

IN THE MATTER between **JENNIFER BARRY**, Applicant, and **LYNN ELKIN**,  
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:

**JENNIFER BARRY**

Applicant/Tenant

- and -

**LYNN ELKIN**

Respondent/Landlord

**ORDER**

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 6th of December,  
2006.

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Hal Logsdon  
Rental Officer

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**JENNIFER BARRY**

Applicant/Tenant

-and-

**LYNN ELKIN**

Respondent/Landlord

**REASONS FOR DECISION**

**Date of the Hearing:** November 28, 2006

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

**Appearances at Hearing:** Jennifer Barry, applicant  
Gerard MacNeil, witness for the applicant  
Ted Studer, representing the respondent

**Date of Decision:** December 5, 2006

**REASONS FOR DECISION**

This tenancy agreement was originally made in writing between Jennifer Barry and (Mardel) August Klane. The premises were purchased on August 3, 2004 by Lynn Elkin, who then became the landlord. There is no evidence that a new tenancy agreement was executed by the parties. The application was filed by Jennifer Barry and Gerard MacNeil against Ted Stuges and Lynn Elkin. The style of cause of this order has been amended to reflect the actual parties to the tenancy agreement.

When the property was transferred, a security deposit of \$800 and accrued interest of \$231.27 was provided to Lynn Elkin.

The tenancy agreement was terminated on September 30, 2005 when the applicant elected to take a notice of rent increase as a notice of termination. The respondent retained the security deposit and accrued interest and issued an itemised statement of the security deposit and interest (\$1059.42) and deductions for repairs (\$2090.00), leaving a balance owing to the applicant in the amount of \$1030.58. The respondent did not demand payment for the balance owing but notes on the statement that “with this reconciliation, the landlord does not give up their right to prosecute for any damages.” The respondent has not filed an application to a rental officer seeking damages in excess of the security deposit and the time limit imposed by section 68 of the *Residential Tenancies Act* has expired.

The applicant disputed that there were any damages to the premises and sought an order requiring the respondent to return the security deposit and interest in full.

Although the written tenancy agreement between the parties refers to the joint inspection of the premises by the landlord and tenant and a condition report, signed by both parties, to be attached to the tenancy agreement, the applicant did not believe such a report was completed and the respondent's representative did not believe one was ever provided to the respondent on the sale of the property. It should be noted that the applicant has been in possession of the premises since February, 1998.

The respondent provided digital movies of the premises in evidence at the hearing. Generally, they indicated damages that were consistent with the security deposit statement. Although the applicant initially denied that there were any damages, she later offered a somewhat different defence. In the matter of the damaged doors, the applicant and her witness pointed out that the premises, a mobile home was continuously shifting, making the doors difficult to open and close. The applicant testified that the former landlord refused to repair anything and the continual forcing of the doors resulted in the damage.

The photographic evidence indicated that the middle bedroom closet door was in the back yard, screwed to a fence. A number of globes were shown to be missing and there were holes in the kitchen walls. The photographic evidence indicates the premises are in very poor condition with considerable damage.

The respondent contends that even if some of the damages are not noted on the security deposit statement or fully supported by condition report evidence, there is more than sufficient tenant damage to justify the retention of the security deposit.

It is unfortunate that a report setting out the condition of the premises at the commencement of the tenancy agreement is not available. However, in my opinion, the lack of such a document does not prevent a landlord from seeking a remedy for damages to the premises. While I can accept that the former landlord may not have maintained the premises, the applicant could have sought a remedy through an application to a rental officer rather than continually forcing the doors in the premises. In my opinion, some of the door damage is certainly due to the negligence of the applicant. I may also accept that the missing slider windows have been missing since the beginning of the tenancy. Discounting the door damage by 45% and rejecting the claim for the missing slider window is reasonable. However, this still results in an amount owing to the landlord. If I look to the video evidence for additional damage that was most probably done during the long term of the tenancy and was the result of negligence, I could likely identify more.

The respondents seek no more relief than the retention of the security deposit. In my opinion, the respondent's retention of the security deposit is justified on the balance of probabilities that at least the following repair costs were made necessary due to the applicant's negligence. I have also recalculated the security deposit interest taking into consideration the amount provided to the respondent on the purchase of the property and additional interest to the date the tenancy was terminated.

Security deposit	\$800.00
Interest from former landlord (compounded)	231.27
Interest (Aug 04/04 to Oct 7/05)	24.50
Door repair (55%)	(660.00)
Window repair	(0)
Bathroom door and frame	(130.00)
Closet door	(50.00)
Drawer handles	(40.00)
Holes in kitchen walls	(100.00)
Missing light globes	<u>(120.00)</u>
Balance in favour of respondent	( \$44.23)

The application is therefore dismissed.

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Hal Logsdon  
Rental Officer