

IN THE MATTER between **JAMES AULD**, Applicant, and **POLAR DEVELOPMENTS LTD.**, 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:

**JAMES AULD**

Applicant/Tenant

- and -

**POLAR DEVELOPMENTS LTD.**

Respondent/Landlord

**ORDER**

IT IS HEREBY ORDERED:

1. The application is dismissed.

DATED at the City of Yellowknife, in the Northwest Territories this 19th day of December, 2008.

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Hal Logsdon  
Rental Officer

IN THE MATTER between **JAMES AULD**, Applicant, and **POLAR DEVELOPMENTS LTD.**, 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.

BETWEEN:

**JAMES AULD**

Applicant/Tenant

-and-

**POLAR DEVELOPMENTS LTD.**

Respondent/Landlord

**REASONS FOR DECISION**

**Date of the Hearing:** December 16, 2008

**Place of the Hearing:** Yellowknife, NT

**Appearances at Hearing:** James Auld, applicant  
Karen McLeod, representing the respondent

**Date of Decision:** December 19, 2008

**REASONS FOR DECISION**

The tenancy agreement between the parties was terminated on September 30, 2008. The respondent retained \$1127.81 of the security deposit and accrued interest returning the balance to the applicant. Included in the deductions were costs to replace a stained kitchen counter in the amount of \$1067.81. The applicant objected to this deduction and sought an order requiring the respondent to return the amount of \$1067.81.

The applicant stated that the statement of the security deposit was not mailed to him until October 27, 2008. He referred to the requirement to issue a statement of security deposit within ten days contained in section 18(3) of the *Residential Tenancies Act*. The applicant also objected to the deduction because he felt the stain on the counter was minor in nature and did not warrant the replacement of the entire counter. The applicant did not dispute that the staining occurred during the tenancy or that the stain constituted damage rather than normal wear and tear.

The respondent stated that the lateness of the statement was an oversight. The respondent provided photographs of the stain and an itemised accounting of the repair cost, including a quotation from the supplier of the counter. She noted that the entire counter was not replaced, only the section containing the damaged area. She also noted that the landlord had used their own staff to do the installation, which included removing and replacing the fixtures and ceramic backsplash, in order to keep the cost as low as possible. The cost of the counter had also been reduced to account for depreciation based on a 20 year useful life.

Section 18(3) of the *Residential Tenancies Act* sets out a time limitation for producing a statement of security deposit and the respondent has exceeded this limit. A late security deposit statement does not disqualify a landlord from relief when damages are present as a landlord may also seek relief pursuant to section 42. Rather than order the return of the entire security deposit because of the tardiness of the statement and later consider the landlord's application for relief pursuant to section 42, it would appear more expedient to address the matter of relief on this application, particularly when only a portion of the retained security deposit is at issue. Nevertheless, the respondent should ensure that statements are produced in a timely manner in the future.

The central issue in this matter is whether the partial replacement of the counter was warranted given the extent of the damage. That the stain was caused by the tenant's negligence during the term of the tenancy agreement is not disputed. In this regard, the photographic evidence is most useful. The photographs show a stain which most future tenants would find objectionable. It is not a blemish that most tenants would consider minor and not worth eliminating. While I would agree with the applicant that a small insignificant stain would justify some compensation for damage but not necessarily the replacement cost of the counter, this damage is not, in my opinion, in that category.

I also note that the respondent has only replaced what is necessary and has done so at the most reasonable cost taking into consideration the depreciated value of the counter. The costs are, in my opinion, reasonable.

For these reasons, the application is dismissed.

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Hal Logsdon  
Rental Officer