File #10-9458B

IN THE MATTER between **JOHN CARTER AND TRACY CARTER**, Applicants, and **LONA HEGEMAN**, 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, **COLIN BAILE**, Deputy Rental Officer.

BETWEEN:

JOHN CARTER AND TRACY CARTER

Applicants/Tenants

- and -

LONA HEGEMAN

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. The Respondent/Landlord shall return to the Applicants/Tenants the security deposit and interest in the amount of $992.30.

DATED at the City of Yellowknife, in the Northwest Territories this 25th day of July, 2014.

Colin Baile
Deputy Rental Officer

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-and-

LONA HEGEMAN

Respondent/Landlord

REASONS FOR DECISION

Date of the Hearing: **July 22, 2008**

Place of the Hearing: **Yellowknife NT**

Appearances at Hearing: **Tracy Carter, John Carter, Lona Hegeman**

Date of Decision: **July 25, 2008**

REASONS FOR DECISION

Preliminary Matters

The Applicants/Tenants filed an Application to a Rental Officer on March 1, 2007 regarding the return of a security deposit. A Rental Officer in Yellowknife originally heard the matter on March 20, 2007. The Respondent/Landlord appealed the resulting order to the Supreme Court of the Northwest Territories and Reasons for Judgement were filed by the Court on April 24, 2008 (*Hegeman v. Carter et al*, 2008 NWTSC 24). The appeal was allowed and the Court directed the matter be re-heard by a Rental Officer other than Hal Logsdon.

Independently of the above noted Application and appeal, the Respondent/Landlord on May 31, 2007 filed an Application to a Rental Officer seeking compensation for tenant damages and rental arrears. This matter was heard on August 22, 2007 and the Application was dismissed as a result of the Respondent/Landlord filing her Application after the six month period within which an Application must be filed pursuant to section 68 of the *Residential Tenancies Act*, R.S.N.W.T. 1988, c.8 (Supp.) ("the Act").

Background

The parties entered into a written, month-to-month tenancy agreement on March 2, 2003 regarding the rental premises located at 109 Stinson Road, Yellowknife. The Applicants/Tenants took possession of the premises on the following day. At hearing, Ms. Carter indicated that a security deposit of $950.00 was paid in two equal payments at the beginning of March 2003 and the second payment in mid-March. The Application to a Rental Officer, together with other documents indicates that the security deposit was in the amount of $900.00. The Applicants vacated the rental premises on October 30, 2006.

Applicants' position

The Applicants/Tenants submit that a notice of their intention to vacate the premises was given in the form of a letter dated October 11, 2006. The notice stated in part: "*This letter will serve as notice that we will no longer be renting the premises at 109 Stinson Road. We will vacate the premises on October 31st*." The Applicants stated that the notice was placed in the Respondent's mailbox at her home on October 11, 2006. The Applicants also stated that they had emailed the Respondent notice around the same time. The Applicants provided no evidence of the emails. The Applicants further submit that the Respondent/Landlord attended at the premises on two occasions between October 11th and 22nd, 2006 and informed them that she intended to renovate the entire trailer. Mr. Carter advised at hearing that during the Respondent's two visits no mention was made of their pending departure. The Applicants also allege that the Respondent telephoned them to ask if they could vacate the premises earlier than October 31, 2006.

Respondent's position

The Respondent stated that the Notice to Vacate dated October 11, 2006 was received on November 8, 2006. Provided as part of her submission on Rental Office file 10-9603, was a statement of Andy Chang. Mr. Chang stated that he was living at the Respondent's home and was present to see the notice slide under the door of the Respondent's residence. The Respondent acknowledges that she attended the rental premises on two occasions during October 2006; during one visit she spoke to Mr. Carter outside and during the second, Trevor Kasteel accompanied her. It is the Respondent's contention that she and Mr. Kasteel attended the premises in order to determine the extent of damage resulting from a small fire reported by the Applicants. No discussion about the Applicants vacating the premises took place during her visits, as she had not received the Notice to Vacate at that time.

Analysis

The parties had entered into a periodic tenancy agreement on or about March 2, 2003. The Applicants sought to terminate the tenancy agreement in October 2006. Section 52(1)(c) of the Act sets out the time within which a tenant must give notice to terminate a tenancy agreement.

> **52.** (1) Where a tenancy agreement does not specify a date for the termination of the tenancy agreement, the tenant may terminate the tenancy on the last day of a period of the tenancy by giving the landlord a notice of termination,
>
> > (c) in the case of a monthly tenancy that has continued for 12 months or more, at least 60 days before the termination date stated in the notice of termination.

