File #10-10160

IN THE MATTER between **GERRY MAINVILLE**, Applicant, and **JAY STEELE**, 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:

GERRY MAINVILLE

Applicant/Landlord

- and -

JAY STEELE

Respondent/Tenant

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 42(3)(e) of the *Residential Tenancies Act*, the respondent shall pay the applicant repair and cleaning costs in the amount of nine hundred thirteen dollars ($913.00).

DATED at the City of Yellowknife, in the Northwest Territories this 14th day of August, 2008.

Hal Logsdon
Rental Officer

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Applicant/Landlord

-and-

JAY STEELE

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REASONS FOR DECISION

Date of the Hearing:	**August 12, 2008**
Place of the Hearing:	**Yellowknife, NT**
Appearances at Hearing:	**Gerry Mainville, applicant (by telephone)** **Jay Steele, respondent**
Date of Decision:	**August 14, 2008**

REASONS FOR DECISION

The written tenancy agreement provided in evidence was disputed by the respondent, who testified that the tenant signature on the document was not his and that he did not take possession of the premises on September 1, 2004, the commencement date shown on the document. The respondent testified that he rented a room at 6215 Finlayson Drive North from Carson Boyd commencing in February, 2005 and paid rent to Mr. Boyd until August 31, 2006 when Mr. Boyd moved out. The respondent testified that he began paying rent to the applicant in September, 2007. The respondent gave notice to the applicant by e-mail on January 31, 2008 of his intention to terminate the tenancy agreement effective on February 29, 2008.

As the witness to the respondent's signature was not available at the hearing and the applicant was not present at the signing, I accept the respondent's testimony and shall consider the tenancy agreement provided in evidence by the applicant to be of no effect. I find the tenancy agreement between the parties to be a verbal, monthly tenancy agreement which commenced on September 1, 2007 and was terminated on February 29, 2008.

The applicant alleged that the respondent breached the tenancy agreement by failing to repair damages to the rental premises. The applicant also alleged that the respondent failed to permit the landlord to enter the premises in order to show the premises to prospective tenants after the respondent had given notice to terminate the tenancy agreement. The applicant sought an order requiring the respondent to pay repair costs and compensation for lost rent.

Repair and Cleaning Costs

The applicant provided an invoice and an estimate in evidence. The estimate itemized a number of repairs with costs totalling $2250. Included was the installation of a new exterior door and frame ($500) and the reinstallation of handrails ($100). The applicant stated that the respondent's room mate had paid $270 toward the door costs, although an e-mail from the applicant to the respondent dated July 8, 2008 acknowledges receipt of $280, leaving a balance of $220. The applicant also acknowledged that the handrails were removed by contractors who installed a new boiler and were not removed by the respondent.

The invoice itemized both repairs and cleaning costs totalling $1299.63. Cleaning costs included general cleaning, carpet cleaning and ceiling cleaning for a total of $693 including G.S.T. The remainder was for patching and painting, the removal and replacement of a door and jamb to replace a refrigerator and a disposal fee for the refrigerator.

The respondent accepted responsibility for the door damage but argued that the remainder of the damages were present when he took possession in September, 2007. There was no inspection report or other evidence to indicate the condition of the premises on August 31, 2007. The applicant, who resides in Quebec, had no direct knowledge of the condition of the premises at the commencement of the tenancy agreement. The respondent also stated that he was not aware of the state of cleanliness of the premises at the end of the tenancy because he had not been living at the premises after he gave notice.

I do not find sufficient evidence to conclude that the repairs were the result of the respondent's negligence except for the door replacement which the respondent acknowledged. Regardless of the state of cleanliness at the commencement of the tenancy agreement, the tenant has an obligation to return the premises to the landlord in a state of ordinary cleanliness. The cleaning invoice suggests that the premises were not reasonably clean. I find the respondent responsible for repair and cleaning charges in the amount of $913 calculated as follows:

Door repair	$220
Cleaning	280
Carpet cleaning	180
Ceiling cleaning	200
GST on cleaning	33
Amount owing applicant	$913

Compensation for lost rent

A landlord has the right to enter rental premises to show the premises to prospective tenants where the tenant has given notice to terminate the tenancy agreement, however the landlord must provide written notice to the tenant. Section 26(3) of the *Residential Tenancies Act* sets out the landlord's obligation to provide notice.

> **26.(3) A landlord who intends to exercise the right to enter under subsection (2) shall give written notice to the tenant at least 24 hours before the first time of entry under the notice, specifying the purpose of the entry and the days and the hours during which the landlord intends to enter the rental premises.**

The applicant stated that he had given the required notice but did not provide copies of the written notices. The respondent provided a number of e-mails in evidence, one of which dealt

with entry to show the premises. It was dated January 31, 2008 which was the day the respondent gave his notice to terminate the tenancy agreement.

> "Jamie, can you leave a spare key under the outside stairs, I have someone who will come and see the place in the next few days. Please send me your phone number, so they can call you before they come. The key is for in case you are out of town."

The respondent stated that he did not wish to leave a key outside for reasons of security. The respondent stated that he was not staying at the premises at the time and had no direct knowledge of his room mate's alleged refusal to permit the landlord entry.

Section 28 of the Act outlines the available remedies for landlords and tenants where the provisions for entry are breached.

> **28. Where, on the application of a landlord or a tenant, a rental officer determines that an obligation imposed by section 26 or 27 has been breached, the rental officer may make an order**
>
> **(a) requiring the person who breached the obligation to not breach the obligation again; or**
>
> **(b) requiring the person who breached the obligation to compensate the affected party for loss suffered as a direct result of the breach.**

When considering compensation, the actual monetary loss must be determined as well as the applicant's efforts to mitigate that loss. The applicant was unsure of the date the respondent vacated the premises and the date the premises were re-rented but stated that the premises were not re-rented for one month. An e-mail from the applicant to the respondent dated March 24, 2008 suggests otherwise:

> "Hi Jay, the unit was cleaned out and is now rented. There is a couch and chair outside that I am getting ready to dispose of, do you want them? Can you send me your forwarding address and John's also."

The respondent testified that he had referred a prospective tenant to the applicant that was willing to rent the premises as soon as the respondent had vacated. In an email dated February 7, 2008 the respondent gives the applicant the prospective tenant's name and telephone number. There is no evidence that the applicant took any steps to contact the prospective tenant.

I am not satisfied that the applicant provided the notice required by the Act to permit him to enter the premises. The entry provisions contemplate that a landlord will give notice for specific dates and times of intended entry and, unless alternate times are given by the tenant, will enter. The provisions are not, in my opinion, intended to require the tenant to leave a key outside so that any prospective tenant referred by the landlord may enter at will. As well, even if I were to accept the notice to enter as reasonable, I am not satisfied that the applicant took reasonable steps to mitigate his loss nor am I satisfied that his loss was equivalent to one month's rent. For these reasons, the request of the applicant for compensation for lost rent is denied.

An order shall issue requiring the respondent to pay the applicant cleaning and repair costs in the amount of $913.

Hal Logsdon
Rental Officer