

IN THE MATTER between **AURELE MELANSON AND SUZIE LUCAS**, Applicants,
and **JUSTIN SIMMS**, 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 **INUVIK, NT**.

BETWEEN:

AURELE MELANSON AND SUZIE LUCAS

Applicants/Landlords

- and -

JUSTIN SIMMS

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 41(4)(a) of the *Residential Tenancies Act*, the respondent shall pay the applicants rent arrears in the amount of three hundred seventy seven dollars and nine cents (\$377.09).
2. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondent shall pay the applicants repair and cleaning costs in the amount of two thousand six hundred fifty dollars (\$2650.00).

DATED at the City of Yellowknife, in the Northwest Territories this 31st day of August,
2006.

Hal Logsdon
Rental Officer

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Applicants/Landlords

-and-

JUSTIN SIMMS

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REASONS FOR DECISION

Date of the Hearing: July 26, continued on August 16, 2006

Place of the Hearing: Inuvik, NT via teleconference

Appearances at Hearing: Angela Fleming, representing the applicants
Suzie Lucas, applicant (July 26)
Aurele Melanson, applicant
Justin Simms, respondent
Dwayne Seward, witness for the respondent

Date of Decision: August 31, 2006

REASONS FOR DECISION

This tenancy agreement followed an offer to purchase agreement whereby the rent paid would be applied to the purchase price on closing and forfeited if the respondent failed to complete the purchase by the closing date of December 31, 2005. The respondent failed to complete the purchase but remained in possession, paying the applicants a monthly rent of \$942.73.

On June 1, 2006 the applicants served a notice of early termination on the respondent seeking vacant possession on June 10, 2006 for allegedly failing to pay rent. The applicants filed an application to a rental officer on June 9, 2006 seeking an order for rent arrears and termination of the tenancy agreement for non-payment of rent and because the applicants wished to use the premises as their own residence.

Prior to the matter being heard, the applicants took possession of the premises and alleged that the respondent had damaged the premises and failed to leave them in a clean condition. The applicants filed an estimate of repairs, cleaning costs and photographs with the rental officer and served a copy on the respondent. The applicants sought relief for repairs, cleaning and rent arrears in excess of \$27,000.

At the hearing, it became evident from the testimony of both the applicants and respondent that the repair estimate covered significantly more than either party considered to be the result of the respondent's negligence. As the repair estimate was not itemized, the matter was adjourned and

the applicants instructed to provided a revised itemised estimate to the rental officer and the respondent. The applicants filed a revised estimate with the rental officer on August 15, 2006 and sent a copy to the respondent by registered mail dated August 9, 2006. The revised repair estimate outlined nine areas of repair for a total of \$5000. The applicants also sought cleaning costs of \$1650 and the May, 2006 rent, which was allegedly unpaid, in the amount of \$942.73. The hearing was continued on August 16, 2006.

The respondent disputed the alleged rent arrears testifying that the rent payments were made by pre-authorized withdrawals from his bank account and that the May, 2006 rent was withdrawn from his account on May 30, 2006. He stated that he stopped the pre-authorized withdrawals after that date. The applicant claimed to have a statement in his possession as evidence of the transaction but it was not provided to either the applicants or the rental officer prior to the hearing and the matter was heard by telephone with the parties in different locations. There was no evidence such as a rent ledger or similar records provided by the applicants. In my opinion, the applicants have not provided sufficient evidence to conclude that the May, 2006 rent was not paid. However, the parties agreed that the respondent remained in possession of the premises until June 13, 2006, when the applicants took possession. The applicants are entitled to compensation for use and possession for twelve days which I find to be \$377.09.

THE ALLEGED DAMAGES

Weather Stripping on Front Door

A photograph of the door clearly shows damage to the weatherstripping. The

respondent denied damaging the weather stripping, testifying that it was damaged when he moved in. No inspection report was completed at the commencement of the tenancy agreement nor was one required, as there was no security deposit required by the landlord. There is insufficient evidence to conclude that the weatherstripping was damaged by the respondent. The request for repair costs is denied.

Replacement of Cupboards by the Refrigerator

The respondent did not deny removing the cupboards over the refrigerator but disputed the replacement cost of \$1000 claimed by the applicants. The respondent felt that the cupboards could be built and installed for approximately \$300. There was no evidence to determine the design or quality of the cabinets which were removed but in my opinion, a simple two-shelf cupboard made of materials normally found in a mobile home could be purchased or built for less than the \$1000 claimed by the applicants. While it is difficult, to estimate the costs of cupboards when the design and quality of the ones that were removed is unknown, in my opinion, reasonable cupboards could be provided for approximately \$500.

Patch and Paint Hole in Wall

The respondent did not deny that he damaged the wall but disputed the \$1000 cost to patch and paint the area. Mr. Melanson stated that he had repaired the wall himself and that it cost him about \$100. Mr. Melanson acknowledged that \$100 was fair compensation for the work done.

