neither was picked up by the respondent. It is apparent to me that the respondent is avoiding service. As every practical attempt has been made to make the respondent aware of the hearing, I feel it is appropriate to deem the Notice of Attendance served and determine the matter in the absence of the respondent.

The applicant stated that he entered into a tenancy agreement with Dan Kipling on or about July 1, 2003. A security deposit in the amount of $1200 was provided at that time. It appears that the tenancy agreement was assigned to the respondent, Chris Kipling, on or about July 1, 2004 although no written assignment, tenancy agreement or condition report was provided in evidence by the applicant. The security deposit was retained by the landlord to be held for the duration of the tenancy.

The applicant testified that he attended the premises on or about June 30, 2005 as the respondent was in the process of moving. The applicant testified that he found the premises in very poor condition but that the respondent agreed to pay the outstanding rent for May and June, 2005 and to pay for any repair costs in excess of the security deposit. Agreements to that effect, signed by the respondent, were submitted in evidence.

The applicant retained the security deposit after the respondent vacated. The applicant did not provide an itemized statement of the security deposit but itemized repairs and cleaning on the application and included photographs of the rental premises taken after the respondent had vacated. The applicant sought compensation for repairs and cleaning in the amount of $24,800. In addition to that amount the applicant sought rent arrears of $1700, utility costs paid on behalf of the respondent of $1176 and compensation for lost rent in the amount of $850.

Section 15 of the *Residential Tenancies Act* requires that a statement of the condition of the premises at the commencement of the tenancy be signed by both parties to a tenancy agreement.

> **15.(1) At the commencement of the tenancy and when a security deposit is requested, a landlord and tenant shall sign a document that sets out the condition and contents of the rental premises.**
>
> **(2) A landlord shall ensure that a signed copy of the document referred to in subsection (1) is delivered to the tenant on receipt of all or a portion of the security deposit, as the case may be.**

No condition report was completed at the commencement of the tenancy agreement or at the point in time where the respondent became the tenant or assignee. The applicant provided a signed statement by Dan Kipling, dated September 7, 2005, stating that the premises were in

good condition when he took possession and were in good condition when he vacated the premises. The failure to provide a condition report, in my opinion, does not disqualify a landlord from obtaining relief for damages done to the premises by the tenant. In this matter, I am satisfied by the evidence, that the premises were not clean and were seriously damaged at the termination of the tenancy and that this condition was the result of the respondent's negligence and not normal wear and tear.

I do, however, question the costs of repair sought by the applicant. Few of the costs are substantiated by estimates or invoices and many, when compared to retail material costs and labour rates, appear high. Others do not take into consideration depreciation and still others represent not only repairs but significant improvements to the premises. The remedies for tenant damage to rental premises include "an order requiring the tenant to pay any *reasonable* expenses directly associated with the repair or action".

The following table outlines the amounts claimed by the applicant for repairs and cleaning and the amounts which have been provided in the order, broken down by material and labour. Material costs are based on Yellowknife retail costs which I am confident are equal to or marginally higher than those in Hay River. My reasons for any changes to the applicant's estimates are also included.

In addition to the reasons stated in the table, I offer the following comments on several of the repair items.

Ceiling Repair

The ceiling is acoustical tile. A number of tiles have been punctured and contain holes or damaged areas. The applicant claimed that individual tiles could not be removed and replaced due to their shiplap design. His repair costs of $9000 involved installing gypsum drywall on all the ceiling surfaces. While it may be true that replacing only the damaged tiles is impractical, a new gypsum board ceiling, in my opinion, represents not only a repair but a significant improvement. The tenant should not have to bear costs to improve the premises. Acoustical ceiling tiles are still readily available at a cost of approximately $1.10/square foot and would be considerably easier to install than taped and painted drywall. In my opinion, repair costs should be based on the cost to replace the ceiling with the same finish as the one which was damaged and reasonable costs to do so are $2200.

Carpet Replacement

The evidence supports the applicant’s allegation that the carpets were ruined. The applicant choose to install laminate flooring rather than carpet. The applicant stated that the cost of the laminate was equal to or less than the cost of a new carpet. The applicant also stated that the carpet was in the house when he purchased it approximately four years ago. Assuming a useful life of ten years, the respondent should only bear 60% of the replacement cost. I find reasonable compensation to be $3000.

