

IN THE MATTER between **SHAWNA TOHM AND GEOFFREY BUNGAY**, Tenants,
and **5655 NWT LTD.**, 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 **YELLOWKNIFE, NT.**

BETWEEN:

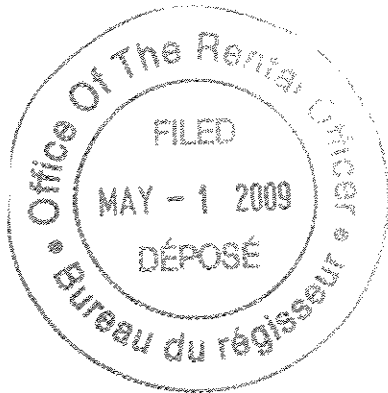
SHAWNA TOHM AND GEOFFREY BUNGAY

Tenants

- and -

5655 NWT LTD.

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 tenants in the amount of two hundred ninety five dollars and thirty two cents (\$295.32).

DATED at the City of Yellowknife, in the Northwest Territories this 30th day of April,
2009.



Hal Logsdon
Rental Officer

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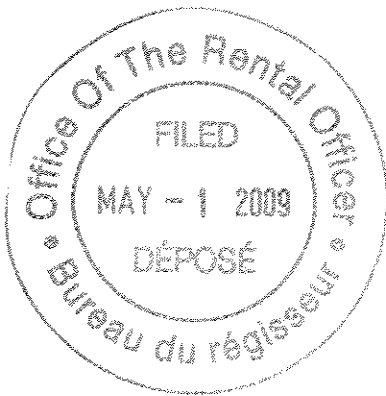
SHAWNA TOHM AND GEOFFREY BUNGAY

Tenants

-and-

5655 NWT LTD.

Landlord



REASONS FOR DECISION

<u>Date of the Hearing:</u>	April 22, 2009
<u>Place of the Hearing:</u>	Yellowknife, NT
<u>Appearances at Hearing:</u>	Shawna Tohm, tenant Geoffry Bungay, tenant Billie Levesque, witness for the tenants Lynn Elkin, representing the landlord
<u>Date of Decision:</u>	April 30, 2009

REASONS FOR DECISION

The tenants' application was filed on February 27, 2009 and the landlord's application was filed on March 23, 2009. As both applications pertain to the same premises and tenancy agreement, they were heard at a common hearing.

The tenants' application seeks the partial return of their security deposit which was retained in full by the landlord. The landlord's application sought relief for rent arrears and repair costs in excess of the security deposit.

The tenancy agreement between the parties was terminated by order on September 30, 2008. The landlord retained the security deposit (\$1650) and accrued interest (\$18.93) applying it against rent arrears (\$1307), penalties for late rent (\$4.93), replacement of a fire extinguisher (\$60), replacement of a damaged light fixture (\$4.69), carpet cleaning (\$75), replacement of a hand-held shower (\$31.99) replacement of the bathroom flooring (\$461.48) and replacement of a bedroom door (\$95), resulting in a balance owing to the landlord of \$371.16. The landlord sought relief in this amount.

The tenants disputed the replacement cost of the fire extinguisher, testifying that they left the fire extinguisher in the premises when they vacated the premises. The landlord stated they did not find it in the premises after the tenants vacated. I find no reason to question the credibility of either party. Given the contradictory testimony, I can not conclude that the extinguisher was not

in the premises. Relief for replacement costs is therefore denied. I note that had the parties conducted a check out inspection together, these types of dispute would not occur.

The tenants stated that they were unaware of any broken fixtures in the premises. The landlord stated that a pull cord from a light fixture had been pulled out, requiring the replacement of the light fixture. I find the tenants responsible for the damaged fixture and find the costs of \$4.69 reasonable.

The landlord provided a statement from a professional carpet cleaner, confirming his opinion that the carpet had not been damaged by water but appeared to be the result of dirt caused by traffic across the room. The landlord noted that the areas that had the most traffic were the most soiled and after the carpet had been cleaned you could not determine one area from another. The tenants stated that the carpet was clean when they vacated the premises. In my opinion, if cleaning the carpet resulted in making the areas of traffic indistinguishable from low traffic areas, the carpet was not reasonably clean. I find the relief requested of \$75 to be reasonable.

The tenants did not dispute the request for compensation for the hand held shower.

The landlord provided a statement from the professional carpet cleaner that there was a yellow stain on the bathroom floor which he believed to be caused by a bath mat and that it was not uncommon for certain types of bath mats to leave stains. The landlord sought compensation of \$461.48 to replace the sheet flooring in the bathroom. The tenants stated that there was no stain

on the bathroom floor and the tenant's witness stated that she did not notice any stains in the apartment that weren't there at the commencement of the tenancy.

Section 42 of the *Residential Tenancies Act* sets out a tenant's obligation to repair damage to the premises:

42.(1) A tenant shall repair damage to the rental premises and the residential complex caused by the wilful or negligent conduct of the tenant or persons who are permitted on the premises by the tenant.

In my opinion, using a bath mat in a bathroom is not a negligent act nor is it a wilful act done to create damage. Using a bath mat is not something that a reasonably careful and prudent person would avoid doing so as to not damage the bathroom floor. The bath mat may have caused damage to the floor or it may have not. However, whatever damage it may have caused, it was not, in my opinion, the result of a wilful or negligent act of the tenant. If the landlord is aware of certain products which are known to cause damage to certain materials in the premises, a rule concerning the use of the product can be established in writing and made known to tenants. I find no evidence of such a rule in this case. The request for compensation is denied.

The tenant disputed the deduction for the door replacement, stating that the hole in the door was present at the commencement of the tenancy agreement. The landlord acknowledged that the door had a hole in it at the commencement of the tenancy but that it was larger when the tenant vacated. There was no evidence to indicate how large the hole was either at the beginning or at the end of the tenancy agreement. The tenants questioned how a hole could get larger when the door was never shut.

In my opinion, a hole in an interior door, unless miniscule in size would warrant replacement of the door. Even if the hole was somehow enlarged by a negligent or wilful act of the tenant, the door should have been replaced at the expense of the landlord (or the former tenant).

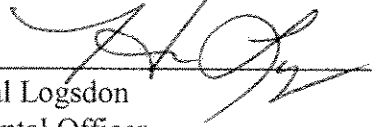
Notwithstanding that there is no evidence concerning the size of the hole, it is unreasonable, in my opinion, to expect the tenant to replace the door. The request for compensation is denied.

I note that a previous order required the landlord to compensate the tenants in the amount of \$393. The order permitted the landlord to set off the amount of the order against any unpaid rent for September, 2008. The parties agreed that the September, 2008 rent of \$1650 was not paid and that the compensation to the tenant was not paid by the landlord. Deducting the \$393 from the unpaid September rent results in a balance of rent owing of \$1257. The landlord has also applied a penalty of \$4.93 to the September, 2008 arrears.

Applying the security deposit and interest to the rent arrears and repairs I find a balance owing to the tenant in the amount of \$295.32 calculated as follows:

Security deposit	\$1650.00
Interest	18.93
Light fixture	(4.69)
Shower head	(31.99)
Carpet cleaning	(75.00)
September rent (net of previous order)	(1257.00)
Late penalty	<u>(4.93)</u>
Amount owing tenants	\$295.32

An order shall issue requiring the landlord to return a portion of the security deposit to the tenants in the amount of \$295.32.



Hal Logsdon
Rental Officer