Carpet - Front Entrance

Mr. Melanson testified that the carpet in the front entrance was soaked with urine, could not be cleaned and had to be replaced. He stated that the replacement costs would be \$450 and that the carpet was in the premises when it was purchased about four years ago. The respondent stated that the carpet was of poor quality and badly stained when he took possession. The respondent also stated that in his opinion, it could have been successfully cleaned. The respondent kept several dogs and other animals in the premises. In my opinion, the replacement of the carpet is reasonable when it has been soiled by dog urine. However, both the age and quality of the carpet and the condition at the commencement of the tenancy agreement must be considered. In my opinion a fair depreciated value of the carpet is \$100.

Bi-fold Closet Doors

The applicants' representative stated that Suzie Lucas informed her that one of the closet doors was missing. Mr. Melanson could not confirm whether the door was missing. The respondent testified that the bi-fold doors were removed from their tracks but all were still in the premises and were undamaged. The direct evidence provided at the hearing does not support that one closet door is missing. The claim for compensation is denied.

Repair and Replace Windows

The applicants' estimate of repairs notes that one window requires replacement and

another requires repair. Mr. Melanson stated that in his opinion, both could be repaired. The respondent testified that one window pane was broken at the commencement of the tenancy agreement. No evidence of the condition of the windows at the commencement of the tenancy was produced. Taking into consideration the broken pane at the commencement of the tenancy agreement, in my opinion, the broken panes of glass could be replaced at a cost of \$200.

Refrigerator

The applicants' estimate of repairs is for a new refrigerator, but Mr. Melanson stated at the hearing that the refrigerator was working properly but the racks and drawers have been removed and were missing. The respondent acknowledged that the racks and trays had been removed. In my opinion, racks and drawers could be obtained for a cost of approximately \$100.

Install Toilet

The toilet had been removed and the applicants sought costs of installation of \$50. The respondent testified that the toilet was leaking and that he was in the process of replacing the seal when the applicant took possession. There is no evidence of damage to the toilet. While the agreement for sale obligates the respondent to maintain the premises during the one year period before closing, it does not serve as a tenancy agreement past the anticipated closing date. Section 30 of the *Residential Tenancies Act* obligates a landlord to maintain the premises in a good state of repair unless the parties

have agreed that the tenant should perform this obligation. I see no evidence that the parties have agreed that the respondent should maintain the premises after December 31, 2005. In my opinion, the toilet was not damaged by the respondent and the repair of the leak is the responsibility of the applicants. The request for relief is denied.

The photographic evidence adequately substantiates the extremely dirty condition of the premises. The respondent claims that he would have cleaned and repaired the premises if he was given the opportunity. He alleges that the applicants took possession of the premises while he was still in the process of moving and that he had every intention of completing the required cleaning and repairs. He stated that he told Ms. Lucas of his intention to clean and repair the premises.

The respondent testified that when he received the notice of early termination he began looking for another place to live. He found another place but it needed repairs, which he undertook. He stated that after the repairs were complete, he began moving his possessions, finally moving his dogs to the new location on June 12 or 13, 2006. The respondent stated that he had spent the night in the premises up to the time the applicants took possession. He stated that after moving his dogs, the landlord took possession, preventing his re-entry. The respondent stated that he asked for and received assistance from the RCMP on or about June 20, 2006 to remove some possessions which remained on the premises.

The applicants' representative stated that Ms. Lucas had been living across the street from the

premises and believed the premises had been abandoned since the doors were left unlocked and most of the possessions had been removed. The respondent stated that he never locked the doors to the premises because his dogs kept the premises safe from intruders.

Section 1(3) sets out the criteria for abandonment of rental premises.

- 1.(3) For the purpose of this Act, a tenant has abandoned the rental premises and the residential complex where the tenancy has not been terminated in accordance with this Act and**
- (a) the landlord has reasonable grounds to believe that the tenant has left the rental premises; or**
 - (b) the tenant does not ordinarily live in the rental premises, has not expressed an intention to resume living in the rental premises, and the rent the tenant has paid is no longer sufficient to meet the tenant's obligation to pay rent.**

Did the applicants have reasonable grounds to believe the respondent had left the premises? In my opinion, yes. Ms. Lucas was in a position to observe the progress of the respondent moving out of the premises. When the dogs were removed and the premises left unsecured, the landlord could, in my opinion, reasonably conclude that the respondent had left. If the tenant intended to return to complete the cleaning and repairs, it is reasonable to assume he would have secured the premises and/or left his dogs there. Therefore I find the respondent responsible for the cleaning costs of \$1650 and find those costs reasonable.

In summary, I find the respondent in breach of his obligation to repair the premises and in breach of his obligation to pay rent for the days he was in possession in June, 2006. An order shall issue requiring the respondent to pay the applicants rent arrears in the amount of \$377.09 and repair and cleaning costs in the amount of \$2650, calculated as follows:

Rent arrears (12 days at \$31.424/day) - \$377.09

Cupboard replacement	\$500
Patch & paint wall	100
Carpet - entrance	100
Repair windows	200
Refrigerator parts	100
Cleaning	<u>1650</u>
Total	\$2650

Hal Logsdon
Rental Officer