Replace Wall Panels

The walls are finished with prefinished 4' X 8' panels. A number of the panels have been

damaged. The applicant seeks $4000 to replace panels in the living room and hallway and stated that approximately six panels were damaged. The prefinished panelling is available in the same finish as is currently in the premises. The panels cost less than $30 each and the removal of the old panels and installation of the new ones involves little labour. In my opinion, it is only necessary to replace each damaged panels and a reasonable cost to replace six panels is $500.

Item	**Amount sought**	**Material**	**Labour**	**Amount ordered**	**Reasons for change**
Replace two front entrance doors	$1200	$600	$400	$1000	material cost includes prehung doors, hardware and repair of storm door
Shelving in porch	$200	$150	$0	$150	solid wood shelving labour is negligible
Interior kitchen door	$300	$90	$100	$190	Prehung interior door with jamb and hardware
Refrigerator repairs	$200			$200	
Repair kitchen cabinets	$300	$0	$50	$50	Little apparent damage. Material is negligible
Seven broken light globes	$350	$70	$0	$70	Globes are $10 or less. Labour is negligible
Ceiling replacement	$9000	$1200	$1000	$2200	See text

Item	Amount sought	Material	Labour	Amount ordered	Reasons for change
Four closet doors	$1200	$360	$400	$760	Bifolds are $90 each. Labour should not exceed $100 each
Carpet replacement	$5000			$3000	Depreciated cost
Three bedroom doors	$1050	$270	$300	$570	Same as kitchen door
Repair bookcase	$200			$50	Doors need paint only
Replace shower curtain	$20	$20	$0	$20	
Replace wall panels	$4000	$200	$300	$500	See text
Interior trim and moulding	$300	$100	$100	$200	Evidence does not support extensive damage
Cleaning	$680			$680	
Repair skirting/clean up yard	$400	$50	$100	$150	Only one skirting panel is damaged. Yard clean up included in general cleaning
Repair front steps	$400	$100	$100	$200	Damage to steps involve removal of plywood and one tread repair
TOTAL REPAIR AND CLEANING COSTS	**$24,800**	**--**	**--**	**$9990**	

The respondent acknowledged in his written statement that the rent for May and June, 2005 had not been paid. The rent for the premises was $850.

The there was no evidence that the respondent gave any notice to terminate the tenancy agreement. The applicant stated that he would not have known that the tenant was moving had he not attended the premises when the tenant was in the process of moving out. It does not appear that the applicant has taken any action to re-rent the premises except to begin the necessary repairs. However, given the damages to the premises, it is unlikely that the landlord would have been able to repair the premises and re-rent it prior to July 31, 2005 despite his best efforts. In my opinion compensation for lost rent is reasonable in the amount of $850.

The applicant testified that the fuel tank was not full at the termination of the tenancy and that the respondent had failed to pay for water and sewage services in full. The applicant stated that he could submit receipts for the utilities and was asked to do so. I have reminded the applicant since the hearing date but he has not provided any documentation concerning the fuel, water and sewage costs. In my opinion, this evidence is easy to obtain and I am not prepared to consider the claim on the basis of the applicant's estimates of cost. The costs of utilities is therefore denied.

I find the respondent in breach of his obligations to pay rent and to repair damages to the premises. I also find that the tenant abandoned the rental premises and that the landlord is entitled to compensation equivalent to one month's rent. Taking the security deposit into consideration, I find the amount owing the applicant to be $11,275.52, calculated as follows:

Security deposit	$1200.00
Interest on deposit	64.48
Repair/Cleaning costs	(9990.00)
Rent arrears	(1700.00)
Compensation for lost rent	(850.00)

Amount due applicant $11,275.52

Applying the security deposit first to rent arrears, I find rent arrears of $435.52, repair costs of $9990 and compensation for lost rent of $850. An order shall issue requiring the respondent to pay the applicant rent arrears, repair costs, and compensation for lost rent in the total amount of $11,275.52.

The applicant should take particular note of the security deposit requirements contained in sections 14, 15 and 18 of the *Residential Tenancies Act*. The applicant is obligated to provide a condition report to the tenant, signed by both parties, if he requires a security deposit. As well, the security deposit can not exceed one month's rent. Finally, the landlord is obliged to provide an itemized statement to the tenant within ten days after the tenant vacates the premises.

Hal Logsdon
Rental Officer