File #10-10776

IN THE MATTER between **CHERYL CARDINAL**, Applicant, and **GERRY MAINVILLE**, 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:

CHERYL CARDINAL

Applicant/Tenant

- and -

GERRY MAINVILLE

Respondent/Landlord

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18(5) of the *Residential Tenancies Act*, the respondent shall return a portion of the retained security deposit to the YWCA of Yellowknife on behalf of the applicant in the amount of six hundred seventeen dollars and sixty three cents ($617.63).
2. Pursuant to section 30(4)(d) of the *Residential Tenancies Act* the respondent shall pay the applicant compensation for the removal of property left in the premises by the former tenant in the amount of one hundred dollars ($100.00).

DATED at the City of Yellowknife, in the Northwest Territories this 11th day of June, 2009.

Hal Logsdon
Rental Officer

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-and-

GERRY MAINVILLE

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REASONS FOR DECISION

Date of the Hearing:	**June 3, 2009**
Place of the Hearing:	**Yellowknife, NT**
Appearances at Hearing:	**Cheryl Cardinal, applicant** **Eileen Blackmore, representing the applicant** **Gerry Mainville, respondent (by telephone)**
Date of Decision:	**June 11, 2009**

REASONS FOR DECISION

The tenancy agreement between the parties was terminated on or about February 26, 2009 when the applicant vacated the premises. The respondent deducted rent arrears ($1000) and water costs ($165) from the security deposit ($1550) and returned the balance ($385) to the YWCA of Yellowknife who paid the deposit on behalf of the applicant. The applicant disputed the deductions and sought a return of the retained portion and compensation for cleaning done on behalf of the landlord. The applicant also sought the return of an alleged overpayment of rent and water charges and a reasonable resolution to the utility costs she was required to pay during the term of the tenancy agreement.

The tenancy agreement between the parties was oral in nature. The parties disagree as to the commencement date of the tenancy agreement. The applicant claims that she took possession of the premises on December 22, 2008 but spent 3 days cleaning. She contends that the commencement date of the tenancy agreement should therefore be December 25, 2008 and that she should have been required to pay only a pro-rated amount of rent for December, 2008 rather than the full monthly rent of $1550. The respondent stated that the tenancy agreement commenced on December 1, 2008 and a full months rent was due regardless of when the applicant actually took possession.

Section 2(4) of the *Residential Tenancies Act* sets out when a tenancy agreement commences.

> **2.(4) A tenancy agreement takes effect on the date the tenant is entitled to occupy the rental premises.**

The evidence provided by the respondent suggests that although the premises were advertised and offered for rent commencing on December 1, 2008 the tenancy agreement was not in place nor was the applicant entitled to possession on that date.

On December 2, 2008 the respondent e-mailed Violet Hardisty, the mother of the applicant's partner, who was inquiring about accommodation on behalf of the couple. The respondent asks for references and suggests that the best time for viewing the premises is "between 5PM and 9PM on weekdays and early in the morning on weekends". Clearly, he is only offering the premises for rent at this time, subject to reasonable references being obtained and acceptance by the prospective tenants. The next day he again contacted Ms Hardisty offering a less expensive monthly rent and security deposit. It is obvious that a tenancy agreement has still not been formed at this time.

Although no correspondence between the parties specifically outlines when the applicant was entitled to occupy the premises, it appears that the parties agreed to the terms and conditions of a tenancy agreement on or about December 12, 2008 when the respondent e-mailed the applicant and informed her that the utility account had been transferred to her name and sent her a condition report to fill out. He stated that he would send a tenancy agreement when the condition report was returned to him. In my opinion, this is the first evidence that a tenancy agreement had

been formed and the applicant was entitled to possession. The cheque for the security deposit was also issued on December 12, 2008.

Because the premises were available to rent on December 1, 2008 does not mean that a tenancy agreement commenced on that date. Similarly, simply because a tenant chooses not to move in until a date after they were entitled to possession does not change the commencement date. In my opinion, this tenancy agreement commenced on December 12, 2008. That being the case, the rent for December, 2008 should have been $1000. The parties agreed that the applicant paid $1550 for the December rent, a difference of $550.

