File #10-10967

IN THE MATTER between **AMANDA JOHNSTONE**, Applicant, and **MARION HUTTON**, 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:

AMANDA JOHNSTONE

Applicant/Tenant

- and -

MARION HUTTON

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 applicant in the amount of one thousand twelve dollars and seventy six cents ($1012.76).

DATED at the City of Yellowknife, in the Northwest Territories this 25th day of September, 2009.

Hal Logsdon
Rental Officer

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-and-

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REASONS FOR DECISION

Date of the Hearing:	**September 16, 2009**
Place of the Hearing:	**Yellowknife, NT**
Appearances at Hearing:	**Amanda Johnstone, applicant** **Marion Hutton, respondent**
Date of Decision:	**September 25, 2009**

REASONS FOR DECISION

The tenancy agreement between the parties was terminated on July 4, 2009 when the applicant vacated the premises. The respondent retained the security deposit and accrued interest. The applicant disputed the retention of the security deposit and sought an order requiring the respondent to return the deposit and accrued interest.

Section 18(3) of the *Residential Tenancies Act*, requires a landlord who retains all or part of a security deposit to provide an itemized statement of the deposit and deductions and return any balance to the tenant.

> **18.(3) Where a landlord objects to returning all or a part of the security deposit on the grounds that a tenant has caused damage to the rental premises and repairs to the rental premises are necessary or the tenant is in arrears of the rent, the landlord shall, within 10 days after the tenant vacates or abandons the rental premises,**
>
> **(a) send a notice to the tenant and a rental officer of the intention of the landlord to withhold all or part of the security deposit;**
>
> **(b) give the tenant an itemized statement of account for the security deposit;**
>
> **(c) give the tenant an itemized statement of account for the repairs or arrears of the rent; and**
>
> **(d) return the balance of the security deposit with interest to the tenant.**

Instead of producing the required statement, the respondent sent an e-mail message to the applicant on July 6, 2009 stating that the landlord had incurred the following expenses:

Water	$151.80
Oil	299.04
Furnace repairs	250.00
Cleaning	325.00

In addition to the above mentioned items, the respondent also stated in the e-mail that there was $950 in outstanding rent and that the carpet in the children's bedroom had to be replaced. In summary, the respondent stated in the e-mail that her expenses and the rent arrears now totalled $1975.84 and that "at this time I do not feel we are in a position of owing you damage deposit on property."

The application was filed on July 8, 2009. I am unsure when the application was provided to the respondent but I am confident she received it as she filed a written response to the application on August 24, 2009 serving a copy on the applicant as well. The response sets out rent arrears and other deductions for the security deposit which are quite different from those set out in the respondent's July 6th e-mail.

- The rent arrears are now set out as $975 rather than $950. Receipts were provided in evidence.
- The water costs are now set out as $392.56 rather than $151.80. Two water invoices and a statement were provided in evidence.
- Carpet cleaning costs are set out as $213.15. Two invoices were provided in evidence. No costs for carpet cleaning were set out in the July 6th e-mail.
- An invoice for the repair of an oil burner was provided in evidence for $224.60. The July 6th e-mail set out plumbing and electrical costs of $250.
- There is no claim for cleaning. The July 6th e-mail set out $325 in expenses.
- The applicant now claims $294 for the replacement of blinds which did not appear on the July 6th e-mail statement.

The intent of section 18 of the Act is to resolve the security deposit promptly after the termination of the tenancy agreement. Section 18 does permit a landlord to provide only an estimate of the itemised repairs within ten days and a final statement within thirty days if the exact costs can not be accurately determined. In my opinion, it does not permit a landlord to add additional items to the original estimate. In any case, the July 6th e-mail is not an estimate. Therefore, I shall only consider the items contained on the July 6th e-mail statement. The respondent may make an application seeking relief for other items, such as the blinds and carpet cleaning pursuant to section 42 of the Act provided such an application is made within six months of the end of the tenancy agreement.

It should also be noted that although the respondent completed an inspection report outlining the condition of the premises at the commencement of the tenancy, it was not signed by the applicant as required by section 15(1) of the Act.

> **15.(1) At the commencement of the tenancy and when a security deposit is requested, a landlord and tenant shall sign a document that sets out the condition and contents of the rental premises.**

The Security Deposit and Interest

The written tenancy agreement sets out the required security deposit as $2100. The parties agreed that the deposit was paid in full although the applicant did not know the exact dates the deposit was paid. The respondent's payment records, provided in evidence, do not account for the full deposit but appear to indicate that $1100 was paid on September 26, 2008 and $400 was paid on September 29, 2008 and $500 was paid on October 31, 2008. I shall assume that the unaccounted

$100 was also paid on October 31, 2008 and calculate the interest to be $45.60.

Water

The written tenancy agreement between the parties fails to set out whether water is included in the rent or whether the tenant is responsible to pay for water during the term of the tenancy. Article 5(3) of the tenancy agreement which is intended to set out which party is obligated to pay for water has been left blank. The applicant stated that the respondent paid for water at the commencement of the tenancy agreement but she paid for water from December, 2008 to the end of the agreement. The evidence provided by the respondent supports the testimony of the applicant. The evidence suggests that the parties intended for the applicant to pay for water during the term of the agreement but that the water account was not established in the name of the applicant until December, 2008. The applicant did not pay for water for October, 2008 or November, 2008 but paid for water for the remainder of the term. The October, 2008 charges for water were $100.68 and the November, 2008 charges were $57.16. These charges were paid on behalf of the applicant by the landlord and are now payable to the landlord. I find the applicant responsible for these costs.

Oil

The respondent withdrew their request for reimbursement for the oil which appeared on the original statement.

Repair of Oil Burner

The respondent stated that repairs to the oil burner was made necessary because the system ran out of fuel causing damage to the burner control. An invoice for the $224.60 was provided in evidence. The invoice describes the work as "replace the defective Riello burner control." Section 42 of the Act sets out the tenant's obligation to repair damages 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, there is insufficient evidence to conclude that the burner control was rendered "defective" because the system ran out of fuel. The respondent's request for relief is denied.

Cleaning

The cleaning charges on the July 6th e-mail statement do not appear on the later statement. There is no invoice or other evidence to substantiate the cost or any inspection report, photographs or other evidence to indicate the need for cleaning. The respondent's request for relief is denied.

Rent Arrears

The respondent's receipts indicate that $600 was paid on June 11, 2009 and $375 was paid on July 8, 2009 leaving $975 owing for the month of June, 2009. The applicant did not present any evidence to the contrary. The parties agreed that the monthly rent had been reduced from $2100 to $1950 in April, 2009. I find the rent arrears to be $975.

Considering the above items, I find the retention of the entire security deposit unreasonable. In

my opinion the respondent is entitled to deductions for rent arrears ($975) and water ($157.84). Taking into consideration the security deposit and accrued interest, an order shall issue requiring the respondent to return $1012.76 of the retained security deposit calculated as follows:

Security deposit	$2100.00
Interest	45.60
Rent arrears	(975.00)
Water	(157.84)
Amount due applicant	$1012.76

Hal Logsdon
Rental Officer