

IN THE MATTER between **809656 ALBERTA LTD.**, Applicant, and **TIM ALLEN**,
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:

809656 ALBERTA LTD.

Applicant/Landlord

- and -

TIM ALLEN

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 16th day of June,
2006.

Hal Logsdon
Rental Officer

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809656 ALBERTA LTD.

Applicant/Landlord

-and-

TIM ALLEN

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REASONS FOR DECISION

Date of the Hearing: June 13, 2006

Place of the Hearing: Yellowknife. NT

Appearances at Hearing: David Beckwith, representing the applicant
Tim Allen, respondent (by telephone)

Date of Decision: June 13, 2006

REASONS FOR DECISION

The application was filed on May 16, 2006 alleging that the respondent had disturbed other tenants and seeking the termination of the tenancy agreement. The applicant stated that the premises were abandoned on June 2, 2006. The applicant retained the security deposit and issued a statement of the deposit which was provided to the rental officer but had not been given to the respondent. The security deposit statement indicated deductions for cleaning and repairs and rent arrears resulting in a balance owing to the applicant in the amount of \$91.85. The applicant sought an order requiring the respondent to pay that amount.

The respondent disputed the amount of the security deposit held by the applicant, stating that he had provided a deposit of \$1495 for apartment 111 which was transferred to the current premises. The respondent did not know if any deductions were made at the time of the transfer. The applicant had only the security deposit statement as evidence which indicated that a deposit of \$1070 was paid on February 1, 2006.

The respondent also disputed the charges of \$192 for the repair of a broken window, testifying that the broken window was a result of vandalism while he was not at home. He stated that the persons who broke the window were not in his apartment or permitted into the building by himself.

Section 18(2) permits a landlord to retain all or part of a security deposit for repairs of damage

and sections 42(1) and 42(2) further define damage.

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.

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.

Damages done by persons who were not permitted on the premises by the tenant are not the tenant's obligation to repair. The deductions for the window repair are therefore denied and the applicant's request for relief in excess of the retained security deposit is dismissed.

Normally, in a matter such as this one, I would issue an order requiring the landlord to return part of the deposit to the tenant. However, the amount of the deposit appears to be in dispute and because the respondent is currently incarcerated, his ability to provide any physical evidence is somewhat impeded. I leave it to the respondent to file a future application for the return of all or part of the security deposit when he is able to assemble his evidence. He should note that the Act requires that such an application must be made within six months of the end of the tenancy agreement but leave to extend that deadline may be considered.

The applicant should ensure that the statement of the security deposit is provided to the respondent.

Hal Logsdon
Rental Officer