File #10-10742

IN THE MATTER between **RADHA RAUT AND BINTI RAUT**, Applicants, and **GABRIEL MANTLA AND ADELINE VITAL**, Respondents;

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:

RADHA RAUT AND BINTI RAUT

Applicants/Landlords

- and -

GABRIEL MANTLA AND ADELINE VITAL

Respondents/Tenants

ORDER

IT IS HEREBY ORDERED:

1. Pursuant to section 18(5) of the *Residential Tenancies Act*, the applicants shall return a portion of the retained security deposit to the respondents in the amount of three hundred nineteen dollars and one cent ($319.01).

DATED at the City of Yellowknife, in the Northwest Territories this 9th day of September, 2009.

Hal Logsdon
Rental Officer

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BETWEEN:

RADHA RAUT AND BINTI RAUT

Applicants/Landlords

-and-

GABRIEL MANTLA AND ADELINE VITAL

Respondents/Tenants

REASONS FOR DECISION

Date of the Hearing:	**August 26, 2009**
Place of the Hearing:	**Yellowknife, NT**
Appearances at Hearing:	**R. Clark Rehn, representing the applicants** **Radha Raut, applicant** **Manik Duggar, witness for the applicants** **Brad Enge, representing the respondents** **Gabriel Mantla, respondent** **Adeline Vital, respondent** **Jessica Abel, witness for the respondents** **Lucy Beaulieu, witness for the respondents**
Date of Decision:	**September 9, 2009**

REASONS FOR DECISION

The tenancy agreement between the parties commenced on December 10, 2007 and was made for a term ending on December 31, 2008. The respondents vacated the premises at the end of the term. The applicants alleged that the respondents had breached the tenancy agreement by failing to pay rent, failing to pay for the full cost of fuel during the term and failing to repair damages to the premises. The applicants sought an order requiring the respondents to pay costs to repair damages to the premises caused by a freeze-up ($580.25), fuel costs paid on their behalf ($630.06), rent arrears ($750) and repair of a broken picture window ($979.27).

At the commencement of the tenancy agreement, the respondents provided the applicants with a security deposit of $1500 as well as the last month's rent of $1500. I note that the requirement to provide the last month’s rent in advance is prohibited by section 14(5) of the *Residential Tenancies Act* and that the inclusion of this obligation in article 12(h) of the tenancy agreement is of no effect.

At the commencement of the tenancy agreement, the parties failed to comply with the provision of article 9(1) of the tenancy agreement and section 15 of the *Residential Tenancies Act*. These provisions require that an inspection report be completed and signed by both parties setting out the condition of the premises at the commencement of the tenancy agreement.

After the respondents vacated the premises, the applicants retained the security deposit but failed

to provided a statement of the security deposit and the deductions as required by section 18(3) of the *Residential Tenancies Act*. The respondents did not pay the December, 2008 rent and the applicants applied the prepaid rent which was provided at the commencement of the tenancy agreement.

Repairs Due to Freezing

The applicants alleged that the respondents had failed to fill up the fuel tank at the end of the tenancy agreement which resulted in a loss of heat and damage to the toilet due to freezing. The applicants sought compensation of $380.75 for replacement of the broken toilet and $199.50 for costs related to restarting the furnace. Invoices for these repairs were provided in evidence.

The tenancy agreement between the parties obligates the tenants to pay for fuel during the term. The parties have added an additional clause to the tenancy agreement which reads, " The landlord will fill the fuel tank at the beginning of the lease and the tenant will fill the tank at the end of the lease." This is the usual practice where the tenant pays for fuel.

The applicants' witness testified that he entered the premises in January, 2009 to arrange for a broken window to be replaced and discovered that the heat was off. He stated that the gauge on the fuel tank indicated the tank was empty and called the fuel distributer that day. A delivery slip, entered in evidence, indicates that 655.8 litres of fuel was delivered to the premises on January 11, 2009. The delivery slip is marked "fill". This would be a normal fill for a 680 litre fuel tank as they are not filled to the very top.

The applicants also provided a delivery slip in evidence which indicated that 361.0 litres of fuel were delivered on February 2, 2009. The slip is marked “please fill”. Utilizing these two fuel delivery slips it is possible to estimate the daily fuel consumption between January 11 and February 2, 2009. Taking into consideration the time of day of the deliveries, 361.0 litres of fuel were consumed in 22 days, resulting in an average daily consumption of 16.41 litres/day.

Mr. Mantla stated that he put fuel in the tank and that the furnace was operating when they vacated the premises. A delivery slip, provided in evidence by the respondents indicates that 251.8 litres of fuel were delivered to the premises on December 19, 2008. Mr. Mantla stated that the tank was 50% full at the end of the tenancy.

Even if the fuel tank was empty when the respondents had 251.8 litres of fuel delivered on December 19, 2008 the furnace would have continued to operate for 15 days or until January 3, 2009 using the daily consumption calculated above. In my opinion, it is unlikely that the fuel tank was empty on December 19, 2008 which would allow the furnace to operate even longer.

In my opinion, a landlord has an obligation to mitigate damages to the premises by taking possession immediately after tenants vacate, particularly in the winter. The evidence suggests that the premises were not checked until January 11, 2009. Temperatures dropped to -44.6 C. during the first ten days of January, 2009. A prudent landlord, would have ensured that the heat was on and the fuel level adequate. The evidence supports Mr. Mantla’s testimony that the heat was on when they vacated. Therefore, I find that the premises were in the landlord’s possession

when the freezing occurred and regardless of whether the respondents filled the fuel tank or not, the landlord had a duty to protect his property and mitigate any loss. Had the property been checked in a timely manner, the damage could have been completely avoided. The applicants' request for repairs to the toilet and charges for restarting the furnace is denied.