The tenancy agreement between the parties had been in place for a period of time in excess of 12 months and therefore the Applicants were required to give 60 days notice of their intention to vacate.

The Act does provide for a landlord and tenant to terminate a tenancy agreement by consent.

> **50.** A landlord and tenant may agree in writing after a tenancy agreement has been made to terminate the tenancy on a specified date and the tenancy is terminated on the date specified.

It is the assertion of the Applicants that the Respondent had asked if they could vacate the premises prior to October 31, 2006. The Respondent refutes this assertion. I accept the Respondent's position that no request was made of the Applicants to vacate prior to October 31, 2006. Both parties agree that during the Respondent's two visits in October 2006, no mention was made of the Applicants' intention to vacate. Had the Respondent been aware of the Applicants intention to vacate, it stands to reason that some discussion would have taken place concerning the subject. This suggests to me that the Respondent had not received the Applicants' notice to vacate. The Respondent would have had to know that the Applicants' intended to vacate in order to make such a request. Further, any agreement between the parties to terminate the tenancy by consent, needed to be in writing.

The Applicants vacated the premises without providing the Respondent with the required notice as set out in section 51(1) of the Act. I find therefore that the Applicants abandoned the rental premises.

> **62.** (1) Where a tenant abandons a rental premises, the tenancy agreement is terminated on the date the rental premises were abandoned but the tenant remains liable, subject to subsection 9(2), to compensate the landlord for loss of future rent that would have been payable under the tenancy agreement.

The Applicants have stated that they gave notice to vacate on October 11, 2006 whereas the Respondent has asserted that notice was received on November 8, 2006. Regardless of which date is accurate, the Applicants failed to give notice in keeping with section 52(1) of the Act. If notice was given on October 11, 2006, the earliest the tenancy could have been lawfully terminated was December 31, 2006.

The Act addresses how a security deposit should be administered after a tenancy is terminated.

> **18.** (1) Subject to this section, where a landlord holds a security deposit the landlord shall, within 10 days after the tenant vacates or abandons the rental premises,
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> (a) return the security deposit to the tenant with interest; and
>
> (b) give the tenant an itemized statement of account for the security deposit.
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> (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.

The Applicants and Respondent give oral evidence as to the various attempts at communication subsequent to the tenancy ending. It is not germane to this analysis to determine which version of events is more likely in that the parties agree the Respondent failed to return the Applicants' security deposit or in the alternative, give a statement of account for the security deposit. As such, the Respondent did not meet her obligation as set out in section 18(1) of the Act. However, section 18(2) of the Act does provide the authority to a Landlord to retain a security deposit for any arrears of rent.

Where a conflict arises as to the disposition of a security deposit, section 18(5) of the Act allows for the matter to be determined by a Rental Officer.

> 18(5) Where a landlord fails to return all or part of the security deposit with interest, a landlord or a tenant shall refer the matter to a rental officer who shall inquire into the matter and render a decision on the matter.

In the matter of *Greenway Realty LTD v. N.C. Roy,* Mr. Justice Vertes addressed the issue of a landlord retaining a security deposit for "loss of future rent". In his reasons he stated:

[5] The Act defines a “security deposit” as money paid by a tenant as “security for the repairs of damage caused by a tenant to the rental premises or any *arrears of rent*”: s.1(1). The emphasis on *arrears of rent* is mine. A landlord may object to the return of all or part of the deposit on the grounds that the tenant “has caused damage to the rental premises and repairs are necessary or the tenant is in *arrears of rent”:* s.18(3). In such case certain steps have to be taken by the landlord.

[6] Nowhere in the Act is the landlord authorized to retain a security deposit as compensation for loss of future rents. That is an economic loss claim. A security deposit may be retained for *arrears of rent* but that is not the same as future rent. The term *arrears of rent*, as used in the Act, clearly means rent that was due at a fixed time and that time has now lapsed without payment being made. It is rent behind, not in the future. To hold otherwise would not only distort the plain meaning of the words used in the statute but could also be viewed as conflicting with the express statutory prohibition on taking a security deposit as security for the first or last month’s rent: s.14(5). (*Greenway Realty Ltd. v. Roy* -- [1998] N.W.T.R. 309)

The Respondent had filed an Application to a Rental Officer in May 2007 regarding tenant damages and rental arrears pursuant to section 18 of the Act. As noted above, that Application was dismissed and therefore the Respondent has no other means of seeking compensation for loss of future rent.

As the Respondent has no lawfully entitlement to the security deposit and interest, she must return both to the Applicants. I calculate the interest to be $92.30 for the period of March 2, 2003 to October 30, 2006.

Colin Baile
Deputy Rental Officer