Files #10-9353 & #10-9424

IN THE MATTER between **DWAYNE HANSEN**, Tenant, and **PAUL HACHEY**, Landlord;

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:

DWAYNE HANSEN

Tenant

- and -

PAUL HACHEY

Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18(5) of the *Residential Tenancies Act*, the landlord shall return a portion of the retained security deposit to the tenant in the amount of four hundred forty two dollars and two cents ($442.02).

DATED at the City of Yellowknife, in the Northwest Territories this 8th day of March, 2007.

Hal Logsdon

Rental Officer

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Tenant

-and-

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REASONS FOR DECISION

Date of the Hearing:	**February 28, 2007**
Place of the Hearing:	**Hay River, NT**
Appearances at Hearing:	**Dwayne Hansen, tenant** **Terri Hansen** **Paul Hachey, landlord**
Date of Decision:	**March 8, 2007**

REASONS FOR DECISION

The tenant filed an application on December 14, 2006 seeking the return of a portion of the retained security deposit. The landlord filed an application on January 24, 2007 seeking utility costs, additional repairs to the premises, rent to the end of the term and costs related to the removal of personal goods. With the consent of both parties, both maters were heard at a common hearing.

The tenant's application was filed in the names of Dwayne Hansen and Terri Hansen although only Dwayne Hansen appears on the tenancy agreement as tenant. The style of cause of this order reflects that Dwayne Hansen is the sole tenant.

The tenancy agreement commenced on August 1, 2006 and was made for 13 month term ending on August 31, 2007. The tenancy agreement was terminated by mutual agreement in writing albeit in a rather unusual form. The agreement appears to name three dates on which the tenancy will be terminated (October 31, November 1 and November 10, 2006). The parties agreed that they understood that the premises would be vacated on November 10, 2006. In my opinion, this is the effective termination date. There are also conditions placed on the agreement.

The landlord retained a portion of the security deposit and issued a statement of the deposit in accordance with section 18, of the *Residential Tenancies Act*. An inspection report, outlining the condition of the premises at the commencement of the tenancy agreement, was completed and

signed by both parties. An inspection report was also completed at the termination of the tenancy agreement and signed by the landlord and Terri Hansen. The landlord returned $671.78 of the security deposit to the tenant

The tenant stated that items were added to the check-out inspection report after it was signed. The tenant stated that they did not dispute the repairs to the door hinge and kitchen drawers or the requirement to clean the carpets. The tenant disputed the remainder of the repairs and particularly objected to the labour charges for cleaning the premises. The tenant testified that they spent a lot of time cleaning the premises and, with the exception of the carpet, the premises were very clean. The tenant provided photographs of the premises in evidence which were taken at the end of the tenancy agreement. The tenant stated that the landlord had stated at the check-out inspection that the carpet cleaning and repairs would cost no more than $300.

The landlord acknowledged that he did not provide a copy of the final inspection report to the tenants but denied adding anything to the report after it had been signed by Ms. Hansen. The landlord noted that he had kept track of the time spent by himself and his wife and submitted that information with the application. The landlord stated that the living room carpet was shampooed four times and treated with an odour enzyme.

I can find no discrepancies between the check out report and the list of material cost claimed by the landlord. I find no evidence that any notation was added to the inspection report after Ms.

Hansen signed it. There is no statutory requirement to complete such a report at the end of a tenancy agreement. The repairs are minor and the tenant acknowledged all of them on the material list with the exception of the small wall repair in a bedroom and minor screen repair. Both are noted on the check-out inspection report. I find the material costs of $199.35 to be reasonable. In the matter of labour, however, I can not find sufficient evidence to support the expenditure of 28 hours to clean and repair the premises. The photographs provided in evidence by the tenants and their testimony indicate that the premises were left in a reasonably clean state except the carpet. Although the landlord claims that the carpets were cleaned four times (which may have contributed to the odour he is now seeking additional relief to eliminate), I can not find evidence to support the expenditure of more than a day's work. I find 7.5 hours of labour to be reasonable.

The landlord stated that the tenants had failed to pay for fuel and water during the tenancy agreement. The landlord provided an invoice for water which indicated a balance owing of $167.52. The landlord stated that he had not paid the invoice on behalf of the tenant but the balance would be added to his tax account if unpaid. The landlord also provided a statement from the fuel supplier which indicated a balance owing in the amount of $84.79. The tenancy agreement between the parties obligates the tenant to pay for fuel and water during the term of the tenancy agreement. The tenant testified that the fuel bill had been paid. As the water bill is still outstanding and will undoubtedly be added to the landlord's property taxes, he shall be authorized to pay it and the tenant shall reimburse the landlord accordingly.

The landlord also stated that after the security deposit statement had been completed and the balance returned to the tenant, he noticed that the carpet had an unpleasant odour. He stated that he had determined that the underlay had to be replaced, the subfloor sealed and the carpet and baseboards reinstalled. He estimated the cost of this work to be $1140. The landlord was unable to identify the odour or what may have caused it. The check-out inspection indicates a small stain on the living room carpet and the requirement for shampooing of the carpets in the living room and bedrooms. No notation regarding odour is contained on the final inspection report. The condition of the subfloor and underlay have not been determined. There is no evidence to conclude that the odour was caused by the negligence of the tenant. The tenant testified that he did not keep a pet in the premises. It is entirely possible that the multiple carpet cleaning at the end of the tenancy agreement and the resultant wetting of the underlay have caused the odour. I can not conclude from the evidence that the odour was caused by any negligence of the tenant. The landlord's claim for relief for the additional carpet repairs is denied.

The landlord also seeks the balance of the rent for the term of the tenancy agreement (10 months at $1800/month). The landlord bases this claim on a condition in the mutual agreement to terminate which makes the termination conditional upon the cleaning and repair costs being less than the security deposit. Presumably, because the landlord's claimed costs of cleaning and repair now exceed the amount of the security deposit, the mutual agreement is null and void and the tenant is now deemed to have abandoned the premises. On abandonment, the tenant is liable for lost rent, subject to the landlord's efforts to mitigate loss. Even if one were to accept that the

conditions placed on the mutual agreement to terminate were effective, the landlord could only claim actual loss of rent. The landlord re-rented the premises on December 5, 2006. In my opinion, the conditions placed on the mutual agreement to terminate are not reasonable and are not enforceable. They can not serve to void the agreement to terminate and turn a termination into an abandonment. In any case, the cost of cleaning and repairs determined by this order do not now exceed the security deposit. The landlord's claim for the rent to the end of the term or lost rent is denied.

The landlord also claims $35 for the removal of clothes and a vacuum cleaner and seven bags of garbage which were left in the premises by the tenant. The clothing and vacuum cleaner were returned to the tenant. The *Residential Tenancies Act* permits a landlord to collect removal and storage costs from a tenant when personal property is left in the premises after a tenancy agreement has been terminated or abandoned. There is no remedy to collect these charges through an application to a rental officer. The costs to remove the bags of garbage are part of the permitted labour costs. No additional relief shall be granted.

In summary, I find the original deductions made for labour from the tenant's security deposit to be excessive and the tenant liable for additional water costs that have not been paid. I find the amount owing to the tenant to be $442.02 calculated as follows:

Security deposit	$1800.00
Interest	12.51
Repair & cleaning materials	(199.35)
Labour (7.5 hrs @$40/hr)	(300.00)

GST	(29.96)
Interest on late rent	(1.88)
Water costs	(167.52)
Subtotal	$1113.80
Previously paid	(671.78)
Total due tenant	$442.02

An order shall issue requiring the landlord to return a portion of the security deposit in the amount of $442.02.

Hal Logsdon
Rental Officer