Fuel:

The applicants testified that the tank was filled on December 10, 2007 in accordance with the tenancy agreement. No delivery slip or invoice was provided. Mr. Mantla claimed that the tank was only 25% full at the commencement of the tenancy but it is not clear how or when he determined that or why he didn't inform the landlord at the time. I am inclined to accept the landlords' testimony that the tank was full as Mr. Mantla's testimony appears to be more an assumption rather than an observation.

Based on daily consumption estimates, I have already determined that the furnace was operating at the end of the tenancy agreement and continued to operate until at least January 3, 2009. In my opinion, it is unlikely that the tank was empty when the respondents put 251.8 litres in the tank on December 19, 2008. In my opinion, it is likely that the furnace continued to run until almost January 11, 2009 when the premises were first inspected and found frozen. I base that assumption on the degree of damage to the premises and the outside temperatures at the time. Had the furnace been out for more than a day or two, there certainly would have been more damage than just a broken toilet bowl. I note from the contractors invoice that the hot water tank was also inoperative. The hot water tank would have taken several days to freeze and the freezing

would have burst the tank. No water lines were repaired and the toilet tank does not appear to have been replaced. I estimate that the heat had been off for 48 hours or less.

Assuming that the furnace ran out of fuel on January 9, 2009 it is reasonable to reduce the 655.8 litres of fuel purchased by the applicants by 147.69 litres to account for the fuel consumed after December 31, 2008 when the respondents gave up possession. Therefore I find that the respondents breached the tenancy agreement by failing to pay for the full amount of fuel during the term and find reasonable compensation for fuel that was purchased on their behalf to be $503.94 calculated as follows:

Fuel delivered on January 11/09	655.80 litres	
less fuel consumed January 1-8/09		
(8 days X 16.41 litres/day)	(131.28)	
Total	524.52 litres @ $0.9150/litre =	$479.94
Plus GST		24.00
Total		$503.94

Rent Arrears:

The parties agreed that only $750 of the November, 2008 rent was paid by the respondents. The respondents appeared to have some concerns about the amounts they had paid for rent but offered no specific evidence concerning any disputed payments. Mr. Mantla also claimed that the parties had agreed to a rent credit for any labour Mr. Mantla performed but the applicants disputed any such agreement and there is not reference to rent credits or abatement in the tenancy agreement.

Repair of Broken Window:

The applicants alleged that a picture window had been broken and sought compensation for the

replacement of the window in the amount of $979.27. A quotation for the supply and installation of the sealed unit was provided in evidence. Pictures of the window and the crawl space were provided in evidence.

As stated previously, there was no inspection report completed outlining the condition of the premises at the commencement of the tenancy agreement.

Mr. Raut testified that the window was not broken at the commencement of the tenancy agreement. Mr. Duggar testified that he had been in the premises in 2007, prior to the tenancy agreement between the parties, and had not seen any broken windows. He stated that he noticed the broken window just before the tenants vacated the premises.

Ms Abel testified that she had been in the premises on December 10, 2007 and had noticed the broken window. She described the window as a very small window.

Mr. Mantla testified that he pointed out the broken window to the landlord at the commencement of the tenancy. He stated that the floor near the window had a bulge in it and noted that there were some boards in the crawl space that were loose. He also noted that the premises were extremely dirty at the commencement of the tenancy and stated that it took them four months to completely clean the unit.

Ms Vital testified that the window was broken when they moved in and when the broken window

was pointed out to the landlord he stated he would deal with it. She also noted that the floor appeared to have a hump near the broken window. Ms Vital also noted that the premises were not clean at the commencement of the tenancy agreement.

Ms Beaulieu testified that she saw the cracked window close to the time the respondents moved into the premises.

I find the testimony of all of the witnesses of little use. Ms Abel referred to a small window but the window in question is a large picture window. There were no other reported broken windows in the premises. Ms Beaulieu, who is Ms Vital's sister, could not name a date when she saw the cracked window. Similarly, Mr. Duggar saw the window undamaged in 2007 before the respondents moved in but could not specify a date.

Both Mr. Mantla and Ms Vital emphasized the alleged structural problem as a possible cause of the window damage. The loose boards shown in the photos are not structural members and do not indicate any structural problem with the floor. However, if the window was indeed cracked at the commencement of the tenancy agreement, the cause of the damage is irrelevant.

The photographs which the respondents stated were taken in January, 2008 do not show premises which are extremely dirty as both respondents stated. This leads me to question the credibility of the respondents' testimony. However the photographs of the window, if taken in January, 2008 (a calendar on the wall appears to show that month), show the signs of condensation and dripping in

between the double glazing, more than I would expect to accumulate in less than a month.

Without an inspection report outlining the condition of the premises at the commencement of the tenancy agreement, a statutory requirement when the landlord requires a security deposit, I can not find, on the balance of probabilities, sufficient evidence to support the applicants' request for compensation for the window repair. Their request for window repair costs of $979.27 is denied.

The applicants have not considered interest on the security deposit which they held from December 10, 2007 which I calculate as $72.95.

Taking into consideration the retained security deposit, I find an amount owing to the respondents of $319.01 calculated as follows:

Security deposit	$1500.00
Interest	72.95
Rent arrears	(750.00)
Fuel	(503.94)
Amount owing respondents	$319.01

An order shall issue requiring the applicants to return a portion of the retained security deposit in the amount of $319.01.

Hal Logsdon
Rental Officer