

IN THE MATTER between **TOMAS VERZOLA**, Applicant, and **N.W.T. COMMUNITY SERVICES CORPORATION**, 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:

TOMAS VERZOLA

Applicant/Tenant

- and -

N.W.T. COMMUNITY SERVICES CORPORATION

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 17th day of October, 2005.

Hal Logsdon
Rental Officer

IN THE MATTER between **TOMAS VERZOLA**, Applicant, and **N.W.T. COMMUNITY SERVICES CORPORATION**, Respondent.

AND IN THE MATTER of the **Residential Tenancies Act** R.S.N.W.T. 1988, Chapter R-5 (the "Act");

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BETWEEN:

TOMAS VERZOLA

Applicant/Landlord

-and-

N.W.T. COMMUNITY SERVICES CORPORATION

Respondent/Tenant

REASONS FOR DECISION

Date of the Hearing: October 11, 2005

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Tomas Verzola, applicant
Juliana Vilan, representing the applicant
Louis Leonardis, representing the respondent

Date of Decision: October 13, 2005

REASONS FOR DECISION

The tenancy agreement between the parties commenced on August 31, 2004 and was terminated on August 31, 2005. The respondent held a security deposit during the term of the agreement in the amount of \$550.00. The respondent retained the full deposit and accrued interest of \$26.83 following the termination of the tenancy and issued a statement of the security deposit showing a single deduction for "cleaning/painting" of \$576.83 leaving a balance of \$0 due to the applicant.

The applicant claimed there were no damages to the premises and that they were reasonably clean at the termination of the tenancy and sought the full return of the security deposit.

The respondent testified that portions of two walls in the premises had been repainted during the tenancy but had been very poorly done with a different colour of paint. The respondent provided photographs of the walls and stated that the entire security deposit and interest was retained to pay for the repainting of the walls. The respondent also provided a check-out inspection report for the previous tenant, the invoice for painting the apartment in 2003, a maintenance inspection report completed in February, 2005 and the check-out report completed at the end of the tenancy agreement with the applicant. The respondent stated that no check-in report was completed at the commencement of tenancy agreement with the applicant.

The applicant's representative stated that Mr. Verzola did not speak English well but had stated to her that he did not do anything to the walls. She stated that she was in the apartment frequently to

bring meals to Mr. Verzola and had not paid much attention to the condition of the walls. She assumed they had been in that condition prior to the commencement of the tenancy agreement. She expressed her doubt that Mr. Verzola would be physically capable of painting and noted that the colour of the paint was the same as that above the kitchen cabinets.

Normally, the check-in inspection report would determine if the wall damage occurred during the tenancy or before. Section 15 of the *Residential Tenancies Act* requires that such a document be completed.

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.

Section 18(2) of the *Residential Tenancies Act* permits a landlord to retain all or part of the security deposit for rent arrears and repairs of damages.

18.(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.

The requirement for a landlord to provide a tenant with a check-in document is intended to provide evidence to both parties of any damages to the premises at the commencement of the tenancy agreement. In my opinion, the failure to provide such a document does not preclude a landlord from deducting repair costs from a security deposit, but if disputed by the tenant, makes the landlord's burden of proof more difficult.

The documents provided by the landlord in evidence indicate that the premises were professionally painted in August, 2003. When the former tenant vacated the premises on July 30, 2004, the condition of the walls was noted as "OK" on the check-out document. The applicant took possession on August 31, 2004. In February, 2005 the landlord inspected the premises and noted no requirement for painting. The photographs indicate a quite noticeable darker area where the two walls have been partially repainted. The respondent testified that the wall condition could not have been overlooked at the check-out of the former tenant or at the inspection in February, 2005.

The applicant is an elderly man who requires help with his meals. It is hard to imagine him even attempting to repaint the walls. However, the evidence provided by the landlord leads me to believe that the walls were damaged during his tenancy. Although there was a month between tenants in August 2004 when the damage might have occurred, it is hard to believe that it would not have been noted in February, 2005 when the walls and other components of the premises were inspected. Although I doubt Mr. Verzola undertook this poorly done painting, the evidence is convincing that it occurred during the term of his tenancy agreement and was not done by the landlord. I am led to conclude that someone who was permitted on the premises by the applicant damaged the walls and therefore the applicant is liable for the cost of repair.

In the matter of cost, it appears that the damaged walls constitute approximately 30% of the total painted area of the apartment. The cost to repaint the entire premises is approximately \$2000.00. The retained security deposit and accrued interest is somewhat less than the cost to repaint the walls.

In my opinion, the \$576.83 retained by the respondent is reasonable compensation.

Accordingly the application is dismissed.

Hal Logsdon
Rental Officer