

IN THE MATTER between **THE EXECUTIVE LTD.**, Applicant, and **KAREN BENEDICT AND COLIN BENEDICT**, Respondents;

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:

THE EXECUTIVE LTD.

Applicant/Landlord

- and -

KAREN BENEDICT AND COLIN BENEDICT

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18(5) of the *Residential Tenancies Act*, the applicant shall return a portion of the retained security deposit to the respondents in the amount of forty seven dollars and sixty six cents (\$47.66).

DATED at the City of Yellowknife, in the Northwest Territories this 24th day of August, 2007.

Hal Logsdon
Rental Officer

IN THE MATTER between **THE EXECUTIVE LTD.**, Applicant, and **KAREN BENEDICT AND COLIN BENEDICT**, Respondents.

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:

THE EXECUTIVE LTD.

Applicant/Landlord

-and-

KAREN BENEDICT AND COLIN BENEDICT

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing: August 22, 2007

Place of the Hearing: Yellowknife, NT

Appearances at Hearing: Dennis Williacy, representing the applicant
Karen Benedict, respondent
Colin Benedict, respondent

Date of Decision: August 24, 2007

REASONS FOR DECISION

The parties entered into a one year term agreement commencing on April 1, 2006. The respondents gave notice to terminate and vacated the premises on March 31, 2007. The applicant inspected the premises and determined that no repairs or cleaning were necessary but retained the security deposit and accrued interest because the rent for March, 2007 had not been paid.

The new tenant was permitted to take possession but on entering the apartment complained to the landlord of a urine odour and refused to move in. The applicant stated that on second inspection of the premises they noticed a “faint” odour and made arrangements to have the carpets inspected and more thoroughly cleaned. After pulling up the corners of the carpet where the urine damage was suspected and cleaning both sides of the carpet, the odour became much stronger. The applicant pulled up the carpets and found the underlay and sub floor damaged by urine. The sub floor was painted and new carpet and underlay installed. The applicant sought an order requiring the respondents to pay for the cost of the carpet cleaning, the new carpet and compensation for lost rent for the month of April, 2007.

The respondents stated that they had kept a cat in the apartment but did not believe that the damage was caused by their cat. The respondents noted that the check-in inspection report indicated several stains on the carpet and stated that they were told by the landlord that the carpets were old, perhaps 10 years old or more, but still serviceable. The respondents stated that

they had the carpets cleaned before moving out and did not detect any odour at all during their tenancy or at the check-out inspection.

The applicant acknowledged that no odour was detected at the check-out and the security deposit statement notes "No deductions, tenant took care of the unit well." The applicant stated that the carpet had been replaced one year before the respondents took possession, although no evidence of the replacement date was provided. The applicant stated that the apartment was not ready to rent for three weeks due to the installation of the new carpet and the new tenant did not move back in until April 1, 2007.

It is apparent that the odour became more noticeable after the carpet was pulled up and cleaned on both sides. The moisture of the cleaning solution obviously activated the odour which was undetectable by both landlord and tenant at the check-out inspection. It is not unreasonable to conclude that the carpet had not been recently soiled as the odour only became quite noticeable when the carpet was thoroughly moistened, top and bottom. Since the carpet pre-dates the occupancy of the respondents, at least by a year but possibly more, it is entirely possible that the pet of a former tenant caused some or all of the damage which was detected due to the aggressive moistening of the carpet. It would seem logical that if the respondent's cat was the culprit, the landlord would have noticed the odour at the check-out inspection. In my opinion, there is not sufficient evidence to conclude that the damage to the carpet was caused by the respondents' cat. Therefore, the applicant's request for costs and compensation is denied.

The applicant retained the security deposit due to the non-payment of the March, 2007 rent. The accrued interest of \$47.66 should be returned to the respondents. An order shall issue requiring the applicant to return a portion of the security deposit to the respondents in the amount of \$47.66.

Hal Logsdon
Rental Officer