The parties agreed that the applicant would pay the landlord an extra $165/month for water and $165 was paid for the month of December, 2008. Since the tenancy agreement commenced on December 12, 2008, a prorated amount, or $106.45, should have been paid for the December, 2008 water charges, a difference of $58.55.

On January 20, 2009 the applicant contacted the respondent by e-mail informing him that she intended to move out on February 26, 2009. On February 9, 2009 the respondent sent an e-mail to the applicant asking her to inform him of amounts of rent and utilities paid in December, 2008 and January and February, 2009. The applicant responded on the same day stating that she still owed $1000 for rent and $165 for water for February, 2009. The respondent testified that these numbers agreed with his records and deducted these amounts from the security deposit at the end of the tenancy agreement and returned the balance to the YWCA of Yellowknife.

The applicant stated that her e-mailed acknowledgment of $1000 in rent arrears considered that she paid only $550 for January, 2009 and did not consider that the December, 2008 rent should have been prorated.

Adjusting the rent and water charges based on a commencement date of December 12, 2008 I find the amount of rent owed at the end of the tenancy agreement to be $556.45 calculated as follows:

	Rent	Water	Amount Paid	Balance
December/08	$1000	$106.45	$1715	($608.55)
January/09	$1550	$165	$715	$391.45
February/09	$1550	$165	$1550	$556.45

The respondent failed to calculate interest on the security deposit. I find the interest to be $9.08.

Deducting the rent arrears from the security deposit and interest and taking into account the previous refund made, I find an amount owing of $617.63 calculated as follows:

Security deposit	$1550.00
Interest	9.08
less rent arrears	(556.45)
balance	$1002.63
less amount returned	(385.00)
Amount owing	$617.63

An order shall issue requiring the respondent to return an additional portion of the security deposit to the YWCA of Yellowknife on behalf of the applicant in the amount of $617.63.

In the matter of compensation for cleaning, the applicant claims she spent 21 hours,

> "removing belongings and garbage; total cleaning and disinfecting of the bathroom, cleaning and disinfecting of the entire kitchen including all the appliances which took quite a long time cleaning since there must have been years of cooking grime on the appliances; washing of walls; vacuuming, sweeping and washing of the floors; cleaning of the windows; and the list goes on."

The applicant sought $525 in compensation.

Section 30(5) of the *Residential Tenancies Act*, requires a tenant to give reasonable notice to a landlord of any breach of the landlords obligation to provide and maintain the rental premises in a good state of repair that comes to their attention. The respondent was apparently notified by the applicant that some items belonging to the former tenant were left in the premises. The respondent e-mailed the applicant on December 13, 2008 advising her to contact the former tenant and to store the items in the garage or below the front deck if necessary. There is no evidence that any other maintenance or cleaning issues were outlined to the respondent.

The evidence suggests that the landlord was made aware of the abandoned personal property of the former tenant but was not advised of the state of cleanliness or other faults of the premises. He expressed his willingness to deal with the known deficiencies in the unit by way of abatement of rent and asked the applicant to complete an inspection report form and return it to him. The applicant never completed the form.

In my opinion, it is not reasonable for a former tenant to make a claim for compensation for cleaning after the tenancy agreement has been terminated when the landlord was not advised of

the issue when it became apparent to the tenant. However, it is clear that the applicant had to deal with the few items that were left by the former tenant and did notify the landlord. In my opinion, $100 is reasonable compensation for the removal of these items. The respondent shall be ordered to pay compensation for the removal of items left by the former tenant in the amount of $100.

In the matter of the electrical and fuel expenses, the parties agree that the tenancy agreement obligated the tenant to pay the full cost of electricity and fuel for the residential complex even though it contained two premises. The applicant contends that the agreement was not fair as she was required to pay for electricity and fuel which she did not directly consume. The respondent defended the agreement, stating that he had lowered the rent for the applicant in consideration of the fact that she was paying for the fuel and electricity for the entire residential complex.

While I agree that the arrangement was not a desirable one for any tenant, the applicant did, nevertheless, agree to it. The tenancy agreement is a contract. There is nothing in the *Residential Tenancies Act* which would require this arrangement to be otherwise. Consequently, the applicant's request for relief is denied.

Hal Logsdon
Rental Officer